The NORTH CAROLINA REGISTER

IN THIS ISSUE .....

ISSUE DATE: July 15, 1992

Volume 7 • Issue 8 • Pages 791-902

INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CO

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 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. Individual issues may be purchased for eight dollars ($8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. 0. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments: the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies ma ssue temporary rules. Within 24 hours of submission to O , the Codifier of Rules must review the agency's written state nt of findings of need for the temporary rule pursuant to the prov ns in G.S. 150B-21.1. If the Codifier determines that the findin neet the criteria in G.S. 150B-21.1, the rule is entered into the N C. If the Codifier determines that the findings do not meet the eria, the rule is returned to the agency. The agency may supple nt its findings and resubmit the temporary rule for an additiona view or the agency may respond that it will remain with it itial position. The Codifier, thereafter, will enter the rule the NCAC. A temporary rule becomes effective either w the Codifier of Rules enters the rule in the Code or on th ixth business day after the agency resubmits the rule without nge. The temporary rule is in effect for the period specified in th le or 180 days, whichever is less. An agency adopting a tempor rule must begin rule-making procedures on the permanent rul the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE C DE

The North Carolina Administrative Code (NCA is a compilation and index of the administrative rules of 2 tate agencies and 38 occupational licensing boards. The AC comprises approximately 15,000 letter size, single spaced p s of material of which approximately 35% of is changed ar lly. Compilation and publication of the NCAC is mandated G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state ncy is assigned a separate title which is further broken do by chapters. Title 21 is designated for occupational licensing bo s.

The NCAC is available in two formats.

(I) Single pages may be obtained at a minimum t of two dollars and 50 cents ($2.50) for 10 pages ess, plus fifteen cents ($0.15) per each additional page.

(2) The full publication consists of 53 volumes, tot g in excess of 15,000 pages. It is supplemented m thly with replacement pages. A one year subscriptio the full publication including supplements c be purchased for seven hundred and fifty lars ($750.00). Individual volumes may also be pu sed with supplement service. Renewal subscripti for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC sh i be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLIN REGISTER

The *North Carolina Register* is cited by volume, issu age number and date. **1:1 NCR 101-201, April 1, 1986** re s to Volume 1, Issue 1, pages 101 through 201 of the *North C lina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office Administrative Hearings, ATTN: Rules Division, P Drawer 27447, Raleigh, North Carolina 27611-7447, (733-2678.

NORTH CAROLINA REGISTER

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, NC 27611-7447
(919) 733 - 2678

ISSUE CONTENTS

NORTH CAROLINA REGISTER

Publication Schedule

(May 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
06/01/92	05/11/92	05/18/92	06/16/92	07/01/92	07/20/92	09/01/92
06/15/92	05/22/92	06/01/92	06/30/92	07/15/92	07/20/92	09/01/92
07/01/92	06/10/92	06/17/92	07/16/92	07/31/92	08/20/92	10/01/92
07/15/92	06/24/92	07/01/92	07/30/92	08/14/92	08/20/92	10/01/92
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
03/01/93	02/08/93	02/15/93	03/16/93	03/31/93	04/20/93	06/01/93
03/15/93	02/22/93	03/01/93	03/30/93	04/14/93	04/20/93	06/01/93
04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
05/03/93	04/12/93	04/19/93	05/18/93	06/02/93	06/20/93	08/02/93
05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/93
07/01/93	06/10/93	06/17/93	07/16/93	07/31/93	08/20/93	10/01/93
07/15/93	06/23/93	06/30/93	07/30/93	08/14/93	08/20/93	10/01/93
08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
10/01/93	09/10/93	09/17/93	10/16/93	10/31/93	11/20/93	01/04/94
10/15/93	09/24/93	10/01/93	10/30/93	11/14/93	11/20/93	01/04/94
11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* *The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.*

EXECUTIVE ORDER NUMBER 169
CRIMINAL RECORD CHECKS OF APPLICANTS FOR DIRECT CARE POSITIONS WITHIN THE DEPARTMENT OF HUMAN RESOURCES

WHEREAS, the State of North Carolina endeavors to promote the safety of the residents and clients of institutions operated by the Department of Human Resources, including protection from physical or sexual abuse or related conduct, and

WHEREAS, federal regulations established for Intermediate Care Facilities for the Mental Retarded prohibit the Department of Human Resources from employing individuals with a history of child or client abuse or related conduct in its mental retardation centers, and

WHEREAS, careful reviews of applications and employment reference checks have not always been effective in screening out applicants for employment with histories of client or child abuse or related conduct, and

WHEREAS, a credible source of information on North Carolina criminal records of applicants for employment in direct care positions is the criminal history record information maintained by the State Bureau of Investigation, Division of Criminal Information ("DCI").

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

1. Criminal Background Investigations.

The Department of Human Resources shall conduct a criminal background investigation through access of the criminal history record information for individuals who have been selected for employment in a direct patient / resident / client care position in the Division of Services for the Blind, Division of Services for the Deaf and Hard of Hearing, and the following institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services: Western Carolina Center, Black Mountain Center, Murdoch Center, O'Berry Center, Caswell Center, Broughton Hospital, John Umstead Hospital, Dorothea Dix Hospital, Cherry Hospital, Black Mountain Alcohol and Drug Abuse Treatment Center, Butner Alcohol and Drug Abuse Treatment Center, Walter B. Jones Alcohol and Drug Abuse Treatment Center, Whitaker School, Wright School, N.C. Special Care Center and Butner Adolescent Treatment Center; provided, however, that such individuals shall be required to sign a statement which advises them that a criminal background investigation will be conducted and that the information obtained, if confirmed by the submission of fingerprints to DCI, may be used as a basis to deny employment. In the event of reasonable grounds therefor, the Secretary of Human Resources or his designee(s) shall request further criminal record checks through the submission of fingerprints to SCI.

2. Denial of Employment.

Consistent with federal and state fair employment laws, the Department of Human Resources shall deny or discontinue employment in direct patient/resident/client care positions of any applicant or employee who has been convicted of a criminal offense involving or has engaged in unlawful sexual conduct, assault or other violent behavior, or any type of child abuse, elder abuse, client abuse or related conduct, or any felony arising out of possession or sale of controlled substances.

3. Administration and Procedure.

The Department of Justice shall adhere to its established procedures and shall charge the Department of Human Resources a reasonable fee when it conducts a criminal record check through the submission of fingerprint information pursuant to this Executive Order. The fee charged shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

4. Confidentiality of Information.

Criminal histories obtained by the Department of Human Resources through DCI or otherwise shall be confidential and access thereto shall be limited to those persons authorized by the Secretary of Human Resources. Unauthorized disclosure of any such information may result in severe disciplinary action, including dismissal, and as provided in N.C.G.S. 126-27 and 126-28 or successor statute.

5. Effective Date.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 26th day of June, 1992.

EXECUTIVE ORDER NUMBER 170
AMENDMENT TO EXECUTIVE ORDERS NUMBER 151 AND NUMBER 163

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

Executive Orders Number 151 and Number 163 are hereby amended to add the following members to the Governor's Advisory Commission on Military Affairs:

Section 1. ESTABLISHMENT

The Governor's Advisory Commission on Military Affairs shall be comprised of thirty-six (36) members. Twenty (20) members are to be appointed by the Governor and shall serve for terms of two (2) years at the pleasure of the Governor. In addition to the twenty (20) appointed members the following sixteen (16) will be permanent members:

(1) Lieutenant Governor of North Carolina;
(2) Chairpersons of the Military Affairs Committees of the North Carolina House of Representatives and the North Carolina Senate;
(3) Secretaries of the Departments of Admi istration, Transportation, Environmen Health, and Natural Resources, Crim Control and Public Safety, and Econom and Community Development;
(4) Base Commanders of Fort Bragg, Cam Lejeune, Cherry Point and the Elizabet City Coast Guard Air Station;
(5) Wing Commanders of the 4th Tactic Fighter Wing and the 317th Tactical Ai lift Wing;
(6) Executive Director of the North Carolin Ports Authority; and
(7) Adjutant General of the North Carolin National Guard.

The Governor shall designate one of the mem bers as Chairperson.

This Executive Order shall be effective imm diately.

Done in Raleigh, this the 29th day of June, 199

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

U.S. Department of Justice
Civil Rights Division

JRD:LLT:EMP:gmh
DJ 166-012-3
92-1942

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

June 23, 1992

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to two annexations (Ordinance Nos. 92-42 and 92-43) and the designation of the annexed areas to election districts for the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 21, 1992.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt 1 NCAC 38 .0101 - .0102, .0201 - .0206, .0301 - .0308, .0401 - .0408, .0501 - .0511, .0601 - .0602, .0701 - .0703.

The proposed effective date of this action is October 1, 1992.

The public hearing will be conducted at 9:00 a.m. on July 30, 1992 at the Commission Room 5034, Administration Building, 116 West Jones Street, Raleigh, NC 27602-8003.

Reason for Proposed Action: This adoption is necessary for the Division of Motor Fleet Management's implementation of the statutory requirements of G.S. 143-341(8)i regulating state motor passenger vehicles assignments and use.

Comment Procedures: Any interested person may present his her comments either in writing or at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003.

CHAPTER 38 - MOTOR FLEET MANAGEMENT DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0101 ORGANIZATION

The Motor Fleet Management Division, hereafter referred to as the Division, is housed in the North Carolina Department of Administration.

Statutory Authority G.S. 143-341(8)i.

.0102 PURPOSE

The Division and its statewide motor pool network provide efficient management, maintenance, repair, and storage of state-owned passenger motor vehicles. It provides a convenient source of passenger transportation for all state agencies on a statewide basis.

Statutory Authority G.S. 143-341(8)i.

SECTION .0200 - OPERATION OF THE DIVISION'S MOTOR POOLS

.0201 LOCATION OF FACILITIES

(a) The Division's Administrative Office and Garage is located at:

1915 Blue Ridge Road
Raleigh, North Carolina 27607-6403
Telephone: 919-733-6540.

(b) The Division's Raleigh Motor Pool is located in the vicinity of the state government complex. Its address is:

220 East Peace Street
Raleigh, North Carolina 27604-1211
Telephone: 919-733-7776.

Statutory Authority G.S. 143-341(8)i.

.0202 DISPATCHING

Dispatching is performed from all motor pool facilities.

Statutory Authority G.S. 143-341(8)i.

.0203 GASOLINE PURCHASES

Gasoline purchases should be obtained from the Division's facilities or other state-owned facilities except when state-owned facilities are closed or when travel is out-of-state. When commercial establishments are used for the purchase of fuel the driver must complete form FM-33, attach it to the travel log, and forward it to the Division. Only regular unleaded gasoline from self-service pumps (except those who have a physical handicap that would prevent the pumping from self-service pumps) is permitted to be purchased from commercial pumps.

Statutory Authority G.S. 143-341(8)i.

.0204 MILEAGE RATES

(a) Rates charged for the use of the Division vehicles are established by the Department of Administration. The Division's mileage rate includes all expenses for operating, servicing, repairing, and replacing all motor pool vehicles under its jurisdiction.

(b) Agencies shall reimburse the Department of Administration at the end of each calendar month, on a mileage basis at a rate set by the Department of Administration:

(1) Permanently and agency assigned vehicles will be billed for 1,050 miles per month or actual mileage, whichever is greater. Vehicles usage will be reviewed to determine if the assignment is cost effective and serves the best interest of the assigned agency and the Division.

(2) Temporarily assigned vehicles will be billed for actual mileage or 60 miles for each day's usage, whichever is greater. If the vehicle is checked out after 5:00 p.m.

no minimum fee will be assessed for the day the vehicle is checked out. If the vehicle is returned before 8:00 a.m., no minimum fee will be assessed for the day the vehicle is returned. However, a minimum fee of 60 miles will be assessed for each temporary assignment made for less than 24 hours.

Statutory Authority G.S. 143-341(8)i.

.0205 CREDIT CARDS AND PUMP KEY

There are two credit cards and a gasoline pump key issued to each vehicle. The Motor Fleet Management Universal Gasoline Credit Card (used only when state pumps are closed or travel is out-of-state) and the Department of Transportation (DOT) Credit Card (used at some DOT and state facilities) are issued to each vehicle and are to be used for that vehicle only. A gasoline pump key is to be used at DOT facilities having special self-service pumps. A listing of county maps showing the location of DOT gasoline facilities and hours of operation is found in the Division's Manual, which is stored in each vehicle's glove box.

Statutory Authority G.S. 143-341(8)i.

.0206 SERVICE FOR NON-MOTOR POOL VEHICLES

Gasoline and oil shall be furnished to any state-owned passenger vehicle at the Division rates. Other services and minor repairs may be obtained on a first-come reservation basis as time permits.

Statutory Authority G.S. 143-341(8)i.

SECTION .0300 - MAINTENANCE AND CARE OF VEHICLES

.0301 GENERAL

The maintenance of permanent assigned and agency assigned vehicles is the responsibility of the individual and agency to whom the vehicle is assigned. The driver or agency may obtain any required maintenance at any Division motor pool or any state-owned facility or any approved commercial facility. Charges for this maintenance are billed to the Division. The maintenance of temporarily assigned vehicles is the responsibility of the Division.

Statutory Authority G.S. 143-341(8)i.

.0302 ROUTINE MAINTENANCE

Drivers shall routinely check their assigned vehicles to insure proper oil level, water and antifreeze for radiators, water for battery, wear on belts, and proper inflation of tires. This service should be performed when fuel is purchased or at least weekly.

Statutory Authority G.S. 143-341(8)i.

.0303 PREVENTIVE MAINTENANCE

Preventive maintenance on vehicles is to be performed at scheduled intervals established by the Division. If maintenance is not performed within plus or minus 500 miles of the schedule, vehicle assignment is subject to termination.

Statutory Authority G.S. 143-341(8)i.

.0304 REPAIRS AND MAINTENANCE

The driver or agency may obtain required maintenance or repairs at the Division's Garage, other state-owned facilities or any commercial facility. All maintenance and repairs must have prior authorization by calling 1-800-277-8181 or 733-4043 (in Raleigh calling area) with the details of the maintenance and an estimate of the cost. Properly authorized charges for maintenance or repairs should be billed to the Division for payment. In case of holidays, nights or weekends, an authorization request must be left with the Division's answering service. Any unauthorized repair expense will be billed to the agency to which the vehicle is assigned.

Statutory Authority G.S. 143-341(8)i.

.0305 ANNUAL SAFETY INSPECTIONS

All vehicles shall be inspected annually as required by North Carolina safety inspection laws. This inspection is billed to the Division. It is the responsibility of the assigned driver and agency to assure that the vehicle has a valid inspection sticker.

Statutory Authority G.S. 143-341(8)i.

.0306 ACCIDENT REPORTING

(a) All accidents involving state vehicles or other property damage, regardless of amount of damage, must be reported by calling 1-800-277-8181 or 733-4043 (in Raleigh calling area). Information which must be obtained from the other driver involved in the accident is: name, address, telephone number, license plate number, insurance company, and policy number. An Accident Report Form FM-16 must be completed and forwarded immediately to the Division. All accidents involving injury or damage to a state vehicle must be reported to Travelers Insurance Company, promptly as follows:

(1) In North Carolina, call 1-800-762-3804 except in the following counties: Bertie, Currituck, Hertford, Pasquotank, Camden, Dare, Hyde, Perquimans, Chowan, Gates, Martin, and Washington. In these counties call 804-330-4788, collect.
(2) On weekends, after hours and holidays when there is serious injury or death, call immediately 1-800-243-3840.
(3) Accidents with minor property damage may be reported to Travelers Insurance Company on the Travelers' form.

Statutory Authority G.S. 143-341(8)i.

.0307 DECALS ON VEHICLES

Decals may be affixed to vehicles owned by the Division when done in accordance with the following provisions:
(1) The decal and method of fixture must be approved by the Division prior to application of decal.
(2) The decal must not cover an area greater than 200 square inches.
(3) No more than two decals may be affixed to the vehicle and must be affixed one each to the front doors of the vehicle.
(4) The decal must be applied and removed without defacing or devaluing the vehicle.
(5) The cost of decal material, application, and removal of decal must be borne by the using agency.
(6) The cost of any repairs resulting from inadvertent defacing must be borne by the using agency. All such repairs must restore the vehicle to its original condition.
(7) Any exception to these Rules and Regulations must be approved by the Division in advance.
(8) Bumper stickers are not allowed on Division-owned vehicles unless approved by the Division in advance.

Statutory Authority G.S. 143-341(8)i.

.0308 INSTALLATION OF EQUIPMENT

Special equipment required in the line of duty may be installed on Division vehicles upon receiving prior written authorization. The using agency must bear the cost of purchase, installation, maintenance, and removal of such equipment. Any defacing to or devaluing of the vehicle resulting from installation or removal of special equipment must be repaired at the expense of the using agency. Other equipment not furnished with the vehicle at the time of assignment by the Division shall be paid by the requesting agency. Radar detectors are not allow in state vehicles.

Statutory Authority G.S. 143-341(8)i.

SECTION .0400 - ASSIGNMENT OF VEHICLE

.0401 TYPES OF VEHICLE ASSIGNMENTS

(a) Individual Permanent Assignment: Stat owned passenger-carrying vehicles may be pe manently assigned to state employees for offici state business when the vehicle is expected to b driven a minimum of 3,150 miles per quarte Individuals whose duties are routinely related public safety or are exposed to life-threatenin situations are exempt from the 3,150 miles p quarter requirement.

(b) Agency-Assigned Vehicles: States-owne passenger carrying vehicles may be assigned to state agency or institution when the vehicle expected to be driven an average of 1,050 mil per month to conduct official state busines Vehicles may also be assigned to a state agenc or institutuion when the vehicle is needed for unique use involving a minimum number of lo mileage trips per month as determined by th agency and approved by the Division. The ve hicle cannot be driven continuously by one em ployee and must be made regularly available t all persons in the agency. Agency-assigned ve hicles must consistently be driven the 3,150 mil per quarter minimum.

(c) Temporary Assignment: State-owned vehi eles may be temporarily assigned to state em ployees for official state business or whil permanently assigned vehicles are being repaired Vehicles for temporary assignment will be cen trally controlled and housed by the Division, as signed from a motor pool for a specific purpos and returned to the motor pool at the end of th assignment.

Statutory Authority G.S. 143-341(8)i.

.0402 REQUESTS FOR ASSIGNMENT OF VEHICLES

(a) Temporary assignment requests for tempo rary assignment of vehicles shall be made o Form FM-2 signed by the proper agency super visor and presented to the dispatcher at the as signing motor pool. Forms shall be provided b the Division to all requesting agencies.
(1) Before a vehicle may be picked up, a vali North Carolina driver's license shall b presented to the motor pool dispatcher b the assigned driver and all other passen gers who are subject to drive the vehicl during its temporary assignment.

(2) Temporary assignments are intended to meet the needs of state employees who require transportation on a short-term (one to ten days) basis. All temporarily assigned vehicles shall be returned immediately upon completion of trip or at end of use. With documented justification, temporary assignments may be made for up to 30 calendar days.

(3) Temporary assignments shall not be renewed for any reason, but may be extended in cases of emergency or when extenuating circumstances make it impractical to return the vehicle as scheduled. In all cases, the motor pool from which the vehicle was dispatched must be notified by the driver to obtain prior approval for its extension.

(4) If the vehicle assignment is originally requested for a period in excess of 30 calendar days, the request must be processed as a permanent assignment (see "Permanent Assignments" in this Rule).

(5) All temporarily assigned vehicles shall be returned to the motor pool from which it was originally dispatched. During the temporary assignment, the driver should make note of any malfunctions encountered and any repairs and adjustments needed and report them to a fuel pump attendant upon returning the vehicle to the motor pool.

(b) Permanent Assignments. Requests for vehicles to be assigned to individuals or agencies on a permanent or indefinite basis or for a period in excess of 30 calendar days shall be made on Form FM-30, signed by the department head or his/her designee, and forwarded to the Division at least 10 calendar days prior to date of need. A photocopy of the assigned driver's valid North Carolina driver's license shall be submitted with the FM-30. All permanently assigned vehicles shall be returned to Motor Fleet Management on Blue Ridge Road, Raleigh, at the end of assignment unless otherwise instructed by the Division. The Division shall not approve requests for assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non job-related reason. A reassignment (a transfer of a vehicle from one employee to another) may occur when filling vacant positions to which a vehicle is assigned. A form FM-30 must be submitted by the requesting agency and approved by the Division before the vehicle may be reassigned. The requesting agency must attach a memorandum to the FM-30 explaining the request for reassignment. If approved, a Division approved copy of the FM-30 will be sent to the agency granting permission for the new driver to take possession of the vehicle. All exchanges of lower mileage and/or better quality vehicles to senior or higher ranking employees and higher mileage and or lower quality vehicles to junior employees will be denied.

(c) The Division will not assign "special use" vehicles such as four wheel drive vehicles or law enforcement vehicles to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary of the Department of Administration.

(1) All assignments of four-wheel drive and law enforcement vehicles must be reviewed. A memorandum, accompanied by historical data, must be sent to the Division for each individual vehicle assigned.

(2) All requests for "special use" vehicles must be on a completed FM-30 accompanied by a memorandum explaining the intended use of the vehicle. Attached to the memorandum should be evidence substantiating the necessity for this type of vehicle, which must be verified by historical data.

(3) The agency or individual to whom the vehicle is assigned is responsible for forwarding this information to the Division. The Division will forward all justification requests to the Secretary of the Department of Administration.

(4) The agency will be notified, in writing, of the Secretary's decision. If the assignment request is denied, the requesting agency will be notified by the Division of a date for the return of the vehicle to the Division.

Statutory Authority G.S. 143-341(8)i.

.0403 DENIAL AND APPEAL PROCEDURES

In the event a request for a permanently or agency assigned vehicle is denied, the agency head may appeal the decision of the Division to the Secretary of the Department of Administration, in writing, within 10 days of denial of request.

Statutory Authority G.S. 143-341(8)i.

.0404 VIOLATIONS

A copy of all traffic violations received by state employees while operating state-owned vehicles is received by the Director of the Division. An

inquiry letter is sent to the department head and a response is requested. If a state employee is involved in repeated infractions, he/she may be subject to denial of the use of any state-owned vehicle.

Statutory Authority G.S. 143-341(8)i.

.0405 REMOVAL OF VEHICLES FROM INDIVIDUAL AND AGENCY ASSIGNMENT

Permanent vehicle assignment to individuals or agencies may be revoked if any of the following occur:

(1) If the vehicle is used for any purpose other than official state business.

(2) If reports are not submitted to the Department of Administration, or if the report is inaccurate, incomplete or correction is not made within 30 days of request.

(3) If false information is willfully and knowingly submitted on any report or application.

(4) If reports or forms are not signed properly and correction is not made within 30 days of a request to do so.

(5) If vehicle abuse occurs. Abuse includes, but is not limited to, improper care and maintenance of the vehicle (excess and extended filth of vehicle), willful damage to the vehicle (destruction of interior or exterior) and reckless disregard for the proper operation of the vehicle (excessive moving or standing violations).

(6) If the vehicle is not being driven the 3,150 miles quarterly minimum mileage requirement and lower mileage cannot be justified.

(7) If substantiated violations of Motor Vehicle laws are committed.

(8) If other rules and regulations or policies are willfully violated.

Statutory Authority G.S. 143-341(8)i.

.0406 TERMINATION PROCEDURES

The Division shall revoke the assignment or require the department owning the vehicle to revoke the assignment of a state-owned passenger motor vehicle, pickup truck or Van when any one of the conditions cited previously in Rule .0405 of this Section have been established to a reasonable certainty. Agencies may cite abuse or any one of the other conditions set forth in Rule .0405 of this Section for appropriate agency disciplinary action. The following procedures shall be used by the Division:

(1) Complaints, concerns, and questions received by the Division are acted upon and a written notice is sent to the proper department head.

(2) Notification by the Division of a vehicle complaint will include specific documentation to support such claim. Within 10 days a written reply should be received by the Division regarding the complaint unless an extension is granted.

(3) The Division will review the allegation and verify all documents supporting the allegation. Further, the Division will review the response received by the agency head and or alleged offender.

(4) After a full evaluation of the allegation and response, the Director of the Division will determine if the vehicle assignment shall be revoked. No revocation will occur based on an anonymous call.

(5) The Division reserves the right to temporarily terminate a vehicle assignment during the course of an investigation. This shall definitely be the case under citation of driving while impaired or without a valid driver's license or any other major allegation.

If a vehicle assignment is revoked, the offender may appeal the decision of the Division's Director to the Secretary of the Department of Administration. Any appeal to the termination of a vehicle assignment will be sent to the agency head who will forward the appeal to the Division. The Division will send the appeal to the Secretary of the Department of Administration. If an appeal is denied, and the vehicle assignment is revoked, a new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which the assignment was previously revoked will not recur.

Statutory Authority G.S. 143-341(8)i.

.0407 WEEKEND ASSIGNMENTS

When official state business requires the use of a motor pool vehicle on weekends or a state holiday, or early departure on Monday or the day following a state holiday is required, the employee may be assigned a vehicle on Friday afternoon or on the afternoon preceding the holiday. Such assignments may be made after 5:00 p.m. with no charge for the day that the vehicle is picked up or for the holiday or weekend if the car is not being used.

Statutory Authority G.S. 143-341(8)i.

.0408 RETURN OF ASSIGNED VEHICLES

(a) Vehicles assigned on a temporary basis shall be returned to the motor pool at the end of the

assignment period unless an extension has been requested and approved.

(b) The Division will schedule replacement vehicles based on mileage, time in service, economy and nature of use of each vehicle. If turn-in or replacement is required, all permanently assigned vehicles must be returned to the Division's Garage on Blue Ridge Road. When returning a permanently assigned vehicle, all credit cards assigned to that vehicle, vehicle registration, travel log book, and any other materials issued by the Division must be returned. Drivers must turn their cars in to Assignment personnel or the turn-in will not be recognized by the Division, and the agency will continue to be charged for the assignment until the matter is handled properly.

(c) All cases of damages or excessive wear due to vehicle misuse or abuse will be billed to the driver's agency.

Statutory Authority G.S. 143-341(8)i.

SECTION .0500 - VEHICLE USE

.0501 OFFICIAL USE ONLY

(a) State-owned passenger-carrying vehicles shall be driven only by state employees and used for official state business only. It shall be unlawful for any state employee to use a state-owned vehicle for any private purpose whatsoever. Commuting privileges approved by the Division are not considered a private purpose.

(b) An employee with an individual permanently assigned vehicle may drive the vehicle to and from his/her home when one or more of the following conditions exist:

(1) By virtue of his/her position, the employee is entitled to use the vehicle and is so approved and authorized by the Secretary of Administration.

(2) Employee's duties are routinely related to public safety or are likely to expose him her to life-threatening situations.

(3) Employee's home is his her official work station and the vehicle is parked at home when not being used for official business.

(4) State-owned vehicle is required for a trip the following workday and employee's home is closer to the destination than the regular work station, and the employee does not have to report his her regular work station before beginning the trip. Frequent occurrence of this situation would require the Division's approval.

(5) Temporary and agency assigned vehicles may not be driven to an employee's home unless one of the above four conditions apply.

Statutory Authority G.S. 143-341(8)i.

.0502 COMMUTING POLICY

Employees who routinely drive any state-owned vehicle between their home and work station shall reimburse the state for mileage. Reimbursement shall be made by payroll deduction. The amount of reimbursement shall approximate the benefit derived from the use of the vehicle as prescribed by federal law at a rate established by the Division and shall be for 20 days per month. Commuting privilege requires prior approval of the Division. Commuting, for purposes of this Paragraph, does not include those individuals whose office is in their home, as determined and approved by the Office of State Budget and Management. Also, this Paragraph does not apply to the following vehicles:

(1) Clearly marked police and fire vehicles.

(2) Delivery trucks with seating only for the driver.

(3) Flatbed trucks.

(4) Cargo carriers with over a 14,000-pound capacity.

(5) School and passenger buses with over 20-person capacities.

(6) Ambulances.

(7) Hearses.

(8) Bucket trucks.

(9) Cranes and derricks.

(10) Forklifts.

(11) Cement mixers.

(12) Dump trucks.

(13) Garbage trucks.

(14) Specialized utility repair trucks (except vans and pickup trucks).

(15) Tractors.

(16) Unmarked law enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law enforcement officers whose primary duties include carrying firearms, executing search warrants, and making arrests.

(17) Any other vehicle exempted under Section 274 (d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Service regulations based thereon.

Statutory Authority G.S. 143-341(8)i.

.0503 TOLL CHARGES

Charges for ferry, bridge, road, or other tolls shall not be charged to the Division. Such charges shall be paid by the driver when incurred

and shall be reimbursed to the driver by his agency.

Statutory Authority G.S. 143-341(8)i.

.0504 PARKING AND STORING OF VEHICLES

(a) Individuals and agencies are responsible for secure and safe storage and parking of vehicles. Repeated acts of vandalism may result in the agency being charged for repairs. State-owned vehicles shall not be left on non-residential streets or highways overnight unless it is necessary due to mechanical failure or emergency. When a state-owned vehicle is parked on a municipal street, it shall be the responsibility of the driver or the driver's agency to pay all parking fees and any parking fines or other fines assessed against the vehicle. The vehicle may be parked in a commercial or municipal parking facility provided the driver or the driver's agency pays for any parking fees. The assigned driver shall be responsible for any towing fees resulting from improper parking.

(b) The Division shall not be responsible for property left in parked vehicles at any location including the Motor Pool Garage. Further the Division shall not be responsible for the cost of duplicate keys other than those that are issued when the car is assigned. Also, the Division shall not be responsible for the cost associated with locking a key in a vehicle.

(c) Parking citations are the responsibility of the assigned driver or the driver's agency at the time of issue. If a parking citation is not paid within a two-week period, a notice is sent to the Division and forwarded to their assigned driver. Excessive unpaid parking citations received by the Division for the same driver may constitute vehicle abuse.

Statutory Authority G.S. 143-341(8)i.

.0505 MOTOR VEHICLE LAWS AND ORDINANCES

It is the responsibility of the driver to observe all state motor vehicle laws and municipal ordinances. All violations and resulting fines shall be the responsibility of the driver involved.

Statutory Authority G.S. 143-341(8)i.

.0506 HITCHHIKERS

Hitchhikers are not permitted to ride in state-owned vehicles.

Statutory Authority G.S. 143-341(8)i.

.0507 RELATIVES

Spouses and children of state employees may accompany them in state-owned vehicles if sufficient space is available and all travel is strictly for official state business. No family pets are permitted in state-owned vehicles. Leader dogs for the blind are excluded from this restriction.

Statutory Authority G.S. 143-341(8)i.

.0508 NON-STATE EMPLOYED PERSONS

Non-state employed persons may accompany state employees driving state-owned vehicles when they have an interest in the purpose of the trip and their presence is related to state business. Students of universities and colleges may be passengers in state cars to attend athletic events and other activities officially sanctioned by the institution, provided the proper account is reimbursed at the standard mileage cost rate by the student activity fund involved. Non-state employed persons, however, are not allowed to drive the state-owned vehicle, except for drivers of blind or permanently disabled state employees. Also excepted are graduate students enrolled in a state-supported college or university whose educational training requires the use of a state-owned vehicle.

Statutory Authority G.S. 143-341(8)i.

.0509 USE OF STATE-OWNED VEHICLES FOR PRIVATE PURPOSES

When an employee is required to use a state-owned vehicle for travel while away from his/her work station, the vehicle may be used for travel to obtain meals and other necessities, but not for entertainment or any personal purposes. A state employee may not use a state-owned vehicle for obtaining meals unless he/she is in travel status, approved commuter status, or approved office in home. Under no circumstances may a state employee operate a state-owned vehicle while under the influence of intoxicating beverages, drugs, or substances, or transport (except in performance of law enforcement duties) these items in a state-owned vehicle.

Statutory Authority G.S. 143-341(8)i.

.0510 OUT-OF-STATE TRAVEL

There are no special requirements to use a state-owned vehicle for travel in the continental U.S. If a vehicle is to be driven to Canada or Mexico the driver must contact the Division 30 days ahead of time so the proper automotive insurance protection may be obtained.

Statutory Authority G.S. 143-341(8)i.

.0511 REPLACEMENT OF VEHICLES

The Division shall formulate a replacement schedule for state-owned vehicles based upon accumulated mileage, time in service, and nature of use for each vehicle.

(1) The Division shall ensure that state-owned vehicles are not normally replaced until the vehicle has been driven at least 90,000 miles. The Division will schedule replacement at 90,000 miles.

(2) All cases of damages or excessive wear due to vehicle misuse or abuse will be billed to the driver's agency.

Statutory Authority G.S. 143-341(8)i.

SECTION .0600 - USE OF PRIVATELY OWNED VEHICLES

.0601 STATE POLICY ON USE OF PRIVATE VEHICLES

G.S. 138-6 provides for reimbursement of state employees for actual mileage driven when using their private vehicles on official state business. Reimbursement shall not exceed the rate charged for motor pool vehicles or normal air coach fares when private vehicles are used for the convenience of the employee.

Statutory Authority G.S. 138-6; 143-341(8)i.

.0602 REIMBURSEMENT AT STATUTORY RATE

The statutory rate for use of a private vehicle is the rate of reimbursement set by the Legislature. The current rate is twenty-five cents ($ .25) per mile. Employees may be reimbursed by their agency at statutory rates when using their personal vehicles for state business when the round trip does not exceed 60 miles and travel is approved by their agency head. When trips are to exceed 60 miles, agencies shall use a state vehicle if one is available within the Raleigh servicing area. If a motor pool vehicle cannot be supplied, the motor pool dispatcher must stamp the FM2 form before the trip is made in a private vehicle, indicating a motor pool vehicle is unavailable when needed. Statutory rates may also be paid to employees with physical handicaps when equipment for operating a vehicle is not available on state-owned vehicles. Also, when use of a private vehicle is in the best interest of the state and results from the particular requirements of the employee's duties, statutory rates may be paid. Reimbursement at statutory rates shall be limited to actual miles driven on official state business only.

Statutory Authority G.S. 138-6; 143-341(8)i.

SECTION .0700 - MISCELLANEOUS PROVISIONS

.0701 TRANSPORTATION TO AND FROM MOTOR POOLS

The motor pools do not provide local transportation for persons who must leave their vehicle for service. Nor is local transportation provided to a motor pool when a temporary vehicle is picked up at the beginning of a trip. Arrangements should be made for local transportation prior to arriving at a motor pool.

Statutory Authority G.S. 143-341(8)i.

.0702 USE OF PRIVATE LICENSE PLATES

The Division may not assign private license plates to any state-owned vehicle except as provided in G.S. 14-250.

Statutory Authority G.S. 14-250; 143-341(8)i.

.0703 DRIVING UNDER ADVERSE WEATHER CONDITIONS

Temporarily assigned vehicles will not be issued during adverse weather conditions such as accumulated snow, sleet, or ice on roadways. Temporarily assigned vehicles already requested may be cancelled or delayed at the discretion of the Division in the event of any adverse weather conditions. Drivers of vehicles on permanent assignment, who drive during adverse weather conditions, are cautioned to take extreme care and employ safety measures to ensure the safety of driver and passengers. Any damage to Division-owned vehicles operated during adverse weather conditions shall be paid by the using agency when it is found that such damage resulted from negligence on the part of the driver. Drivers are requested to turn on headlights while driving during inclement weather and are required by state law to turn on headlights when operating windshield wipers.

Statutory Authority G.S. 143-341(8)i.

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Economic and Community Development intends to adopt rules cited as 4 NCAC 1K .0101 - .0105, .0201 - .0207, .0301 - .0302, .0401 - .0405.

The proposed effective date of this action is October 1, 1992.

The public hearing will be conducted at 1:00 p.m. on August 17, 1992 at the Claude Pope Room, 2nd Floor, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Rules are proposed to reflect change in agency administering the Industrial Development-Community Development Block Grant program and changes in the program itself.

Comment Procedures: Interested persons may present oral comments at the public hearing on August 17, 1992 or deliver written comments to the Commerce Finance Center no later than August 14, 1992. Oral comments may be limited at the discretion of the hearing officer.

Editor's Note: Rules 4 NCAC 1K .0101 - .0105, .0201 - .0206, .0301 - .0302, .0401 - .0403 have been filed as temporary rules effective July 20, 1992 for a period of 180 days or upon the effective date of the permanent rule, whichever is sooner.

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1K - ECONOMIC DEVELOPMENT ACTIVITY OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0101 PROGRAM PURPOSE AND OBJECTIVE

The purposes and objectives of the North Carolina Community Development Block Grant program are set out in full in the North Carolina Administrative Codes Title 4, Subchapter 19L, as promulgated by the Division of Community Assistance of the Department of Economic and Community Development. While the Division of Community Assistance is the lead agency for the Community Development Block Grant Program, the Commerce Finance Center is responsible for the administration of the Economic Development program and activities conducted as the Economic Development section of that program. Economic Development projects and grant activities consist of projects which directly create or retain jobs, principally for persons of low and moderate income. The major guideline requires that 60 percent of jobs created or retained will be held by persons who qualified as persons of low and moderate income when they were hired by the Employer. Such creation of jobs must take place within the grant period. If at any time during the grant period the percentage of jobs held by persons who qualified as low and moderate income when hired drops below 51 percent of the jobs retained or created, the beneficiary or beneficiaries and the grantee will be directly liable for repayment of the grant. All CDBG's expenditures which directly assist participating private entities must be returned to the Department. Certain other program income, or a portion of other program income, such as connection fees, acreage development fees, or consideration received for the sale of public utilities to private concerns or regulated utilities will be considered as money that will be returned to the CDBG Economic Development Program and used to finance other such Economic Development projects. One example of such a situation would be when CDBG Economic Development money is originally used to finance a gas line owned by a city or county, and the gas line is then acquired by a regulated natural gas distributor. Some negotiated portion of the acquisition cost paid by the private utility would then be returned to the state and used to finance other utilities extensions such as natural gas lines to other employers of low and moderate income people.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489; 24 C.F.R. 570.494.

.0102 DEFINITIONS

(a) "Act" means Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended.

(b) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.

(c) "CDBG" means the State administered Community Development Block Grant Program.

(d) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.

(e) "Community Development Program" means the program of projects and activities to be carried out by the applicant with funds provided annually under this Subchapter and other resources.

(f) "HUD" means the U.S. Department of Housing and Urban Development.

(g) "Local Government" means any unit of general city or county government in the State.

(h) "Low-income families" are those with a family income of 50 percent or less of median-

family income. Moderate-income families are those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.

(i) "Low and Moderate Income Persons" means members of families whose incomes are within the income limits of low and moderate income families as defined in Paragraph (h) of this Rule.

(j) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.

(k) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.

(l) "Department" means the North Carolina Department of Economic and Community Development.

(m) "Project" means any Industrial Project, Industrial Processing Facility or Utility Project as defined in Paragraph (n) of this Rule and which the Economic Development Grant sector of the CDBG Program may consider so long as they are separable, identifiable and directly create or retain jobs, principally for low and moderate income people. Such jobs must be created within the grant period.

(n) "Industrial Project" or "Industrial Processing Facility", will be defined as in GS-159C-3(11), or more specifically shall mean any land, equipment or any buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with any:

(1) industrial project for industry, which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research development or laboratory facility, or industrial processing facility or distribution facility for industrial or manufactured products; or

(2) any pollution control project for industry or for public utilities which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill or plant described in Subparagraph (o)(1) of this Rule or in connection with a public utility plant; or

(3) any combination of projects mentioned in Subparagraphs (o)(1) and (o)(2) of this Rule. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(o) "Utility Project" shall mean any water, sewer, electric or natural gas utility improvement needed to provide services to the economic development project. It will be important to delineate which projects are to be owned and operated by a unit of government, which projects are to be owned by a unit of government and leased to an operating utility company, and which projects are to be owned and operated by a private utility company. Whenever a utility project is owned by a unit of government and leased to a private utility operator, there will be a determination as to the point and time where the utility project shall be acquired by the private operator. In such cases, the project should be acquired by the private operator once it has grown or developed to the point that it has what would be determined as "commercial project feasibility". The purpose of this delineation will be to have such utility projects produce Ad Valorem tax income for the local units of government and additional money to be used by the State for new economic development facilities. If the project is for infrastructure which will be leased to and maintained by a privately owned and regulated natural gas distributor, the application will state the terms of the lease between the unit of government and the private entity. Such stated terms must include provisions as follows:

(1) natural gas lines constructed will be constructed to the safety requirements maintained by the distributor, and

(2) the private entity will remit lease payments annually to the unit of government equal to any moneys which would normally have represented a return to stockholders on lines constructed under normal business conditions, and

(3) the private entity will annually determine if the leased line has a positive net present value, and when that determination is made, the private entity will within 90 days purchase the leased line at its cost of construction and,

(4) the unit of government will return those private moneys to the Department of Economic and Community Development

and then to an economic development rotating fund set up to finance new natural gas lines for industry or industrial process users which will create or retain jobs for North Carolina citizens.

Authority G.S. 143B-431; 24 C.F.R. 570.489.

.0103 ELIGIBLE APPLICANTS

All counties except those designated as Urban counties and all cities except those designated as entitlement cities or urban county cities will be potential applicants under this Economic Development Program. Eligibility to submit a new application will involve previous activity or audit history in the entire program and current participation in projects which might be funded from the current annual grant award from HUD. A certification of eligibility from the lead agency, the Division of Community Assistance, will be considered as clear and compelling proof of eligibility. This certification will state the upper limits of potential dollar participation available to the unit of government.

Authority G.S. 143B-431; 42 U.S.C.A. 5301.

.0104 FUNDING LIMITATIONS

(a) Economic Development Grant awards are limited by:

(1) maximum dollar amounts for each unit of government for the Department of Housing and Urban Development with (HUD) money received in any one funding year; and

(2) maximum dollar amounts for each project. Those program and project maximums are specifically set out in the Grant Agreement between the state and HUD and in the official program statement issued by the State and approved by HUD.

(b) This rule will set both program and project maximum dollar limits as those set out in the effective and approved grant agreement from HUD and the approved Official Statement from the State of North Carolina. If projects have sufficient measurable impact and community benefits, especially to low and moderate income people, both city and county governments with jurisdiction may apply for separate project grants in amounts up to the permitted maximum economic development project limitation. An example of this situation would be when a city applies for a grant to build a water tank for a prospective employer and a county applies for a grant to build a natural gas line for the same employer. Each grant could be in amounts up to project limits but it should be noted that such a project must have sufficient beneficial impact to justify the total commitment of funds.

(c) "Sufficient beneficial impact" will be measured by:

(1) jobs created or retained, especially for low and moderate income people;

(2) revenues for units of government; and

(3) solutions to local economic program development needs and problems. The relative dollar demands of pending projects will be compared to community benefits and community hardships or distress when worthy applications exceed fund availability.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0105 PROJECTS NOT TO BE CONSIDERED FOR FUNDING

(a) The Department and HUD have sustained considerable difficulty interpreting the federal requirement that a particular project would not be completed but for the fact that the requested grant would be made. After June 30, 1992, the Department will apply the same interpretation of this provision that has been used in the Industrial Revenue Bond program since 1976 and the Industrial Building Renovation program since 1988. This Rule is that after an operator or beneficiary becomes economically committed to a project, it will not be eligible for funding and the unit of government will not be eligible to request any funding assistance to serve that project with utilities. "Economic commitment" is not a quantitative measure, but those types of prohibited situations would include the following:

(1) when construction contracts have been signed;

(2) when equipment purchase orders for site specific installations have been issued;

(3) when true, simple options for the purchase of an existing facility are bound with deposits that are so large that the option constitutes a sales contract;

(4) when conditions or contingencies in a contract of sale have all been met; and

(5) when public announcements include no expression of the need for CDBG participation. As provided in a later section, a unit of government may request a letter of non-prejudice to solve this problem.

(b) In order to provide local units of governments with a time and method of transition, any project which has been reviewed in a pre-application conference and has been the subject of a favorable Letter of Encouragement will be

grandfathered as to eligibility until December 31, 1992.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

SECTION .0200 - APPLICATION PROCEDURE

.0201 GENERALLY

This Section provides the application procedures which shall be followed by applicants before the Secretary will make a final decision relative to project approval. The Secretary may request additional facts, details and informed or expert opinions on facts or conditions described in the application. Narratives and statements of fact will be attested as true and accurate by elected officials or by a company official or official objectives designees.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0202 PREAPPLICATION CONFERENCE

(a) Local units of government are encouraged to advise the Department when they enter into serious consideration of an economic development project which may lead to an application. The Department will assist the community as requested within the limits of available resources. Documentation, liaison and coordination will be effected by the Department through the Commerce Finance Center. Available services include:

(1) forms and documents relating to the application process with informative comments,

(2) comment on the type of projects consummated by other authorities,

(3) examination of, and comment on, assembled facts and data which might be used in the preparation of application, and

(4) analysis of approach to likely or potential procedural or environmental problems.

(b) At least one week prior to submission to the Department of a project application, the unit of government shall arrange for a pre-application conference with the Commerce Finance Center. Parties whose presence are required at the pre-application conference shall include a member of the elected governing board for the unit of government, or an authorized designee and a corporate official, or authorized designee, from the employer or beneficiary. In addition, invitees to the pre-application conference must include the Community Assistance Division, the Division of Environmental Management, the Regional Official from the Business Industry Division, the Environmental Specialist in the Business/Industry Division and the Local Government Commission.

(c) The purpose of the conference is to ensure that the application procedures are clearly understood so that the application, when accepted, will be complete, thereby shortening the application period as much as possible.

(d) The operator shall offer written project descriptions whenever possible and will be encouraged to provide data relative to the character and volume of process wastes, water and air discharges of pollutants, as well as any comment or permits already received from the Division of Environmental Management.

(e) The applicant will provide documentation of the first federally required program public hearing if such a public hearing has been held within the provisional 12 months.

(f) Another purpose of this conference will be to reach an understanding among all parties that the project is of the type that may be considered for approval and funding by the Secretary. The Department will not make decisions, however tentative, prior to a full consideration of the completed application. However, the Commerce Finance Center may issue a Letter of Encouragement or a Letter of Concerns if so requested by the unit of government. This letter will convey comments pertinent to the project and the preparation of the application and will enumerate any points of concern which are developed as a result of the information made available at the conference. These points of concern will be enumerated so that the applicant's response may include pertinent facts and data. The issuance of a letter of encouragement will not preclude the Secretary or the Commerce Finance Center from raising new questions or areas of concern after an application is received.

Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496.

.0203 APPLICATIONS

Each applicant that proceeds with a formal application is expected to take the following steps:

(1) It is suggested but not required that the applicant employ or designate an application preparer and service provider for its application. If applicable, federal procurement guidelines will be followed. Documentation of compliance or non-applicability will be provided to the Commerce Finance Center.

(2) The applicant is encouraged to proceed with three critical areas of the application as follows:

(a) the environmental assessment, or the state clearing house,

(b) the determination of Davis-Bacon applicability and the pertinent wage decision, and

(c) the second project specific public hearing.

(3) Based on the satisfactory completion of the three critical elements in Paragraph (2) of this Rule, the unit may request a letter of "Non-Prejudice". In that letter, the Department may state that the unit of government and/or the potential employer may begin to make commitments and expenditures on the project without causing the Department to prejudice its consideration of project approval and project funding because of such expenditures. This letter is not to be construed as project approval, an indication of approval or any priority in the allocation of funds. The letter will convey the critical understanding that any money so spent is spent at the risk of the unit or the beneficiary employer, and that the Department accepts no real, moral or implied liability for such spending funds, or for losses sustained because funds were so expended.

(4) All applications for CDBG funds, irrespective of the Federal threshold of two hundred thousand dollars ($200,000), will include a disclosure report. Such report, in addition to requesting identifying information and the amount of funds requested, will disclose whether or not, and the extent, to which interested parties have a financial interest in the application. Interested parties include developers, contractors, consultants, individuals, entities including units of government with a financial interest greater than fifty thousand dollars ($50,000) or 10 percent of the assistance requested, whichever is lower. Additionally, the report will show any sources and uses of funds for the project which are not identified in the application's sources and used of funds statement.

(5) The unit of government will complete its application on forms developed by the Department and made available by the Commerce Finance Center.

(6) Any application which has incomplete factual data or lacks sufficient detail will be returned to the unit with specific reasons for the return being stated in writing. Upon receipt of the requested information a processing number will be assigned and consideration completed. It will be the goal of the Commerce Finance Center to complete consideration of approval and funding within 45 days.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0204 DISCRETIONARY PUBLIC HEARING BY THE DEPARTMENT

(a) Where the project has caused significant adverse public reaction as determined from the responses to the public notice or the public hearing held by the elected board of the Unit of Government, or where the facts are unclear and do not support clear findings, the Secretary may hold a public hearing on the proposed project for the purpose of obtaining additional views of the community to be affected. The community is hereby defined as the county in which the project is to be located.

(b) Public notice shall be given at least seven days prior to the hearing. The notice shall specify the date, time, place and subject matter of the hearing.

(c) A complete transcript of the hearing shall be prepared by the Secretary and made a part of the application.

Authority G.S. 143B-431; 42 U.S.C.A. 5304.

.0205 FORMAL APPLICATION PROCEDURES: APPROVAL

(a) Where the Secretary makes all the findings necessary they will be made in writing at the earliest possible date according to the procedures set forth in Paragraph (b) of this Rule.

(b) The Secretary will prepare a Letter of Approval and Grant Offer in which all findings are set forth and all grant conditions are set out.

(c) Notice of project approval and funding will be published in a newspaper having general circulation in the project area. The notice may be arranged by either the Unit of Government, the Employer, or the Department and will describe the jobs created or retained and denote a contact for employment applications.

Authority G.S. 143B-431; 42 U.S.C.A. 5301.

.0206 FORMAL APPLICATION PROCEDURES: DENIAL

(a) Where there is significant unresolved public controversy or where the Secretary is unable to make one or more required findings, the Secretary will specifically indicate in writing the reasons for denial.

(b) The Secretary shall indicate in writing that the unit of government is invited to prepare a presentation, either written or oral which speaks factually to the unresolved issues. The Secretary or designee will be present at the meeting to hear and discuss the issues with the unit of govern-

ment. It will be the responsibility of the unit of government to persuade the Secretary that all the necessary findings should be made.

(c) Where the unit of government does accomplish its responsibility to persuade the Secretary, further procedures shall be as in Rule .0205 of this Section.

(d) Where the unit of government does not accomplish its responsibility to persuade the Secretary, the Secretary shall notify the unit of government the decision in writing, again specifying the reasons for denial.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0207 REIMBURSEMENT OF EXTRAORDINARY EXPENSE

Where the Department finds it necessary to incur "extraordinary" expense pertinent to the consideration or approval of a unit of government or its proposed lessee, the expenditure will not be made or committed except as agreed to by the unit of government. Such expenditures will be confined to those costs to be incurred relative to a particular application, such as the out-of-pocket costs relative to travel trips made by the Secretary, or a designee, or the cost of advertising the approval and funding of a project.

Authority G.S. 143B-431; 24 C.F.R. 570.489.

SECTION .0300 - FINDINGS REQUIRED FOR APPROVAL

.0301 GENERAL

(a) In order to approve a project it is necessary for the Secretary to find that:

(1) the project will have a measurable beneficial and desirable impact on the community,

(2) that the funding for the project is appropriate under state and federal guidelines for the Community Development Block Grant programs.

(b) It is the purpose of this Section to specify the standards and criteria to be used in making those findings.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.0302 CRITERIA FOR MAKING NECESSARY FINDINGS

The Department will use certain criteria for making the approval findings, as follows:

(1) It must be determined that the operator is capable of operating the project in a successful manner,

(2) that the project is identifiable and separable with its own measurable and significantly beneficial impact,

(3) that the project will be completed,

(4) that there is a substantial benefit to persons of low and moderate income, or to neighborhoods when census tracks or surveys document numbers of low and moderate income residents,

(5) that there is a favorable and strong ratio or relationship between the jobs created and the number of CDBG dollars invested in the project,

(6) that there is a favorable and strong ratio or relationship between the total dollars invested in the project, the amount of CDBG money invested, and the measured or retained Ad Valorem tax income or other revenues to either or both city and county having taxing authority and jurisdiction,

(7) that there is a favorable and strong relationship between the number of jobs saved or created and the unemployment situation in the unit or units of government impacted,

(8) that the necessary extent of compliance with federal and state guidelines and legal requirements has been documented, and,

(9) if the project is similar to the retail or service establishments described in the 1987 North Carolina General Assembly Resolution, the Secretary will state the basis for the approval in the face of those concerns expressed. The criteria or tests of this Rule will be applied as follows:

(a) In Subparagraph (1) of this Rule, capable will mean that there is a business history, a financial condition, or other outstanding business qualifications which support the conclusion that the entity operating the project is capable of operating it in a successful manner,

(b) In Subparagraph (2) of this Rule, identifiable and separable will mean a project which can literally be separated out and specifically identified and determined as the project being discussed, and as such will have its own measurable and significantly beneficial impact,

(c) In Subparagraph (3) of this Rule, the provision of legally binding commitments from the grantee and the beneficiary employer or employers will be sufficient evidence that the project is to be completed,

(d) In Subparagraph (4) of this Rule, substantial benefit to persons of low and moderate income may be evidenced by employer commitments to assure that 60 percent and no less than 51 percent of

jobs created or saved will be held by persons of low and moderate incomes; benefits to low and moderate income neighborhoods can be evidenced by unanimous actions of the elected board of those units of government having jurisdiction.

(e) In Subparagraph (5) of this Rule, favorable and strong will mean that a project will create or retain jobs at a rate equal to a ratio of one or more jobs per five thousand dollars ($5,000) of CDBG money, or, at a rate equal to a ratio of one or more jobs per fifteen thousand dollars ($15,000) of CDBG money when either, the unit of government matches CDBG money at a rate of one local tax dollar for each three CDBG dollars, or, when the project is a manufacturing plant or an industrial processing facility.

(f) In Subparagraph (6) of this Rule, favorable and strong will mean that a project will create or retain revenue such as Ad Valorem tax revenue or direct sales taxes, or other governmental utility operating profits that will either:

(i) in the case of an infrastructure grant, equal the cost of the infrastructure grant over a period of time of no less than 12 years, or

(ii) in the case of a loan project, that will equal the maximum loss expected in such projects (a sum equal to 25 percent of the CDBG funds invested) in a period of time of no less than 12 years.

(g) In Subparagraph (7) of this Rule, favorable and strong will mean that the pool of available labor in both the unemployed work force, unemployed people not considered as part of the active work force, and underemployed work force in the county is at least three times as large as the number of jobs created.

(h) In Subparagraph (8) of this Rule, the extent of documentation required will be that as considered as reasonable by a prudent person.

(i) In Subparagraph (9) of this Rule, the Secretary will consider evidence that similar businesses in the 15-25 mile labor work force area support the project and that the project will not jeopardize the jobs in their businesses.

Authority G.S. 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

SECTION .0400 - GRANT ADMINISTRATION

.0401 GRANT AGREEMENT

When the Secretary formally approves the project, an offer of the grant agreement and all modifications will accompany and be attached to the communication of project approval. When the grant agreement is received by the unit of government, it will be signed and returned to the Department for the Secretary's signature. When signed by all parties, it will be deemed to be effective.

Authority G.S. 143B-431; 24 C.F.R. 570.489.

.0402 METHOD OF PAYMENT

Recipients will receive payments based on requisitions submitted and approval by the Department. Except for the closing requisition, all such requests shall be for at least five thousand dollars ($5,000). No funds will be kept on deposit for more than three days.

Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(g).

.0403 METHOD OF ADMINISTRATION

Units of government may contract with authorized entities certain responsibilities affecting Economic Development projects and monitoring the compliance of beneficiaries with grant conditions. Such a delegation by contract will not absolve the unit from its responsibilities for compliance with state and federal guidelines or grant agreements.

Authority G.S. 143B-431; 24 C.F.R. 570.494.

.0404 MONITORING AND GRANT CLOSE OUT

The Commerce Finance Center will provide copies of the forms and documents needed to fulfill grant requirements in an annual performance report and in a final grant close out audit. Location visits and conferences with benefiting employers will be conducted by the Commerce Finance Center and the regional offices of the Business and Industry Division. Whenever possible the visits will be made with the support and presence of the local economic development representative and both visits will be combined into one session whenever possible.

Authority G.S. 143B-431; 24 C.F.R. 570.489.

.0405 ADMINISTRATIVE HEARINGS

(a) Recipients may contest departmental actions with respect to this Subchapter under the Contested Case Hearing Procedures set forth in

G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.
(b) The Department may also commence contested case hearing procedures against recipients pursuant to G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

Statutory Authority G.S. 143B-431.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14K .0216; 15A .0205 - .0206, .0210 - .0218, .0220, .0223, .0226 - .0228; 18D .0117, .0119; and adopt rule(s) cited as 10 NCAC 14T .0101 - .0104; 18D .0127.

The proposed effective date of this action is November 1, 1992.

The public hearing will be conducted at 1:00 p.m. on August 27, 1992 at the Edgecombe-Nash area MH/DD/SA Program, Medical Arts Mall, Class Room, 500 Nash Street, Rocky Mt., N.C. 27804.

Reasons for Proposed Actions:

10 NCAC 14K .0216 - *G.S. 150B, the Administrative Procedure Act, now requires that specific criteria be used in determining whether to waive a rule. This Rule is proposed for amendment to be consistent with that requirement.*

10 NCAC 14T .0101 - .0104 - *The above-referenced rules are proposed for adoption to set forth the Division's policy on the implementation of the Natural Death Act and clients' rights relative to making advance care directives. The rules are based on:*

(1) the passage of HB 821 by the 1991 General Assembly, An Act to Establish an Additional Method for an Individual to Designate an Attorney-In-Fact to Make Health Care Decisions and to Amend the Natural Death Act;
(2) the need to implement the Patient Self-Determination Act under the federal Omnibus Budget Reconciliation Act of 1990, (for hospitals and nursing facilities); and
(3) the desire for uniformity across the Division's State facilities in an area of client rights that is becoming increasingly complex.

10 NCAC 15A .0205 - .0206, .0210 - .0218, .0220, .0223, .0226 - .0228 - *These Rules are proposed for amendment to become more consistent with standard practice and to provide for hospitals and area programs a clearer understanding of their roles in carrying out voluntary admissions, involuntary commitments and discharges of minors, to and from State facilities, who need mental health services.*

10 NCAC 18D .0117, .0119, .0127 - *New confidentiality laws were adopted by the 1991 General Assembly which define when and how families can obtain specified information about the treatment of a mentally ill relative; This law mandates the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services to adopt rules defining "legitimate role in the therapeutic services offered"; This role refers to the relationship of the family member and the mentally ill relative. The amendment and adoption of rules specified are necessary in order to comply with this new confidentiality law.*

10 NCAC 18D .0117 - *Need to expand the Scope of the current rules so that specific rules will be applicable to both public and private facilities.*

10 NCAC 18D .0119 - *Need to add a definition for "Legitimate role in the therapeutic services offered."*

10 NCAC 18D .0127 - *Need to add an additional rule to provide proper reference to new statutes.*

Comment Procedures: Any interested person may present his comments by oral presentation or by submitting a written statement. Written comments must be sent to the above address by August 16, 1992 and must state the rules to which the comments are addressed. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street in Raleigh, N.C. 27603, (919) 733-4774 before August 16, 1992. Time limits for oral remarks may be imposed by the Commission Chairman. Fiscal information on these Rules is also available from the same address.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14K - CORE LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES: AND SUBSTANCE ABUSE FACILITIES

SECTION .0200 - LICENSURE

.0216 WAIVER OF LICENSURE RULES

(a) The Director of DFS may waive any licensure rule contained in 10 NCAC 14K through 14O provided the issuance of the waiver is for good cause and will not affect the health, safety or welfare of individuals within the facility.

(b) Requests for waivers shall be sent to the Director of DFS, 701 Barbour Drive, Raleigh, North Carolina 27603.

(c) The request shall be in writing and shall contain:

(1) the name, address and telephone number of the requester;

(2) the name, address and telephone number of the facility for which the waiver is requested;

(3) the rule number and title of the rule or requirements for which waiver is being sought;

(4) a statement of facts ~~necessitating the request with supporting documents as appropriate; and~~ showing:

(A) reason for, and the nature and extent of, the request; and

(B) that the health, safety or welfare of clients will not be threatened;

(5) documentation of area board approval, if and when requests are from area programs and contract agencies of area programs, or documentation of governing body approval when requests are from private facilities not contracting with area programs.

(d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/MR/SAS; and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver shall be based upon, but not limited to, the following:

(1) the nature and extent of the request; and

(2) safeguards to ensure that the health, safety or welfare of clients will not be threatened.

(f) ~~(e)~~ A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/MR/SAS. If the rule in question was adopted by the Commission, the Director of DMH/MR/SAS shall send a copy of the decision to all commission members.

(g) ~~(f)~~ The decision of the Director of DFS regarding a waiver request may be appealed to the Commission through the contested case process set out in 10 NCAC 14B .0300. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

(h) ~~(g)~~ Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

Statutory Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147.

SUBCHAPTER 14T - ADVANCE CARE DIRECTIVES FOR CLIENTS

SECTION .0100 - RIGHT TO NATURAL DEATH

.0101 SCOPE

These Rules set forth the policy of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services regarding the fundamental right of individuals to control decisions relating to his or her medical care, including the right to a peaceful and natural death, as set forth in G.S. 90-321. These Rules apply to the Division's four psychiatric hospitals, the N.C. Special Care Center, the three Alcohol and Drug Abuse Treatment Centers, and the five Mental Retardation Centers, hereafter referred to as Division facilities.

Statutory Authority G.S. 32A-15; 90-320; 143B-147.

.0102 DEFINITIONS

(a) The definitions contained in this Rule, and the terms defined in G.S. 90-321 shall apply to the rules in this Subchapter.

(b) As used in these Rules, the following terms have the meanings specified:

(1) "Advance care directive" means any indication made in writing by a client in which the client makes provision or directions as to who will make health care decisions should the client become incapable of doing so; whether in such cases extraordinary means of sustaining life should be employed; or both.

(2) "Capable client" means a client who has the ability to make and communicate health care decisions, as confirmed by the client's attending physician.

(3) "Division" means the term as defined in G.S. 122C-3.

Statutory Authority G.S. 32A-15; 32A-16; 90-320; 90-321; 143B-147.

.0103 ADVANCE CARE DIRECTIVES

The Division shall honor advance care directives made by clients prior to admission or made by capable clients after admission. Division facilities shall decline to honor any advance care directive which does not conform with the forms set forth by G.S. 32A-25 (for a health care power of attorney) or G.S. 90-321 (for a living will).

Statutory Authority G.S. 32A-15; 90-320; 90-321; 90-322; 143B-147.

.0104 NATURAL DEATH IN ABSENCE OF DIRECTIVE

Clients in division facilities retain the right to die with dignity even where they have made no advance care directive, or have made a directive which does not comply with statutory forms. In the absence of an advance care directive, the Division shall maintain strict compliance with the procedure established by G.S. 90-322 for determination of when, and under what conditions, extraordinary means or artificial nutrition or hydration may be withheld or withdrawn.

Statutory Authority G.S. 90-320; 90-322; 143B-147.

CHAPTER 15 - MENTAL HEALTH HOSPITALS

SUBCHAPTER 15A - GENERAL RULES FOR HOSPITALS

SECTION .0200 - VOLUNTARY ADMISSIONS, INVOLUNTARY COMMITMENTS AND DISCHARGES OF MINORS TO AND FROM REGIONAL PSYCHIATRIC HOSPITALS

.0205 SCOPE

~~The rules in this Section shall be followed with regard to minors by hospital and area program staffs, and other appropriate professionals as specified in G.S. 122C-222.~~ For voluntary admission, involuntary commitment and discharge of minors to regional psychiatric hospitals, the rules in this Section shall be followed by hospital staff, area program staff, and other appropriate professionals as specified in G.S. 122C-222. Area program child and youth coordinators and hospital child and youth unit directors shall develop their policies and procedures regarding inpatient referrals and discharge planning in accordance with these Rules. These Rules do not apply to Wright School, Whitaker School or the ~~Children's Psychiatric Unit at John Umstead Hospital.~~ Butner Adolescent Treatment Center (BATC).

Statutory Authority G.S. 122C-221 through 122C-223; 122C-224.7; 122C-261; 122C-262; 143B-147.

.0206 DEFINITIONS

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

(1) "Child and youth coordinator" means that individual charged by the area program to develop and administer mental health services for minors.

(2) "Child and youth unit director" means that individual charged by ~~the~~ a regional psychiatric hospital to develop and administer mental health services for minors within the hospital.

(3) "Eligible psychologist" means a licensed practicing psychologist who has at least two years' clinical experience.

(4) "Emergency involuntary commitment" means admission to a hospital when a minor has met the criteria specified in G.S. 122C-262.

(5) "Hospital" means one of the regional psychiatric hospitals of the Division. Wright School, Whitaker School and the ~~Children's Psychiatric Unit at John Umstead~~ Butner Adolescent Treatment Center are excluded from this definition.

(6) "Involuntary commitment" means the process of admission to a hospital as set forth in G.S. 122C, Article 5, Parts 1, 6 and 7.

(7) ~~(6)~~ "Legally responsible person" ~~has the meaning specified in G.S. 122C-3(20),~~ means the same as defined in G.S. 122C-3.

(8) ~~(7)~~ "Referring agent" means the practitioner authorized to refer minor clients to a hospital. In a single portal ~~areas~~ area this ~~is~~ means the child and youth coordinator or his designee. In a non-single portal ~~areas,~~ area, this ~~is~~ means the child and youth coordinator or his designee, a licensed physician or an eligible psychologist.

~~(8) "Regional child and family coordinator" means the individual in each regional office who coordinates the development of mental health services for minors.~~

(9) "Regional screening committee" means the regional committee that reviews the records of minors for the purpose of making placement recommendations to Wright School, Whitaker School, and the ~~Children's Psychiatric Unit at John Umstead Hospital.~~ Butner Adolescent Treatment Center. The Committee also reviews records of hard to place minors upon request by area programs

for the purpose of consultation and facilitation.

(10) "Single portal area" ~~has the meaning specified in G.S. 122C-3(35).~~ means the same as defined in G.S. 122C-3.

(11) "Voluntary admission" means admission to a hospital for evaluation and treatment ~~consented to by~~ with the consent of the minor's legally responsible person, or self admission in accordance with G.S. 122C-223.

(12) "Willie M. coordinator" means that individual charged by the area program to develop and ~~administer~~ oversee mental health services for Willie M. class members.

Statutory Authority G.S. 122C-3; 122C-221; 143B-147.

.0210 TELEPHONE NOTIFICATION OF HOSPITAL BY REFERRING AGENT

(a) During working hours, the referring agent shall telephone the child and youth unit director or his designee regarding an imminent voluntary admission or involuntary commitment.

(b) After working hours, the referring agent shall telephone the hospital admission staff regarding an imminent voluntary admission or involuntary commitment. Immediately upon receiving such telephone notification, the hospital admissions staff shall notify the ~~designated representative~~ designee of the child and youth unit director.

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

.0211 REFERRALS FROM A SINGLE PORTAL AREA

(a) In a single portal ~~areas,~~ area, the child and youth coordinator or his designee may refer a minor directly to a hospital.

(b) In a single portal ~~areas,~~ area, all professionals and agencies shall refer all prospective minor voluntary admissions and involuntary commitments to the child and youth coordinator or his designee.

(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the child and youth coordinator or his designee as specified in this Rule.

Statutory Authority G.S. 122C-221; 122C-223; 122C-261; 122C-262; 143B-147.

.0212 REFERRALS FROM A NON-SINGLE PORTAL AREA

(a) In a non-single portal ~~areas,~~ area, licensed physicians, eligible psychologists or the child and youth coordinator or his designee may refer a minor directly to a hospital.

(b) In a non-single portal ~~areas,~~ area, all professionals and agencies other than licensed physicians and eligible psychologists shall refer all prospective minor voluntary admissions and involuntary commitments to the persons listed in Paragraph (a) of this Rule.

(c) Except as provided in G.S. 122C-223 and 122C-262, referrals not made in accordance with this Rule shall be directed by hospital staff to the appropriate persons or agencies as specified in this Rule.

Statutory Authority G.S. 122C-222; 122C-223; 122C-261; 122C-262; 143B-147.

.0213 USE OF STANDARDIZED REFERRAL FORM

All referrals shall be in writing on the standardized referral form, which is available through the area mental health program, in duplicate. One copy of the form shall be filed at the area program and one copy shall be sent to the hospital.

Statutory Authority G.S. 122C-221; 122C-222; 122C-261; 143B-147.

.0214 SCREENING BY REFERRING AGENT

(a) As part of the referral process for hospital admission, except admissions under G.S. 122C-223 and 122C-262, the appropriate referring agent, as specified in Rules .0211(a) and .0212(a) ~~in~~ of this Section, shall determine that:

(1) there is the presence ~~or probable presence~~ of mental illness; and

(2) less restrictive treatment measures are likely to be ineffective. In making this judgment, the referring agent shall determine that:

(A) outpatient treatment, day hospitalization or treatment, or less intensive residential treatment measures would not alleviate the mental illness;

(B) there is no local inpatient unit available that meets the needs of the minor; and

(C) the minor's primary need is not foster care, group child care or correctional placement.

(b) Additionally, the referring agent shall provide the following written information, to the extent possible:

(1) name of the professional at the area program or other setting who has provided diagnostic or treatment services to the client;

(2) full name of client, including maiden name, if applicable;

(3) legal county of residence;
(4) birthdate;
(5) previous admissions to any state facility;
(6) name, address and telephone number of the legally responsible person or, if there is no legally responsible person, the minor's next of kin;
(7) any medical problems, including pertinent laboratory data and treatment;
(8) current psychiatric and other medications;
(9) history of compliance with medications and aftercare instructions;
(10) alternatives attempted or considered prior to referral to hospital;
(11) goal of hospitalization specifying the treatment problems that the hospital should address;
(12) specific suggestions for programming and other treatment planning recommendations; and
(13) ~~release~~ discharge plans to include the relevant information ~~relevant to~~ on placement and other special considerations of the client upon discharge from the hospital.

(c) The written information shall accompany the minor to the hospital.

Statutory Authority G.S. 122C-221 through 122C-223; 122C-261; 122C-262; 143B-147.

.0215 WRITTEN AGREEMENTS FOR A NON-SINGLE PORTAL AREA

(a) In a non-single portal area, when a licensed physician or eligible psychologist who is not affiliated with the area program makes a referral of a minor for hospital admission, he shall be asked by the hospital ~~unit~~ to sign a written agreement which promises the following:

(1) continued involvement with the child and family during hospital treatment;
(2) participation in identification and coordination of community services that are essential to discharge planning; and
(3) provision of aftercare, as needed, following discharge.

(b) The purpose of this written agreement is to assure that appropriate planning for treatment, discharge and aftercare will occur.

(c) If the referring agent does not sign the agreement described in Paragraph (a) of this Rule, the hospital staff shall consult with the minor's legally responsible person to determine his choice of a practitioner to participate in discharge and aftercare planning. The designated person shall thereafter be called the referring agent.

(1) If the legally responsible person names a practitioner, the hospital staff shall obtain the legally responsible person's written consent to contact the practitioner chosen in order to request the practitioner's participation in discharge and aftercare planning.
(2) If the legally responsible person does not know of a practitioner, the hospital staff shall suggest the child and youth coordinator in the area program in the catchment area where the minor resides. The hospital staff shall obtain the legally responsible person's written consent to contact the child and youth coordinator and shall request the child and youth coordinator's participation in discharge and aftercare planning.
(3) If the legally responsible person does not know of a practitioner and declines to choose the child and youth coordinator, the hospital staff may suggest other practitioners. If the legally responsible person selects a practitioner other than the child and youth coordinator, the hospital staff shall proceed as described in Subparagraph (c)(1) of this Rule.
(4) If the legally responsible person refuses to permit the involvement of any practitioner in discharge and aftercare planning or refuses to sign the written consent described in Subparagraph (c)(1) or (c)(2) of this Rule, and in the opinion of the responsible professional, such refusal would be detrimental to the minor, the responsible professional shall so state in writing, and thereafter, the hospital staff shall so advise the child and youth coordinator in the area program in the catchment area where the minor resides.

Statutory Authority G.S. 122C-222; 122C-261; 143B-147.

.0216 INFORMATION FOR TREATMENT PLANNING

(a) When in accordance with G.S. 122C-53 through 122C-56, the ~~The~~ referring agent shall send the following client information, if available, to the appropriate hospital admissions office within three working days following the minor's voluntary admission or involuntary commitment to the hospital. This information shall include but not be limited to the following:

(1) family history, current composition, current functioning, and motivation for treatment;

(2) child or youth's developmental history, highest level of functioning in the past, and current level of functioning;
(3) relationship with family, peers and others;
(4) personality characteristics and degree of emotional or organic impairment;
(5) how, and, under what circumstances, the impairment is most manifest;
(6) intellectual level, past and current;
(7) educational-academic functioning, and school history;
(8) strengths, individual and family;
(9) long range planning; and
(10) goals for hospitalization.

(b) The information required in Paragraph (a) of this Rule shall be used by hospital staff in developing the treatment plan.

Statutory Authority G.S. 122C-55(a); 143B-147.

.0217 NOTIFICATION BY HOSPITAL OF ADMISSION/DENIAL

(a) The child and youth unit director shall notify the referring agent within 24 hours regarding the following:
(1) the decision to admit the minor and the admission date; or
(2) the decision to deny admission of the minor, including the reasons for the denial and any recommendations for treatment alternatives.

(b) In ~~those~~ instances ~~where~~ when the ~~individual~~ minor has not been referred by an area program, the hospital shall notify the referring agent and the appropriate area program within one working day regarding the hospital's decision to admit or deny admission to the ~~individual.~~ minor.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0218 SHARING OF INFORMATION WITH REFERRING AGENT

(a) When in accordance with G.S. 122C-53 through 122C-56, during ~~During~~ the formulation of the minor's treatment plan, the child and youth unit director shall share the following information with the referring agent:
(1) goals for hospitalization;
(2) anticipated length of stay;
(3) expectations regarding family involvement;
(4) expectations regarding area program and other community agency involvement;
(5) dates of hospital diagnostic or treatment conference; and
(6) dates of discharge planning conference.

The information in Subparagraphs (5) and (6) in this Rule shall be provided as early as possible to allow for referring agent participation.

(b) The child and youth unit director shall notify the referring agent concerning any significant changes in the minor's treatment plan.

Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.

.0220 FAILURE OF AREA PROGRAM TO PARTICIPATE IN PLANNING

If the referring agent is the area program, and the area program fails to participate in planning for the treatment, discharge and aftercare of the minor, the child and youth unit director shall notify the child and youth coordinator. If appropriate area program participation does not occur after such notification, the child and youth unit director shall notify the area director. ~~and then the regional child and family coordinator.~~

Statutory Authority G.S. 122C-221; 143B-147.

.0223 AREA PROGRAM PROCEDURES/ UNSCREENED EMERGENCY COMMITMENTS

(a) In those instances where the minor has not been screened by a referring agent prior to emergency commitment to a hospital, the area program in the catchment area where the minor resides shall appoint a ~~case manager~~ staff person for the minor within two working days of receipt of notification of the commitment.

(b) The ~~case manager~~ staff person shall promptly communicate with the child and youth unit director or his designee to arrange a comprehensive treatment planning conference. The ~~case manager~~ staff person shall also communicate with the hospital child and youth unit director or his designee regarding discharge planning.

Statutory Authority G.S. 122C-262; 143B-147.

.0226 PARTICIPANTS IN DISCHARGE PLANNING

(a) The hospital shall consult with the referring agent to determine who will participate in discharge planning.

(b) In those instances where there is no referring agent, the ~~case manager~~ staff person appointed pursuant to Rule .0223 of this Section shall be consulted to determine who will participate.

(c) If the hospital does not request the referring agent's participation in discharge planning, the referring agent shall notify the child and youth unit director.

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

.0227 DISCHARGE PLANNING AND WRITTEN PLAN

(a) ~~A conference shall be held to formulate a discharge plan for each minor.~~ An interdisciplinary meeting shall be held to formulate the discharge plan for the minor. This meeting shall include, but need not be limited to, the parent or legally responsible person and professionals involved in services for the minor. The planning shall include, but need not be limited to, the following:

(1) a review of the minor's presenting problems, social circumstances and relevant case history;

(2) a discussion of follow-up treatment alternatives based on realistic community alternatives; and

(3) the assignment of responsibilities for implementation of the discharge plan.

(b) A written discharge plan shall be developed based on the results of the ~~conference. Copies~~ interdisciplinary meeting. When in accordance with G.S. 122C-53 through 122C-56, copies of the plan shall be distributed to the referring agent and other relevant parties within five working days.

Statutory Authority G.S. 122C-221; 122C-222; 122C-224.7; 143B-147.

.0228 DISCHARGE PLAN IMPLEMENTATION FOR AREA PROGRAM REFERRALS

(a) When a minor referred by an area program is discharged, the minor's ~~case manager~~ staff person shall be responsible for supervising the implementation of the minor's discharge plan.

(b) The following staff shall be available to assist the minor's ~~case manager~~ staff person in implementing the minor's discharge plans:

(1) area program child and youth coordinator;

(2) child and youth staff;

(3) other appropriate area program staff;

(4) area program Willie M. coordinator; and

(5) regional screening committee.

Statutory Authority G.S. 122C-221; 122C-224.7; 143B-147.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18D - CONFIDENTIALITY RULES

SECTION .0100 - GENERAL RULES

.0117 PURPOSE AND SCOPE

(a) The purpose of the rules in this Subchapter is to set forth requirements for those who collect, store and disseminate information on individuals who are served by ~~area and state~~ facilities, as defined in G.S. 122C-3. The rules shall be used in conjunction with the confidentiality requirements specified in G.S. 122C-51 through 122C-56. Area and state facilities shall comply with all rules in this Subchapter; however, facilities, as defined in G.S. 122C-3, shall only comply with Rules .0119(7) and .0127 of this Subchapter.

(b) Area and state facilities governed by these Rules include offices of the Division; regional psychiatric hospitals, mental retardation centers and alcohol and drug abuse treatment centers; state special care centers; schools for emotionally disturbed children; area programs and their contract agencies; and other public and private agencies, institutions or programs which are operated by or contract with the Division for Mental Health, Developmental Disabilities or Substance Abuse Services. All employees, students, volunteers or other individuals who have access to or control over confidential information in these facilities or programs shall abide by these Rules. However, local hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which contract with an area facility or provide services for a state facility shall be excluded from these Rules and the confidentiality policies of that accredited hospital shall apply. In addition, education records generated by Alcohol and Drug Education Traffic Schools (ADETS) and Drug Education Schools (DES) are excluded from these Rules since the records maintained by such schools are considered public records.

Statutory Authority G.S. 122C-52; 122C-55; 131E-67; 143B-147.

.0119 DEFINITIONS

(a) The following terms shall have the meanings specified in G.S. 122C-3, 122C-4 and 122C-53:

(1) "Area board",

(2) "Area facility",

(3) "Confidential information",

(4) "Guardian",

(5) "Internal client advocate",

(6) "Legally responsible person",

(7) "Next of kin",

(8) "Provider of support services",

(9) "Secretary", and

(10) "State facility".

(b) As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Client Record" means any documentation made of confidential information. For the purpose of the rules in this Subchapter, this also includes confidential information generated on an individual who was not admitted but received a service from an area or state facility.

(2) "Clinical Staff Member" means a mental health, developmental disabilities or substance abuse professional who provides active treatment habilitation to a client.

(3) "Confidential information" as defined in G.S. 122C-3 includes but is not limited to photographs, videotapes, audiotapes, client records, reimbursement records, verbal information relative to clients served, client information stored in automated files, and clinical staff member client files.

(4) "Delegated Employee" means anyone designated by the facility head to carry out the responsibilities established by the rules in this Subchapter.

(5) "Disclosure of Information" means the dissemination of confidential information without consent.

(6) "Division" means Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(7) "Legitimate role in the therapeutic services offered" means next of kin or other family member who, in the judgement of the responsible professional, as defined in G.S. 122C-3, and after considering the opinion of the client, currently provides or, within the past 12 months preceding the current hospitalization, provided substantial time or resources in the care of the client regarding residential needs; management of finances; procurement, provision or preparation of food and clothing; provision of transportation; and guidance in obtaining benefits, medical treatment and rehabilitation services.

(8) ~~(7)~~ "Minor Client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.

(9) ~~(8)~~ "Parent" means the biological or adoptive mother or father of a minor. Whenever "parents" are legally separated or divorced or have never been married, the "parent" legally responsible for the minor shall be the "parent" granted custody or either parent when joint custody has been granted.

(10) ~~(9)~~ "Person Standing in Loco Parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.

(11) ~~(10)~~ "Release of Information" means the dissemination of confidential information with consent.

(12) ~~(11)~~ "Signature" means signing by affixing one's own signature; or by making one's mark; or impressing some other sign or symbol on the paper by which the signature may be identified.

Statutory Authority G.S. 122C-3; 122C-4; 122C-52; 122C-55; 131E-67; 143B-147.

.0127 INFORMATION PROVIDED TO FAMILY/OTHERS

Information shall be provided to the next of kin or other family member, who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person in accordance with G.S. 122C-55(j) through (l).

Statutory Authority G.S. 122C-52; 122C-55; 131E-67; 143B-147.

* * * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR Division of Medical Assistance intends to adopt rule cited as 10 NCAC 26B .0122; amend rules cited as 10 NCAC 26B .0201, .0206 - .0207; 2611 .0601 - .0602, .0605 and repeal rules cited as 10 NCAC 26D .0008.

The proposed effective date of this action is October 1, 1992.

The public hearing will be conducted at 1:30 p.m. on July 31, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.

Reason for Proposed Action:

10 NCAC 26B .0122 - *Introduction of Medicaid "Case Management Services" was initiated by the N.C. Division of Social Services and the directors of the County Departments of Social Services to target the population at-risk for abuse, neglect, or exploitation not otherwise served by existing programs.*

10 NCAC 26B .0201, .0206, and .0207 - *Recipients are denied access to care and dental providers have complained of the paperwork delays involved with requiring prior approval for routine and necessary dental care. These changes would allow the dental program to be brought up to standard with other medical services in regard to primary care prior approval requirements.*

10 NCAC 26D .0008 - This denture information is listed elsewhere in the NCAC.

10 NCAC 26H .0601, .0602, and .0605 - To revise the NCAC to conform to the Medicaid State Plan.

Comment Procedures: Written comments concerning these Rules must be submitted by July 31, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, 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 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0122 CASE MANAGEMENT SERVICES FOR ADULTS AND CHILDREN AT-RISK FOR ABUSE, NEGLECT, OR EXPLOITATION

(a) Case management is a set of interrelated activities under which responsibility for locating, coordinating and monitoring appropriate services for an individual rests with a specific person or organization. The purpose of case management services for adults and children at-risk of abuse, neglect, or exploitation is to assist them in gaining access to needed medical, social, educational, and other services; to encourage the use of cost-effective medical care by referrals to appropriate providers; and to discourage over-utilization of costly services. Case management services will provide necessary coordination with providers of non-medical services such as nutrition programs like WIC or educational agencies, when services provided by these entities are needed to enable the individual to benefit from programs for which he or she is eligible. The set of interrelated activities are as follows:

(1) Evaluation of the client's individual situation to determine the extent of or need for initial or continuing case management services.

(2) Needs assessment and reassessment to identify the service needs of the client.

(3) Development and implementation of an individualized plan of care to meet the service needs of the client.

(4) Providing assistance to the client in locating and referring him or her to providers or programs that can meet the service needs.

(5) Coordinating delivery of services when multiple providers or programs are involved in care provision.

(6) Monitoring and following-up to ensure services are received, adequate to meet the client's needs, and consistent with good quality of care.

(b) The target group includes Medicaid recipients who are assessed as at-risk of abuse, neglect, or exploitation as defined in North Carolina General Statutes 7A-542 and 108A-99. The recipient cannot be institutionalized nor a recipient of other Medicaid-reimbursed case management services provided through the State's home and community-based services waivers or the State Plan. The recipient must reside in a county designated by the Division of Medical Assistance to offer this service. The criteria for determining whether an adult or child is at-risk of abuse, neglect, or exploitation is as follows:

(1) At-Risk Adult: An at-risk adult is an individual who is at least 18 years old, or an emancipated minor, and meets one or more of the following criteria:

(A) An individual with only one consistent identified caregiver, who needs personal assistance 24 hours per day with two or more of the activities of daily living (bathing, dressing, grooming, toileting, transferring, ambulating, eating, communicating); or

(B) An individual with no consistent identified caregiver, who is unable to perform at least one of the activities of daily living (bathing, dressing, grooming, toileting, transferring, ambulating, eating, communicating); or

(C) An individual with no consistent identified caregiver, who is unable to carry out instrumental activities of daily living (managing financial affairs shopping, housekeeping, laundry, meal preparation, using transportation, using a telephone, reading, writing); or

(D) An individual who was previously abused, neglected or exploited, and the

conditions leading to the previous incident continue to exist.

(2) At-Risk Child: An at-risk child is an individual under 18 years of age who meets one or more of the following criteria:

(A) A child with a chronic or severe physical or mental condition whose parent(s) or caretaker(s) are unable or unwilling to meet the child's care needs; or

(B) A child whose parents are mentally or physically impaired to the extent that there is a need for assistance with maintaining family stability and preventing or remedying problems which may result in abuse or neglect of the child; or

(C) A child of adolescent (under age 18) parents or parents who had their first child when either parent was an adolescent and there is a need for assistance with maintaining family stability, strengthening individual support systems, and preventing or remedying problems which may result in abuse or neglect of the child; or

(D) A child who was previously abused or neglected, and the conditions leading to the previous incident continue to exist.

(c) Enrollment of providers will be accomplished in accordance with section 1902(a) (23) of the Social Security Act.

(1) Case Management Qualifications. Case managers must meet the following qualifications:

(A) A case manager for at-risk adults must have a Master of Social Work degree or a Bachelor of Social Work degree, or be a social worker who meets State requirements for Social Worker II classification. The individual must also have specialized training in recognizing risk factors related to abuse, neglect, or exploitation of elderly or disabled adults and in assessment of functional capacity and needs related to activities of daily living.

(B) A case manager for at-risk children must have a Master of Social Work degree or a Bachelor of Social Work degree, or be a social worker who meets State requirements for Social Worker II classification. The individual must also have specialized training in recognizing risk factors related to abuse or neglect of children and in assessing family functioning.

(2) Provider Qualifications. Providers must meet the following qualifications:

(A) Have qualified case managers with experience in providing services to elderly and disabled adults or to children and their families, with supervision provided by professional social workers.

(B) Have a formal mechanism for consultation and multi-disciplinary case staffings. For adults this includes, at a minimum, a registered nurse with experience in health and human services, other medical professionals as needed, and a trained adult protective services social worker. For children, this must include a trained child protective services social worker and any other agency staff providing services to the child and his family.

(C) Have experience as a fiduciary agent.

(D) Meet applicable State and Federal laws governing the participation of providers in the Medicaid program.

(E) Be certified by the Division of Social Services as a qualified case management provider.

Authority G.S. 108A-25(b); 108A-54; Social Security Act, 1915(g).

SECTION .0200 - DENTAL SERVICES

.0201 DEFINITIONS

(a) "Dental Services" means diagnostic, preventive or corrective procedures or dentures provided by or under the supervision of a dentist. These services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual.

(b) "Emergency dental care services" means those necessary to control bleeding, relieve pain, or eliminate acute infection, including emergency endodontic therapy; operative procedures which are required to prevent pulpal death and the imminent loss of teeth; or treatment of injuries to the teeth or supporting structures (e.g., bone or soft tissues contiguous to the teeth); prosthetic repairs that, if delayed for prior approval, would adversely affect the health of the patient may be considered emergency procedures.

(c) "Routine services" means examinations, x-rays, ~~prophylaxis,~~ preventive services, non-surgical tooth extractions, ~~amalgam fillings and fluoride treatments. These services are subject to the two times during a consecutive 12 month period limitation, without prior approval. A dentist may provide limited routine services to a new patient without reference to services that may have been performed previously by another dentist. However, bitewing, panorex and full series x-rays have specific time restrictions imposed that limit these services.~~ minor surgical procedures, restorative services, prosthetic repairs and

certain adjunctive services. Prior approval shall be required for all other services.

Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.100.

.0206 RESTRICTIONS AND PRIOR APPROVAL

(a) The Division of Medical Assistance shall have the right of prior approval for dental services except for routine and emergency services. ~~and services required to establish a treatment plan which will be submitted for prior approval.~~

(b) All other ~~Under the Medicaid program,~~ dental services are subject to prior approval. ~~with the exception of emergency dental services and certain limited dental services. Failure to obtain prior approval when required will result in denial of Medicaid payment for services rendered.~~

(c) ~~All non-emergency dental services are subject to prior approval except twice a year diagnostic evaluation services necessary or prophylaxis with fluoride twice a year, and 2 restorations and 2 non-surgical extractions in a 12-month period. The 12-month period begins July 1 of each year.~~ The Division of Medical Assistance has the right to require prior approval for any services for individual providers who have demonstrated aberrant billing patterns in Medicaid.

~~(d) A dentist accepting a new Medicaid patient shall perform an oral examination and take necessary radiographs to establish a treatment plan. The treatment plan, accompanied by radiographs, must be submitted for prior approval before further services are furnished the patient, except as follows:~~

~~(1) prophylaxis or prophylaxis with fluoride which may be performed twice a year without prior approval;~~

~~(2) a total of two non-surgical extractions;~~

~~(3) a total of two restorations in a 12-month period without prior approval.~~

~~(e) The two restorations, which are allowed without prior approval, are limited to either amalgam fillings for any tooth, or composites, plastics, silicates, or acrylics for anterior teeth. The allowance for non-surgical extractions and restorations is intended to provide the dentist with a degree of flexibility so that minor treatments can be completed at one sitting without requiring prior approval.~~

Statutory Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86.

.0207 GUIDELINES ON SERVICES

(a) Each Medicaid recipient may receive two ~~routine~~ oral examinations by the same provider in a consecutive 12-month period beginning July 1 of each year. ~~without prior approval. These examinations, in conjunction with radiographs, are intended to provide information for submission of a treatment plan for prior approval.~~

(b) ~~The routine radiographs necessary to establish a diagnosis and treatment plan may be taken twice in a consecutive 12-month period beginning July 1, of each year without prior approval.~~ A full mouth series is allowed every five years.

(c) ~~Routine~~ Dental prophylaxis or dental prophylaxis with immediate fluoride application is limited to 2 occasions in a consecutive 12-month period beginning July 1 of each year. ~~without prior approval.~~ Fluoride treatment is non-covered for patients 21 years of age and older.

(d) ~~Restorations are limited to 2 procedures in a consecutive 12-month period beginning July 1 of each year, without prior approval.~~ Amalgams are authorized for all teeth. Composites, plastics, ~~silicates,~~ and acrylics are authorized for anterior teeth only.

(e) Replacement of complete or partial dentures may be made once every ten years. Replacement after the expiration of fewer than ten years may be made with prior approval if failure to replace the dentures will cause an extreme medical problem or irreparable harm.

(f) Initial reline of dentures may only be made if six months have elapsed since receipt of dentures. Subsequent relines are allowed only at five year intervals; if failure to reline in fewer than five years will cause an extreme medical problem or irreparable harm, relines may be made with prior approval.

(g) Standard procedures and materials shall be used for full and partial dentures.

Statutory Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86.

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION: AND SCOPE

.0008 DENTURES

~~(a) Coverage for complete dentures shall be allowed only once in a five year period.~~

~~(b) Coverage for partial dentures shall be allowed once in a three year period; however, where medical necessity may be a factor, individual consideration may be given.~~

~~(c) Standard procedures and materials shall be used for full and partial dentures.~~

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d).

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0600 - HOME HEALTH PROSPECTIVE REIMBURSEMENT

.0601 REIMBURSEMENT PRINCIPLES

~~All covered~~ Services provided by Medicare certified home health agencies participating in the North Carolina Medicaid Program are to be reimbursed on a prospective payment basis as set forth in this plan. Qualified providers of Durable Medical Equipment (and DME associated supplies) and Home Infusion Therapies are paid on the basis of reasonable charges as defined in Attachment 4.19-B, Section 7(B) and (C), of the North Carolina State Plan for Medical Assistance. The intent of this plan is to develop reasonable rates that provide incentives for the cost effective and efficient delivery of home health services.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.70.

.0602 REIMBURSEMENT METHODS

(a) A maximum rate per visit is established annually for each of the following services:

(1) Registered or Licensed Practical Nursing Visit;
(2) Physical Therapy Visit;
(3) Speech Therapy Visit;
(4) Occupational Therapy Visit;
(5) Home Health Aide Visit.

(b) The maximum rates for the services identified in Section (a) above are computed and applied as follows:

(1) Payment of claims for visits is based on the lower of the billed customary charges or the maximum rate of the particular service. Governmental providers with nominal charges may bill at cost. For this purpose, a charge that is less than 50 percent of cost is considered a nominal charge. For such governmental providers, the payment amount is equal to the lower of the cost as billed or the applicable maximum rate.

(2) The maximum rates are derived from a base year selected by the state. The base year maximum rates are set at 90 percent of the median charge per visit for each service.

(3) To compute the annual maximum rates, the base year median rates per visit are adjusted as described in Sections (4), (5), and (6).

(4) Base year rates are adjusted by an annual cost index factor. The cost index has a labor component with a relative weight of 75 percent and a non-labor component with a relative weight of 25 percent. The relative weights are derived from the Medicare Home Health Agency Input Price Index and adopted by reference pursuant to N.C.G.S. 150B-14(a)(2)(c) as published in the Federal Register dated May 30, 1987.

(5) The annual cost index equals the sum of the products of multiplying the forecasted labor cost percentage change by 75 percent and multiplying the forecasted non-labor cost percentage change by 25 percent. The base year rates are multiplied by the cost index factor for each year from the base year to the year in which the rates apply.

(6) Other adjustments may be necessary for special factors relating to home health services or to comply with federal or state laws, regulations and policies.

(c) Medical supplies except those related to provision and use of Durable Medical Equipment are reimbursed at the lower of a provider's billed customary charges or a maximum amount determined for each supply ~~and equipment~~ item. ~~The maximum amount for each item is determined by multiplying the prevailing Medicare Part B allowable amount by 115 percent to account for the allocation of overhead costs and by 80 percent to encourage maximum efficiency.~~ Fees will be established based on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. Estimates of reasonable cost will be used if a Medicare allowable amount cannot be obtained for a particular supply or equipment item. The Medicare allowable amounts will be those amounts available to the Division of Medical Assistance as of July 1 of each year.

~~(d) Parenteral and Enteral Therapy and other in-home therapies (e.g., chemotherapy, antibiotic therapy) covered under the North Carolina Medicaid Program are reimbursed at the lower of billed customary charges or the comparable Medicare Part B allowable amount.~~

~~(e) Extended home care nursing is reimbursed at the lower of billed customary charges or an established hourly rate. The rate is derived from the average billed charges per hour in the base year and is adjusted annually by the percentage change in the average hourly earnings of North Carolina service workers.~~

~~(f) In addition to prospective rate payments, a hardship cost settlement payment is made to a~~

~~home health agency if the agency's total Medicaid reasonable cost significantly exceeds its total Medicaid payments as reported in an annual cost report. The amount of the hardship payment is equal to the excess cost minus ten percent of an agency's total Medicaid cost. Hardship settlement payments will not be available for cost reporting periods beginning on or after July 1, 1989.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.70.

.0605 PAYMENT ASSURANCES

(a) The state will pay the amounts determined under this plan for each covered service furnished in accordance with the requirements of the State Medicaid Plan, provider participation agreement, and Medicaid policies and procedures. The payments made under this methodology will not exceed the upper limits as established by 42 C.F.R. 447.325.

(b) Participation in the program is limited to providers who accept, as payment in full, the amounts paid in accordance with this plan.

(c) In all circumstances involving third party payment, Medicaid is the payor of last resort. Any amounts paid by non-Medicaid sources are deducted in determining Medicaid payment. For patients with both Medicare and Medicaid coverage, Medicaid payment is limited to the amount of coinsurance related to the services, supplies and equipment covered under the Medicare program.

(d) Excess payments ~~Payment~~ may be recouped from any provider found to be billing ~~an amount~~ amounts in excess of its customary charges, or ~~in excess of~~ costs if charges are nominal. ~~The amount of recoupment shall equal the amount paid in excess of customary charges, or in excess of costs if charges are nominal.~~

Authority G. S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. 440.70.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26H .0102, .0303.

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 1:30 p.m. on October 16, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reasons for Proposed Actions:

10 NCAC 26H .0102 - *To meet the requirements of Title 29, Subpart Z, Section 1910.1030 of the Code of Federal Regulations in nursing facility payments.*

10 NCAC 26H .0303 - *To meet the requirements of Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations in ICF-MR facility payments.*

Comment Procedures: Written comments concerning these amendments must be submitted by October 16, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN.: Bill Hottel, 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.

Editor's Note: These Rules have been filed as temporary rules effective July 1, 1992 for a period of 180 days to expire on December 31, 1992.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care is determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient will be classified in one of the two categories depending on the services needed. Rates are derived from either desk or field audited cost reports for a base year period to be selected by the state. Cost reports are filed and audited under provisions set forth in Rule .0104 of this Section. The criteria for determining the classification of each patient are presented in Appendix 1 of Attachment 3.1-A of the state plan. The minimum requirements of the 1987 OBRA are met by these provisions.

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

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

(2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day is increased by adjustment factors for price changes as set forth in Rule .0102(c).

(A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(B) A standard per diem amount will be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount is based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.

(3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate will be assigned as determined in Rule .0102(d) of this Section for the new type of care.

(4) The direct maximum rates are developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. The per diem cost at the 80th percentile in each array is selected as the base for the maximum rate. The base cost in each array is adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

(5) Effective October 1, 1990, the direct rates will be adjusted as follows:

(A) A standard per diem amount will be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:
(i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
(ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
(iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) A standard amount will be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases would be equal to the exact additional amount required to meet the licensed nursing requirements.

(C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred

in the cost reporting year ending in 1991 which will reflect each facility's actual cost of complying with all OBRA '87 requirements.

(6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein are repaid to the State. This will be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments are not reimburseable.

(7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:

(A) Administrative and General,

(B) Operation of Plant and Maintenance,

(C) Property Ownership and Use,

(D) Mortgage Interest.

(8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents ($14.60) for each SNF day of care and thirteen dollars and fifty cents ($13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.

(9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates will be computed as follows:

(A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents ($13.02)] will be the base rate.

(B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.

(C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.

(10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount is based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.

(11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and will be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate will be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), are adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors are computed using aggregate base year costs in the following manner:

(1) Costs will be separated into direct and indirect cost categories.

(2) Costs in each category will be accumulated into the following groups:

(A) labor,

(B) other,

(C) fixed.

(3) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).

(4) Price adjustment factors for each cost group will be established as follows:

(A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs is based on the projected average hourly wage of N.C. service workers.

(B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(C) Fixed. No adjustment will be made for this category, thus making the factor zero.

(D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.

(E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, for the rate period beginning October 1, 1991 through September 30, 1992 the forecast of the N.C. Service Wages percent applied to the 1991-92 Inpatient Hospital and Intermediate Care Facility for the Mentally Retarded rates is applied to the Labor component weight computed in (c)(4)(A) of this Rule.

(G) For the rate period beginning October 1, 1991 through September 30, 1992 the direct adjustment factor determined under (c)(4) of this Rule will be applied to the direct rate adjustments determined under (b)(2), (b)(5)(A) and (b)(5)(B) of this Rule.

(d) The skilled and intermediate direct patient care rates for new facilities are established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Rates:

(1) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components can be negotiated for nursing facilities that specialize in providing intensive services for head-injured or ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For head-injury services, a facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for head-injury services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF). For ventilator services, the only facilities that are eligible for a combined single rate are small freestanding facilities with less than 21 Nursing Facility beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities are reimbursed at higher direct rates as described in Rule .0102(b)(2)(A) of this Section.

(2) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate.

(3) Cost reports for these services must be filed in accordance with the rules in .0104 of this Section, but there will be no cost settlements for any differences between costs and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider will not be eligible to receive separate payments for return on equity as defined in Rule .0105 of this Section.

(g) In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; 29 C.F.R. 1910, Subpart Z; S.L. 1991, c. 689, s. 95.

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0303 METHODS AND STANDARDS FOR DETERMINING RATES

(a) Prospective rates for each ICF-MR provider shall be determined annually to be effective for a 12-month period beginning July 1 and ending the following June 30. These rates shall be derived from actual cost data from a base year to be selected by the state presented in cost reports submitted to and audited by the state agency. The year to which this cost report applies shall be known as the base year. Appropriate adjustments may be made to these base year costs to accommodate changes in applicable federal and state laws or regulations.

(b) The per diem rate for each provider in the base year shall be determined by dividing the total allowable costs in that year by the total actual number of patient days.

(c) The base year per diem rate for each provider will be inflated from the base year to the year in which the rate will apply using inflation factors for each intervening year computed as follows:

(1) Cost data from the base year cost reports will be aggregated to determine the proportion (percent of total) of cost in each of the following categories:

(A) Labor;

(B) Other Operating;

(C) Capital which includes the cost for use or ownership of physical plant and movable equipment.

(2) Inflation rates for each category will be established using official estimates of inflation provided by the North Carolina Office of Budget and Management for the year in which the rate shall apply.

(A) Labor costs shall be inflated by the estimate of the increase in Average Annual Service Wages in North Carolina, adjusted for any special factors related to ICF-MR personnel, however, salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Director of the Division of Medical Assistance;

(B) Other costs shall be inflated by the estimate of the Implicit Price Deflator for the U. S. Gross National Product; however, management fees shall be limited to a sum equal to seven percent of the maximum ICF rate in the state during the current fiscal year;

(C) Capital cost shall not be inflated.

(3) Rates determined in 10 NCAC 26H .0303(c)(2) will be multiplied times the percentages determined in 10 NCAC 26H .0303(c)(1) to obtain a weighted inflation rate for each category of cost.

(4) The weighted rates determined in 10 NCAC 26H .0303(c)(3) will be added to obtain the composite inflation rate.

(5) No inflation factor for any provider will exceed the maximum amount permitted for that provider by federal or state law or regulation.

(d) The prospective rate established in Paragraph (c) of this Rule, will be paid to the provider for every Medicaid eligible day during the year in which it will apply. These prospective rates may be determined after the date in which they are to go into effect and paid retroactively to that date.

(e) If allowable costs are less than prospective payments during a cost reporting period, a provider may retain one-half of the difference between costs and payments, up to an amount of five dollars ($5.00) per patient day. The balance of unexpended payments must be refunded to the Division of Medical Assistance.

(f) New providers are those that have not filed a cost report covering at least one full year of normal operations. A new provider shall have a negotiated rate based upon the provider's proposed budget. This rate for a new facility shall not exceed the maximum rate being allowed to existing facilities or any other limit established in state law. The rate shall be rebased to the actual cost incurred in the first full year of normal operations in the first year after audited data for that first year of normal operations is completed.

(g) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost vacation leave earned for that year and all previous years less vacation leave used or expended over the same period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on a reasonable estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(h) Start-up costs are cost incurred by an ICF-MR provider while preparing to provide

services. It includes the cost incurred by providers to provide services at the level necessary to obtain certification less any revenue or grants related to start-up. The North Carolina Medicaid Program will reimburse these start-up costs up to a maximum equal to the facility's rate times its beds times 120 days. This reimbursement will be made in addition to the facility's per diem rate. The amount shall be payable upon receipt of a special start-up cost report. This report should be filed within 15 months of the certification date. No advance of start-up funds shall be made prior to the desk audit of the start-up cost report.

(i) The annual capital cost or lease expense shall be limited to the sum of (1) and (2) as follows:

(1) The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars ($30,000) per bed during the fiscal year 1982-83 adjusted for changes in the Dodge Building Cost Index of North Carolina cities for each year since 1982-83. This amount is computed using the straight line method of depreciation and the useful life standards established by the American Hospital Association.

(2) An interest allowance equal to ten percent of the maximum allowed historical cost used to compute the annual depreciation on plant and fixed equipment.

(3) This capital lease limit does not apply to leases in effect prior to August 3, 1983.

(4) The limitation on capital cost shall not be applied to facilities with fewer than 21 certified beds, nor to facilities consisting of multiple detached buildings, no one of which contains more than eight certified beds.

(j) In addition to the prospective direct per diem rates developed under this Section, effective July 1, 1992, an interim payment add on will be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart Z, Section 1910.1030 of the Code of Federal Regulations. The interim rate will be subject to final settlement reconciliation with reasonable cost to meet the requirements of Part 1910. The final settlement reconciliation will be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate will be allowed, subject to final settlement reconciliation, in subsequent rate periods until adequate cost history is available to include the cost of meeting the requirements of Part 1910 in the prospective rate.

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

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEM-Groundwater Section intends to adopt rules cited as 15A NCAC 1K .0101 - .0103; .0201 - .0202; .0301 - .0305; .0401 - .0404.

The proposed effective date of this action is November 2, 1992.

The public hearing will be conducted at 7:00 p.m. on August 6, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Reason for Proposed Action: The proposed rules will allow the Department to make loans to owners and operators of underground storage tanks (USTs) to replace or upgrade USTs in accordance with 15A NCAC 2N. The proposed rules set application and review procedures, limits on term of loans, and interest rates. Loan applications will only be accepted through December 31, 1994.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted through August 14th, 1992. Please submit comments to Mr. David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-3221. Please notify Mr. Hance prior to the public hearing if you desire to speak. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE DEPARTMENT THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES.

This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on April 29 1992, OSBM on April 29, 1992, N.C. League of Municipalities on April 30, 1992, and N.C. Association of County Commissioners on April 30, 1992.

CHAPTER I - DEPARTMENTAL RULES

SUBCHAPTER 1K - GROUNDWATER PROTECTION LOAN FUND

SECTION .0100 - PROGRAM SCOPE

.0101 GENERAL

(a) The purpose of this Subchapter is to establish requirements for borrowers and administrators of the monies of the Groundwater Protection Loan Fund (Loan Fund).

(b) The Division of Environmental Management (Division) shall administer the Loan Fund.

Statutory Authority G.S. 143-215.94P; 143B-279.2.

.0102 APPLICABILITY

(a) Monies from the Loan Fund are available to all owners of commercial underground storage tanks in North Carolina which were in use on July 1, 1991, and which are subject to the technical standards contained in 15A NCAC 2N.

(b) Monies from the Loan Fund shall only be used to upgrade or replace commercial underground storage tanks to meet technical standards set forth in 15A NCAC 2N relating to corrosion protection, spill and overfill containment and prevention, and leak detection. Loan monies shall not be used to conduct environmental site assessments or environmental remediation, to construct new buildings, nor to install or replace petroleum marketing equipment such as dispensers, islands, and canopies. Loan monies may be used for landscaping or paving of the site only if the landscaping or paving is required to complete the upgrade or to restore the site after tank replacement.

(c) Each loan shall be designated for a specific site. No owner shall apply for or receive more than one loan under the provisions of this Subchapter for a single site.

(d) No single loan under the provisions of this Subchapter shall exceed one hundred thousand dollars ($100,000).

(e) No owner shall apply for or receive loans under the provisions of this Subchapter in excess of five hundred thousand dollars ($500,000). If one or more business(es) under the same or different name(s) is (are) fifty percent owned by a single individual, partnership, or corporation, this (these) company(ies) shall not apply for or receive loans under the provisions of this Subchapter in excess of five hundred thousand dollars ($500,000).

(f) Applications for loans from the Loan Fund must be made in accordance with the provisions of this Subchapter and must be received by a participating Bank prior to January 1, 1995. All approved loans must be funded on or before June 30, 1995.

Statutory Authority G.S. 143-215.94P; 143-215.94T.

.0103 DEFINITIONS

(a) The terms used in this Subchapter shall be as defined in 15A NCAC 2N .0203.

(b) The following definitions are defined for the purpose of this Subchapter:

(1) "Annual Operating Fee" is an annual fee required to be paid to the Department by the owner or operator of each commercial underground storage tank in use on or after January 1 of the year, beginning with 1989.

(2) "Bank" means any commercial lending institution as specifically defined in N.C.G.S. 53-1.

(3) "Borrower" means any owner of a commercial underground storage tank who applies for or receives a loan from the Loan Fund.

(4) "Coordinator" means an individual or contractor authorized by the Department to coordinate all activities between the Department and banks pertaining to the Loan Fund. The official title of this individual or contractor shall be Loan Fund Coordinator.

(5) "Department" means the Department of Environment, Health, and Natural Resources.

(6) "Serious Contamination" means any groundwater contamination at levels above the standards established in 15A NCAC 2L or any soil contamination extending beyond the property boundaries at levels above guidelines set by the Department.

(7) "Tank In Use" means an underground storage tank which is intended for the containment or dispensing of petroleum products.

Statutory Authority G.S. 143-215.94A; 143-215.94P; 143-215.94T.

SECTION .0200 - APPLICATION

.0201 ELIGIBILITY

For an owner of a commercial petroleum underground storage tank to be eligible for a loan from the Loan Fund to upgrade or replace that tank, all of the following criteria must be met.

(1) The tank must be located in North Carolina and have been in use on July 1, 1991.

(2) The tank must be registered with the Department.

(3) All annual operating fees required of the borrower pursuant to G.S. 143-215.94C must have been paid.

(4) The owner must have formally applied for a conventional loan from his primary bank for the subject work, and must have been denied based solely on reasonable concerns with respect to potential liability for environmental compliance by the lender, not financial reasons. The owner must have qualified for the loan in all other respects using generally accepted standards prevailing among commercial lending institutions.

Statutory Authority G.S. 143-215.94P; 143-215.94T.

.0202 APPLICATION PROCEDURES

(a) Each application to the Loan Fund must be made through a Bank that has entered into an agreement with the Department to act as an administrative agency for the Loan Fund.

(b) Each application submitted to the Loan Fund must be made on forms supplied by the Department and must be accompanied by the following:

(1) A letter from the declining Bank stating the reason the loan application was denied;

(2) Supporting financial statements;

(3) A complete scope of work for the upgrade or replacement of the tank(s) which provides a description of the work to be performed addressing each of the following three categories according to the technical standards specified in 15A NCAC 2N:

(A) Corrosion protection for tank(s) and piping,

(B) Spill and overfill protection and prevention, and

(C) Leak detection for tanks and piping;

(4) A binding estimate for the scope of work. This work may be performed by the borrower's own qualified construction personnel; and

(5) Any applicable fees required by Paragraph (b) of Rule .0401 of this Subchapter.

(c) If the borrower plans to use real estate where commercial petroleum underground storage tanks are located or were formerly located as collateral, a site assessment must be performed by a Professional Engineer or a Licensed Geologist as defined in G.S. 89C-3 and G.S. 89E-3, respectively, prior to the submittal of the application. The site assessment report shall be attached to a letter of certification stating whether the site has serious contamination, and shall be submitted to the Bank with the application.

(d) In the event the borrower must use real estate where commercial petroleum underground storage tanks are not and have not been located as collateral, the borrower must certify and furnish evidence satisfactory to the Bank and in accordance with all generally accepted prevailing standards commonly used by banks, including those for environmental compliance, that the real estate to be used would be acceptable as collateral.

Statutory Authority G.S. 143-215.94C 143-215.94P; 143-215.94T.

SECTION .0300 - LOAN ADMINISTRATION

.0301 BANK ELIGIBILITY

(a) Each Bank in North Carolina will be invited to participate in the Loan Fund program. Acceptance of a letter of agreement with the Department will qualify the Bank to participate in the administration of the Loan Fund.

(b) For the purposes of providing loans from the Loan Fund, Banks will act only as administrative agencies for the Department and, if acting within the terms of the agreement with the Department, do not incur any financial or environmental liability associated with loans from the Loan Fund.

Statutory Authority G.S. 143-215.94P.

.0302 LOAN PROCESSING BY BANKS

(a) Banks will utilize any rules and guidelines adopted and established by the Department. These rules and guidelines will complement generally accepted standards prevailing among banks and relating to commercial loans.

(b) Banks will receive and process loan applications.

(c) Banks will gather and process all necessary documents.

(d) Banks will receive monthly payments from borrowers, maintain records, and deposit pay-

ment amounts daily to a designated account of the State Treasurer after deduction of fees.

(e) Banks will maintain all original loan documents until the loan is satisfied.

(f) The Bank will forward one copy of each of the following documents to the Coordinator:

(1) the Loan Application;
(2) the Bank letter explaining the reasons for denial;
(3) financial statements;
(4) credit report;
(5) scope of work and binding cost estimate;
(6) originating Bank's letter of certifications; and
(7) site assessment report, if applicable, and if other real property is used as collateral, the borrower's certification and other evidence satisfactory to the Bank that the property conforms with the applicable Rules of this Subchapter.

(g) The Bank shall make a monthly report to the Coordinator of each delinquent loan.

(h) Each Bank shall make all Loan Fund files available to audit and review by the Coordinator, the Department, the Petroleum Underground Storage Tank Funds Council, or other authorized persons or agencies.

(i) The Bank shall notify the Borrower of the approval or denial of the loan application.

Statutory Authority G.S. 143-215.94P.

.0303 DUTIES OF THE LOAN FUND COORDINATOR

(a) The Coordinator is responsible for coordinating Bank and Department activities relative to all loans under the Loan Fund.

(b) The Coordinator is responsible for determining the following:

(1) whether all required annual operating fees have been paid;
(2) whether the application exceeds allowable amounts for funding pursuant to Paragraphs (c), (d), and (e) of Rule .0102 of this Subchapter;
(3) whether there are sufficient funds available in the Loan Fund; and
(4) whether the application has been completed in accordance with this Subchapter.

(c) If the Coordinator finds that the loan cannot be funded, he shall notify the Bank of the reasons that the loan cannot be funded.

(d) The Coordinator shall keep copies of all completed loan documents.

(e) The Coordinator shall make a quarterly report to the Department and the Petroleum Underground Storage Tank Funds Council indicating the following:

(1) The number and amount of loan commitments;
(2) Available funds to be lent;
(3) Amount lent to each borrower;
(4) Amount lent by each bank; and
(5) The following information for each loan:
(A) Name of Borrower;
(B) Originating Bank;
(C) Amount of Loan;
(D) Whether loan is for upgrade or for replacement; and
(E) Status of loan.

(f) The Coordinator shall make the Loan Fund files available to audit and review by the Department, the Petroleum Underground Storage Tank Funds Council, or other authorized persons or agencies.

Statutory Authority G.S. 143-215.94O(g); 143-215.94P.

.0304 LOAN APPROVAL CRITERIA

(a) Before a loan may be funded, all supporting materials must have been received and reviewed by the Bank administering the loan.

(b) Eligibility for the loan shall be determined in accordance with Rules .0102 and .0201 of this Subchapter.

(c) If real estate where commercial petroleum underground storage tanks are located is to be used as collateral, the site assessment must show that no serious contamination exists. Other real estate may only be used as collateral considering all generally accepted prevailing standards commonly used by banks, including those for environmental compliance.

(d) Banks will approve or disapprove loans from the Loan Fund based on generally accepted commercial bank loan standards including those for considering the appraised value of any real estate used for collateral.

Statutory Authority G.S. 143-215.94P.

.0305 DELINQUENT ACCOUNTS

(a) For a loan made in accordance with this Subchapter, a loan is delinquent when the payment is over 30 days in arrears.

(b) Banks are responsible for placing one telephone call and one certified letter to any borrower whose account is delinquent.

(c) If a loan account remains delinquent, Banks will forward notice of the delinquent account to the Loan Coordinator 30 days after the placing of the telephone call or the mailing of the certified letter.

Statutory Authority G.S. 143-215.94P.

SECTION .0400 - LOAN CONDITIONS

.0401 LOAN ADMINISTRATION FEES AND COSTS

(a) All fees and administrative costs associated with processing and servicing a loan are to be paid by the borrower.

(b) The borrower shall pay to the Bank at the time the loan application is submitted, fees for a credit report and for an appraisal if real property must be used for collateral. Fees for title insurance, recording, and other closing costs shall be paid by the borrower as applicable.

(c) A loan origination fee equal to the greater of seven hundred fifty dollars ($750.00) or one percent of the loan amount shall be paid to the Bank by the borrower upon approval of the loan.

(d) A loan servicing fee equal to the greater of fifty dollars ($50.00) or one-twelfth of one percent per month of the outstanding loan balance will be retained by the Bank from each monthly payment.

(e) All coordination costs of the loan fund shall be paid out of the interest on loans that is received by the Department.

Statutory Authority G.S. 143-215.94P.

.0402 INTEREST AND TERM

(a) All loans made in accordance with this Subchapter shall use a variable interest rate. The interest rate shall be the New York Prime Rate, as reported in the Wall Street Journal, plus three percent. This rate includes the loan fees specified in Paragraphs (d) and (e) of Rule .0401 of this Subchapter.

(b) The term of each loan shall not exceed 120 months.

Statutory Authority G.S. 143-215.94P.

.0403 ADDITIONAL CONDITIONS

(a) Loans made in accordance with this Subchapter may be for the full amount or any part of the cost of the upgrade or replacement.

(b) Based on borrower's financial ability and in accordance with generally accepted banking standards, personal guaranties may be required from borrower, spouse, and other owners of the borrower s business.

(c) Based on borrower's financial ability and in accordance with generally accepted banking standards, sufficient collateral to secure the loan may be required.

(d) Any subsequent owner of the business or commercial petroleum underground storage tanks, may apply to assume the outstanding loan. A bank may authorize an assumption by a subsequent owner only in accordance with generally accepted prevailing standards commonly used by banks for assumptions of commercial loans.

Statutory Authority G.S. 143-215.94P.

.0404 FUNDING OF LOAN

(a) Following approval of the loan, loan checks will be made payable to the borrower and the contractor(s) performing the work after the following is provided to the Bank:

(1) A completed copy of "Notification For All Underground Storage Tanks (New & Upgraded)" (Form GW-UST-8) stating all work was completed in accordance with technical requirements of 15A NCAC 2N. This form is available from the Department; and

(2) Copies of itemized invoices.

(b) Loan commitments shall be made for periods up to six months.

Statutory Authority G.S. 143-215.94P; 143-215.94T.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2D .0103 - .0104, .0401, .0521, .0524 - .0525, .0530, .0532; 2H .0603, .0607, .0609.

The proposed effective date of this action is October 1, 1992.

The public hearing will be conducted at 7:05 p.m. on July 30, 1992 at the Groundfloor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Reason for Proposed Actions: To correct address and department name, to correct and update references, to clarify incorporation by reference, to use defined terms, to clarify that emissions from both sources and facilities shall not cause an ambient standard to be exceeded, and to add new source performance standards.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five

minutes if many people want to speak. The record of proceedings will remain open until August 29, 1992, to receive additional written statements. To be included, the statement must be received by the Department by August 29, 1992.

Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

.0103 COPIES OF REFERENCED FEDERAL REGULATIONS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

(1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;

(2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;

(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;

(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;

(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;

(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;

(7) Wilmington Regional Office, ~~7225 Wrightsville Avenue,~~ 127 Cardinal Drive Extension, Wilmington, North Carolina ~~28403.~~ 28405.

(b) Copies of such ~~regulations~~ rules can be made at these regional offices for ten cents ($0.10) per page.

Statutory Authority G.S. 143-215.3; 150B-14.

.0104 INCORPORATION BY REFERENCE

(a) Anywhere there is a reference to rules contained in the Code of Federal Regulations (CFR) in this Subchapter, those rules are incorporated by reference.

(b) ~~(a)~~ The Code of Federal Regulations ~~adopted~~ incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise. ~~as allowed by G.S. 150B-14(c) with the following exceptions:~~

~~(1) New categories of sources in 40 CFR Part 60 and 61 for which new source performance standards or national emission standards for hazardous air pollutants have been promulgated by EPA;~~

~~(2) The Code of Federal Regulations when referenced in Rules .0530, .0531, and .0532 of this Subchapter.~~

~~(b) New categories of sources in 40 CFR Part 60 and 61 for which new source performance standards or national emission standards for hazardous air pollutants have been promulgated by EPA, if and when adopted, shall be adopted as part of Rule .0524 or .0525 of this Subchapter using rule making procedures.~~

~~(c) The version of the referenced Code of Federal Regulations in Rules .0530, .0531, and .0532 of this Subchapter is that as of January 1, 1989.~~

(c) The Code of Federal Regulations may be purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250. The cost of the referenced documents are as follows:

(1) 40 CFR Parts 1 to 51: twenty-seven dollars ($27.00).

(2) 40 CFR Part 52: twenty-eight dollars ($28.00).

(3) 40 CFR Parts 53 to 60: thirty-one dollars ($31.00).

(4) 40 CFR Parts 61 to 80: fourteen dollars ($14.00).

(5) 40 CFR Parts 260 to 269: twenty-two dollars ($22.00).

These prices are January 1992 prices.

Statutory Authority G.S. 150B-21.6.

SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

.0401 PURPOSE

(a) The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air

resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.

(b) Ground level concentrations of pollutants will be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards are applicable at each such sampling location in the state.

(c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by Rules .0531 or .0532 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

SECTION .0500 - EMISSION CONTROL STANDARDS

.0521 CONTROL OF VISIBLE EMISSIONS

(a) Purpose. The intent of this ~~Regulation~~ Rule is to promulgate rules pertaining to the prevention, abatement, and control of emissions generated from fuel burning operations and other industrial processes where an emission can be reasonably expected to occur, except during startups made in accordance with procedures approved by the Commission.

(b) Scope. This ~~Regulation~~ Rule shall apply to all fuel burning ~~installations~~ sources and to other processes that may have a visible emission. However, sources subject to an emission standard in ~~Regulation~~ Rule .0508, .0524 or .0525 of this Section shall meet that standard.

(c) For ~~installations~~ sources existing as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period except that six-minute periods averaging not more than 90 percent opacity may occur not more than once in any hour nor more than four times in any 24-hour period.

(d) For ~~installations~~ sources established after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period except that six-minute periods averaging not more than 87 percent opacity may occur not more than once in any hour nor more than four times in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this ~~Regulation,~~ Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources ~~Installations~~ established after July 1, 1971, may, subject to the following conditions, receive an exception from the opacity standard contained in Paragraph (d) of this ~~Regulation.~~ Rule. These ~~installations~~ sources may produce emissions up to those allowed by Paragraph (c) of this Rule if:

(1) The ~~installation~~ owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and

(2) The ~~installation~~ owner or operator of the source submits necessary data to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions is on the ~~installation~~ owner or operator of the source and shall be approached in the following manner. ~~An installation~~ The owner or operator of a source seeking an exception shall make application to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by ~~regulation.~~ rule. During this same period the applicant shall submit data necessary to determine that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division of Environmental Management may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, his permit shall be modified to allow emissions up to those allowed by Paragraph (c) of this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements,

performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable ~~regulation~~ rule in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(1) fossil fuel-fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
(2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart E);
(3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
(4) nitric acid plants (40 CFR 60.1 to 60.39 and 60.70 to 60.79, Subpart G);
(5) sulfuric acid plants (40 CFR 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
(6) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);
(7) petroleum refineries (40 CFR 60.1 to 60.39 and 60.100 to 60.109, Subpart J);
(8) storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);
(9) secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129, Subpart L);
(10) secondary brass and bronze ingot production plants (40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);
(11) iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);
(12) sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);
(13) phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209, Subpart T);
(14) phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);
(15) phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);
(16) phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);
(17) phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);
(18) steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);
(19) coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);
(20) primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);
(21) primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);
(22) primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);
(23) primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);
(24) ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269, Subpart Z);
(25) kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);
(26) grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);
(27) lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart HH);
(28) stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);
(29) electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);
(30) storage vessels for petroleum liquids, for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);
(31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart CC);
(32) lead-acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);
(33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);
(34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.409, Subpart NN);
(35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);
(36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and CFR 60.310 to 60.319, Subpart EE);
(37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);
(38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);

(39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);
(40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);
(41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);
(42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);
(43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);
(44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart RR);
(45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);
(46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and 40 CFR 60.590 to 60.599, Subpart GGG);
(47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart HHH);
(48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);
(49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart JJJ);
(50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);
(51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);
(52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);
(53) steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);
(54) onshore natural gas processing: SO(2) emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);
(55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);
(56) industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);
(57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);
(58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);
(59) industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);
(60) magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);
(61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.34 and 40 CFR 60.690 to 60.699, Subpart QQQ);
(62) volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (40 CFR 60.1 to 60.34 and 40 CFR 60.610 to 60.618, Subpart III);
(63) volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (40 CFR 60.1 to 60.34 and 40 CFR 60.660 to 60.668, Subpart NNN);
(64) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.34 and 40 CFR 60.740 to 60.748, Subpart VVV);
(65) small industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.34 and 40 CFR 60.40c to 60.48c, Subpart Dc);
(66) municipal waste combustors (40 CFR 60.1 to 60.34 and 40 CFR 60.50a to 60.59a, Subpart Ea);
(67) volatile organic emissions from the polymer manufacturing industry (40 CFR 60.1 to 60.34 and 40 CFR 60.560 to 60.566 except 40 CFR 60.562-2(c), Subpart DDD).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this ~~Regulation~~ Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(c) In the application of this ~~Regulation,~~ Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) Paragraphs (a) and (b) of Rule .0601 of Subchapter 2H of this Chapter are not applicable to any source to which this Regulation applies. The source shall apply for and receive a permit as required in Paragraph (c) of Rule .0601 of Subchapter 2H of this Chapter.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated new source performance standards in 40 CFR Part 60, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable ~~regulation~~ rule in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to ~~61.156,~~ 61.159, Subpart M, with the exception named in 40 CFR 61.157);

(2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);

(3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);

(4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);

(5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);

(6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);

(7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);

(8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);

(9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);

(10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);

(11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);

(12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);

(13) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L);

(14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this ~~Regulation~~ Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 ~~61.146, and 61.147,~~ shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this ~~Regulation,~~ Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) Paragraphs (a) and (b) of Rule 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of Rule 15A NCAC 2H .0601.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

.0530 PREVENTION OF SIGNIFICANT

DETERIORATION

(a) The purpose of the ~~Regulation~~ rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 as amended October 17, 1988.

(b) For the purposes of this ~~Regulation~~ Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years. The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(c) All areas of the State shall be classified as Class II except that the following areas are Class I:

(1) Great Smoky Mountains National Park;
(2) Joyce Kilmer Slickrock National Wilderness Area;
(3) Linville Gorge National Wilderness Area;
(4) Shining Rock National Wilderness Area;
(5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this ~~Regulation.~~ Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this ~~Regulation,~~ Rule, except as otherwise provided in this ~~Regulation.~~ Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this ~~Regulation.~~ Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the state plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this ~~Regulation.~~ Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) Paragraphs (a) and (b) of ~~Rule~~ 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. Sources to which this Rule applies shall apply for and receive a permit as required in Paragraph (c) of ~~Rule~~ 15A NCAC 2H .0601.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this ~~Regulation~~ Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) Volatile organic compounds exempted from coverage in Subparagraph (c)(5) of ~~Regulation~~ Rule .0531 of this Section shall also be exempted when calculating source applicability and control requirements under this ~~Regulation.~~ Rule.

(k) The degree of emission limitation required for control of any air pollutant under this ~~Regulation~~ Rule shall not be affected in any manner by:

(1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
(2) any other dispersion technique not implemented before then.

(l) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.166(q).

(m) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(n) If a source to which this ~~Regulation~~ Rule applies impacts an area designated Class I by re-

quirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with such demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(o) A permit application subject to this ~~Regulation~~ Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants will be notified if the application is complete as to initial information submitted. Notwithstanding this determination, the 90-day period provided for the Commission to act by G.S. 143-215.108(b) shall be considered to begin at the end of the period allowed for public comment, at the end of any public hearing held on the application, or when the applicant supplies information requested by the Director in answer to comments received during the comment period or at any public hearing, whichever is later. The Director shall notify the Administrator of EPA of any application considered approved by expiration of the 90 days; this notification shall be made within 10 working days of the date of expiration. If no permit action has been taken when 70 days of the 90-day period have expired, the Commission shall relinquish its prevention of significant deterioration (PSD) authority to EPA for that permit. The Commission shall notify by letter the EPA Regional Administrator and the applicant when 70 days have expired. EPA will then have responsibility for satisfying unmet PSD requirements, including permit issuance with appropriate conditions. The permit applicant must secure from the Commission a permit revised (if necessary) to contain conditions at least as stringent as those in the EPA permit, before beginning construction. Commencement of construction before full PSD approval is obtained constitutes a violation of this ~~Regulation.~~ Rule.

(p) Approval of an application with regard to the requirements of this ~~Regulation~~ Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other ~~regulations~~ rules of this Chapter and any other requirements under local, state, or federal law.

(q) When a source or modification subject to this ~~Regulation~~ Rule may affect the visibility of a Class I area named in Paragraph (c) of this ~~Regulation,~~ Rule, the following procedures shall apply:

(1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(r) Revisions of the North Carolina State Implementation Plan for Air Quality shall comply with the requirements contained in 40 CFR 51.166(a)(2).

(s) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

.0531 SOURCES IN NONATTAINMENT AREAS

(a) This Rule applies to certain new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be a nonattainment area as of May 1, 1982.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period spec-

ified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

(1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other ~~regulation~~ rule in this Subchapter;

(2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.);

(3) emission of pollutants for which the source or modification is not major;

(4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and

(5) emission of the following volatile organic compounds:

(A) methane,

(B) ethane,

(C) trichlorofluoromethane (chlorofluorocarbon 11),

(D) dichlorodifluoromethane (chlorofluorocarbon 12),

(E) chlorodifluoromethane (chlorofluorocarbon 22),

(F) trifluoromethane (fluorocarbon 23),

(G) trichlorotrifluoroethane (chlorofluorocarbon 113),

(H) dichlorotetrafluoroethane (chlorofluorocarbon 114),

(I) chloropentafluoroethane (chlorofluorocarbon 115),

(J) 1,1,1-trichloroethane (methyl chloroform),

(K) dichloromethane (methylene chloride),

(L) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),

(M) tetrafluoroethane (hydrofluorocarbon 134a),

(N) dichlorofluoroethane (hydrochlorofluorocarbon 141b), and

(O) chlorodifluoroethane (hydrochlorofluorocarbon 142b).

(d) Paragraphs (a) and (b) of ~~Rule~~ 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of ~~Rule~~ 15A NCAC 2H .0601.

(e) To issue a permit to a source to which this Rule applies, the director shall determine that the source will meet the following requirements:

(1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.

(3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new source will be less than the emissions reductions. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable ~~regulations~~ rules in effect prior to the application. The difference between the emissions from the new source and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G).

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant for which the state has demonstrated to the satisfaction of the Administrator of EPA that attainment is not possible in the area within the period prior to December 31, 1982,

despite the implementation of all reasonably available measures, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other ~~regulations~~ rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (e) of Rule .0530 of this Section, the following procedures shall be followed:

(1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or modification.

(2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

(3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.

(4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

(j) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(a) This ~~Regulation~~ Rule applies to certain new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be an attainment or unclassifiable area as of May 1, 1983, and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.

(b) For the purpose of this ~~Regulation~~ Rule the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.

(c) The ~~Regulation~~ rule is not applicable to:

(1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other ~~regulation~~ rule of this Subchapter;

(2) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;

(3) emission of pollutants for which the source or modification is not major;

(4) emission of pollutants other than sulfur dioxide, total suspended particulates, nitrogen oxides, and carbon monoxide;

(5) a new or modified source whose impact will increase not more than:

(A) 1.0 ug m^{-3} of SO_2 on an annual basis,

(B) 5 ug/m^{-3} of SO_2 on a 24-hour basis,
(C) 25 ug/m^{-3} of SO_2 on a 3-hour basis,
(D) 1.0 ug/m^{-3} of total suspended particulates on an annual basis,
(E) 5 ug/m^{-3} of total suspended particulates on a 24-hour basis,
(F) 1.0 ug/m^{-3} of NO_2 on an annual basis,
(G) 0.5 mg/m^{-3} of carbon monoxide on an 8-hour basis;
(H) 2 mg/m^{-3} of carbon monoxide on a one-hour basis;
(I) 1.0 ug/m^{-3} of PM10 on an annual basis; or
(J) 5 ug/m^{-3} of PM10 on a 24-hour basis;
at any locality that does not meet a national ambient air quality standard.

(6) sources which are not major unless secondary emissions are included in calculating the potential to emit;
(7) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;
(8) temporary emission sources which will be relocated within two years; and
(9) emissions resulting from the construction phase of the source.

(d) Paragraphs (a) and (b) of ~~Rule~~ 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of ~~Rule~~ 15A NCAC 2H .0601.

(e) To issue a permit to a new or modified source to which this ~~Regulation~~ Rule applies, the Director shall determine that the source will meet the following conditions:

(1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.
(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.
(3) The source will satisfy one of the following conditions:
(A) The source will comply with Part (e)(3) ~~(A)~~ of ~~Regulation~~ Rule .0531 of this Section when the source is evaluated as if it were in the nonattainment area; or
(B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:
(i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;
(ii) the applicant has secured all available air quality offsets; and
(iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

(f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this ~~Regulation~~ Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or additions to the referenced material.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0603 APPLICATIONS

(a) Permit application shall be made in duplicate on official forms of the Director and shall

include plans and specifications giving all necessary data and information as required by the application form. These application forms shall be used: air contaminant sources--Form AQ-22, and complex sources--Form AQ-81. These forms may be obtained by writing to the address in Paragraph (b) of this Rule. Whenever the information provided on these forms does not adequately describe the source and its air pollution abatement equipment, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(b) A permit or permit renewal application shall be filed in writing with the Director, Division of Environmental Management, ~~Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, N.C. 27611.~~ P.O. Box 29535, Raleigh, North Carolina 27626-0535. Application for permit renewal or ownership transfer may be by letter to the Director, if no alteration or modification has been made to the originally permitted source. A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are in ~~Regulation~~ Rule .0609 of this Section. Each permit or renewal application is incomplete until the permit application processing fee is received.

(c) Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary and require the submission of plans and specifications.

(d) Before issuing any permit for:

(1) a source to which ~~Rule~~ 15A NCAC 2D .0530 or .0531 applies,

(2) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C),

(3) a requirement for controls more stringent than the applicable emission standards in Section 15A NCAC 2D .0500 in accordance with ~~Rule~~ 15A NCAC 2D .0501, or

(4) any other source that may be designated by the Director,

the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality, shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing in the region affected a notice by prominent advertisement which shall provide a 30-day period for submittal of public comment and an opportunity for a public hearing request. Confidential material will be handled in accordance with G.S. 143-215.3(a)(2).

(e) A public hearing shall be held before the issuance of any permit containing any one of these conditions:

(1) any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such limitations are necessary to assure that ~~regulations~~ rules in Section 15A NCAC 2D .0900 do not apply in accordance with ~~Regulations~~ 15A NCAC 2D .0901 and .0902;

(2) an allowance of controls different than the applicable emission standards in Section 15A NCAC 2D .0900 in accordance with ~~Regulation~~ 15A NCAC 2D .0905;

(3) an alternate compliance schedule promulgated in accordance with ~~Regulation~~ 15A NCAC 2D .0910;

(4) the quantity of solvent-borne ink that may be used by a printing unit or printing systems in accordance with ~~Regulation~~ 15A NCAC 2D .0936; or

(5) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2).

The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Environment, Health, and Natural Resources regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

(f) In a permit application for an alternative mix of controls under 15A NCAC 2D .0501(f), the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

(1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued.

The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

(2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the acknowledgment is provided to the Director, the Director will promptly transmit to EPA a copy of the permit application. Before the Director issues the permit, there shall be a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the Director will promptly transmit a copy to EPA. The owner or operator of a source located in a nonattainment area for ozone as designated by the Environmental Protection Agency may not initiate the use of this option after November 30, 1989; he shall follow the procedures set out in Subparagraph (1) of this Paragraph.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0607 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Section and the North Carolina State Implementation Plan for Air Quality appendix of conditioned permits are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

(1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;

(2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;

(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;

(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;

(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;

(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;

(7) Wilmington Regional Office, ~~7225 Wrightsville Avenue,~~ 127 Cardinal Drive Extension, Wilmington, North Carolina ~~28403.~~ 28405.

(b) Copies of such regulations can be made at these regional offices for ten cents ($0.10) per page.

Statutory Authority G.S. 150B-14.

.0609 PERMIT FEES

(a) For the purposes of this ~~Regulation,~~ Rule, the following definitions apply:

(1) "Minor facility" means any plant site where the allowable emissions of each regulated pollutant under Subchapter 2D of this Title are each less than 100 tons per year, except a site that is only a complex source.

(2) "Major facility" means any plant site where the allowable emissions of any one regulated pollutant under Subchapter 2D of this Title are 100 tons per year or more, except a site that is only a complex source.

(3) "PSD facility" means a plant site having one or more sources subject to the prevention of significant deterioration requirements of ~~Regulation~~ 15A NCAC 2D .0530 or a plant site applying for a permit for a major stationary source or a major modification subject to ~~Regulation~~ 15A NCAC 2D .0530.

(4) "NSPS source" means a source subject to a new source performance standard in ~~Regulation~~ 15A NCAC 2D .0524.
(5) "NESHAP source" means a source subject to a national emission standard for hazardous air pollutants in ~~Regulation~~ 15A NCAC 2D .0525.
(6) "Complex source" means a source requiring a permit under Section 15A NCAC 2D .0800.
(7) "Allowable emissions" means the actual emissions that are permitted to occur if the source were to operate constantly under maximum permitted conditions. Sources may request permit conditions that limit emissions to less than regulation allowables or that restrict operations. If neither a ~~regulation~~ rule nor a permit limiting emissions from a particular source specifies an emission rate, then the allowable emissions shall be the actual emissions that are expected to occur if the source were to operate constantly under maximum conditions allowed by the permit. When a new source is added to an existing facility, the allowable emissions for the facility shall be the sum of the new and existing sources.

(b) The following fees shall be charged for processing an application for an air permit and for administering and monitoring compliance with the terms of an air permit:

	PERMIT APPLICATION PROCESSING FEE		ANNUAL ADMINISTERING AND COMPLIANCE MONITORING FEE	
CATEGORY	STANDARD	SIMPLE RENEWAL	STANDARD	IN COMPLIANCE
Minor facility	$ 50	$ 25	$ 250	$ 190
Minor facility with an NSPS source	60	35	500	380
Major facility	100	75	850	640
PSD facility	400	100	1,375	1,030
Facility with a NESHAP source	100	75	850	640
Complex source	100	0	850	640

If a facility or source belongs to more than one category, the fees shall be those of the applicable category with the highest fees. No fees are required to be paid under this ~~Regulation~~ Rule by a farmer who submits an application or receives a permit that pertains to his farming operations. If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seven thousand five hundred dollars ($7,500.00) per year, then the total for all these fees will be reduced for this facility so that the total payment is seven thousand five hundred dollars ($7,500.00) per year.

(c) The standard permit application processing fee listed in Paragraph (b) of this ~~Regulation~~ Rule is required for technical changes such as changing the location of a source; adding additional emission sources, pollutants, or control equipment; or changing a permit condition such that a change in air pollutant emissions could result. A simple renewal permit application processing fee is required for permit renewals without technical changes. A twenty five dollar ($25.00) permit application processing fee is required for administrative changes such as ownership transfers, construction date changes, test date changes, or reporting procedure changes. No permit application processing fee is required for changes to an unexpired permit initiated by the Director to correct processing errors, to change permit conditions, or to implement new standards.

(d) If a facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual administering and compliance monitoring fee shall be that which is in the "Compliance Reduction Annual Administering and Compliance Monitoring Fee" column. A facility shall be considered to

have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year. If a Notice of Non-compliance or a Notice of Violation was based on erroneous information, the Director may send a letter of correction to the permittee clearing the record for compliance purposes. If a Notice of Non-compliance or Notice of Violation is still in the process of being contested or appealed, the permit holder shall pay the in compliance fee. At the conclusion of the contest or appeal process the permit holder shall pay the difference between the standard fee and in compliance fee unless the notice is found to be erroneous.

(e) If the actual emissions of each pollutant from a minor facility are no more than three tons during the previous calendar year, the permit holder need not pay the annual administering and compliance monitoring fee provided that actual emissions continue to be no more than three tons during the annual period for which the fee is being billed.

(f) Payment of permit application processing fees and annual administering and compliance monitoring fees shall be by check or money order made payable to the N.C. Department of Environment, Health, and Natural Resources. ~~and Community Development.~~ The payment should refer to the air permit application or permit number.

(g) The payment of the permit application processing fee required by Paragraph (b) or (c) of this ~~Regulation~~ Rule shall accompany the permit, permit renewal, or permit modification application and is non-refundable. If the permit application processing fee is not paid when the application is filed, the application shall be considered incomplete until the fee is paid.

(h) The initial annual administering and compliance monitoring fee shall be paid in accordance with Paragraph (m) of this Rule when a permit, modified permit, or renewed permit is issued for which a permit application processing fee specified in Paragraph (b) or (c) of this ~~Regulation~~ Rule has been paid. For complex sources only an initial annual administering and compliance monitoring fee needs to be paid; no subsequent annual administering and compliance monitoring fee is necessary for complex sources unless technical changes are made in the permit.

(i) If a permit or permit modification results in changing the category in which a facility belongs, the next annual administering and compliance monitoring fee shall be paid for category in which the facility belongs after the permit or permit modification is issued.

(j) Any permit holder claiming exemption under Paragraph (e) of this Rule shall certify to the Director within 30 days after being billed that the actual emissions of each pollutant from the facility are no more than three tons during the previous calendar year.

(k) A facility which has not begun operations or which has ceased all operations at a site will not be required to pay the next annual administering and compliance monitoring fee provided operations are not resumed during that annual period. Any resumed operations will necessitate the payment of the entire annual fee. A facility that is moved to a new site may receive credit for any unused portion of an annual administering and compliance monitoring fee if the permit for the old site is relinquished. Only one annual administrative and compliance monitoring fee needs to be paid annually for each permit.

(l) A fee payer with multiple permits may arrange to consolidate the payment of annual administrative and compliance monitoring fees into one annual payment.

(m) If, within 30 days after being billed, the permit holder fails to pay an annual administering and compliance monitoring fee or fails to certify an exemption under Paragraphs (e) and (j) or (k) of this Rule, the Director may initiate action to revoke the permit.

(n) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budget from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b).

* * * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2D .0926 - .0927; 2H .0610.

The proposed effective date of this action is November 1, 1992.

The public hearing will be conducted at 7:00 p.m. on July 30, 1992 at the Groundfloor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, N.C.

Reason for Proposed Actions: To adopt maximum feasible control technology for bulk gasoline plants and bulk gasoline terminals and to exempt bulk gasoline plants and terminals from toxic air pollutant requirements.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open until August 29, 1992, to receive additional written statements. To be included, the statement must be received by the Department by August 29, 1992.

Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0926 BULK GASOLINE PLANTS

(a) For the purpose of this ~~Regulation,~~ Rule, the following definitions apply:

(1) "Average daily throughput" means annual throughput of gasoline divided by 312 days per year.

(2) ~~(1)~~ "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.

(3) ~~(2)~~ "Bulk gasoline plant" means a gasoline storage and distribution facility which has an average daily throughput of less than 20,000 gallons of gasoline and which usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.

(4) ~~(3)~~ "Bulk gasoline terminal" means a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.

(5) ~~(4)~~ "Gasoline" means any petroleum distillate having a Reid vapor pressure of four psia or greater.

(6) "Incoming vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank truck or trailer and a receiving stationary storage tank such that vapors displaced from the receiving stationary storage tank are transferred to the tank truck or trailer being unloaded.

(7) "Outgoing vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading stationary storage tank and a receiving tank truck or trailer such that vapors displaced from the receiving tank truck or trailer are transferred to the stationary storage tank being unloaded.

(8) ~~(5)~~ "Splash filling" means the filling of a tank truck or stationary storage tank through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.

(9) ~~(6)~~ "Submerged filling" means the filling of a tank truck or stationary tank through a pipe or hose whose discharge opening is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or whose discharge opening is entirely submerged when the liquid level is six inches above the bottom of the tank.

~~(7) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.~~

(b) This ~~Regulation~~ Rule applies to the unloading, loading, and storage facilities of all bulk gasoline plants and of all tank trucks or trailers

delivering or receiving gasoline at bulk gasoline plants except stationary storage tanks with capacities less than 528 gallons.

~~(c) This Regulation does not apply to:~~

~~(1) stationary storage tanks with capacities less than 528 gallons; or~~

~~(2) gasoline bulk plants with an average daily gasoline through-put not exceeding 4,000 gallons, if all stationary tanks and tank trucks are equipped for submerged filling or bottom filling.~~

(c) ~~(d) With the exceptions stated in Paragraph (c) of this Regulation, the~~ The owner or operator of a bulk gasoline plant shall not transfer gasoline to ~~or from~~ any stationary storage tanks after May 1, 1993, unless ~~each~~ the unloading tank truck or trailer and the receiving stationary storage tank ~~is~~ are equipped with ~~a~~ an incoming vapor balance system as described in Paragraph (g) of this ~~Regulation and:~~ Rule and

~~(1) Each tank is equipped with a submerged fill pipe; or~~

~~(2) Each~~ the receiving stationary storage tank is equipped with a fill line whose discharge opening is flush with the bottom of the tank.

(d) ~~(e) With the exceptions stated in Paragraph (c) of this Regulation, the~~ The owner or operator of a bulk gasoline plant ~~tank truck or trailer~~ with an average daily gasoline throughput of 4,000 gallons or more shall not load ~~or unload~~ tank trucks or trailers at ~~a bulk gasoline~~ such plant after May 1, 1993, unless ~~each~~ the unloading stationary storage tank and the receiving tank truck or trailer ~~is~~ are equipped with ~~a~~ an outgoing vapor balance system as described in Paragraph (g) of this ~~Regulation and:~~ Rule and

~~(1) Equipment is available at the bulk gasoline plant to provide for the submerged filling of each tank truck or trailer; or~~

~~(2) Each~~ the receiving tank truck or trailer is equipped for bottom filling.

(e) The owner or operator of a bulk gasoline plant with an average daily throughput of more than 2,500 gallons but less than 4,000 gallons located in an area with a housing density exceeding specified limits as described in this Paragraph shall not load any tank truck or trailer at such bulk gasoline plant after November 1, 1996, unless the unloading stationary storage tank and receiving tank truck or trailer are equipped with an outgoing vapor balance system as described in Paragraph (g) of this Rule and the receiving tank truck or trailer is equipped for bottom filling. In the counties of Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Rowan, and Wake, the specified limit on housing density is 50 residences in a square one mile on a side with the square centered on the loading rack at the bulk gasoline plant and with one side oriented in a North-South direction. In all other counties the specified limit on housing density is 100 residences per square mile. The housing density shall be determined by counting the number of residences using aerial photographs or other suitable methods acceptable to the Director.

(f) The owner or operator of a bulk gasoline plant not subject to the outgoing vapor balance system requirements of Paragraph (d) or (e) of this Rule shall not load trucks or trailers at such plants unless:

(1) Equipment is available at the bulk gasoline plant to provide for submerge filling of each tank truck or trailer; or

(2) Each receiving tank truck or trailer is equipped for bottom filling.

(g) ~~(f) With the exception stated in Paragraph (c) of this Regulation, the~~ The owner or operator of a bulk gasoline plant, tank truck or trailer that is required to be equipped with a vapor balance system pursuant to Paragraphs (c), (d), or (e) of this Rule shall not transfer gasoline between tank truck or trailer and stationary storage tank unless:

~~(1) The transfer is conducted in accordance with Paragraphs (d) and (e) of this Regulation;~~

~~(1)~~ ~~(2)~~ The vapor balance system is in good working order and is connected and operating;

(2) ~~(3)~~ Tank truck or trailer hatches are closed at all times during loading and unloading operations; and

(3) ~~(4)~~ The tank ~~trucks'~~ truck's or ~~trailers'~~ trailer's pressure/vacuum relief valves and hatch covers and the truck tanks or storage tanks or associated vapor and liquid lines are vapor tight during loading or unloading. ~~and~~

~~(5) The pressure relief valves on storage vessels and tank trucks or trailers are set to release at the highest possible pressure (in accordance with state or local fire codes or the National Fire Prevention Association guidelines).~~

(h) ~~(g)~~ Vapor balance systems required under Paragraphs (c), (d), and (e) of this Regulation shall consist of the following major components:

(1) a vapor space connection on the stationary storage tank equipped with fittings which are vapor tight and will be immediately closed upon disconnection so as to prevent release of organic material;

(2) a connecting pipe or hose equipped with fittings which are vapor tight and will be immediately closed upon disconnection so

as to prevent release of organic material; and

(3) a vapor space connection on the tank truck or trailer equipped with fittings which are vapor tight and will be immediately closed upon disconnection so as to prevent release of organic material.

(i) The owner or operator of a bulk gasoline plant shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or before November 1, 2002, whichever is sooner.

(j) The pressure relief valves on tank trucks or trailers loading or unloading at bulk gasoline plants shall be set to release at the highest possible pressure (in accordance with state or local fire codes or the National Fire Prevention Association guidelines). The pressure relief valves on stationary storage tanks shall be set at 0.5 psi for storage tanks placed in service on or after November 1, 1992, and 0.25 psi for storage tanks existing before November 1, 1992.

(k) ~~(h)~~ No owner or operator of a bulk gasoline plant may permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0927 BULK GASOLINE TERMINALS

(a) For the purpose of this ~~Regulation,~~ Rule, the following definitions apply:

(1) "Bulk gasoline terminal" means:

(A) breakout tanks of an interstate oil pipeline facility; or

(B) a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.

(2) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.

(b) This ~~Regulation~~ Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

(1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding:

(A) 80 milligrams per liter (4.7 grains per gallon) of gasoline loaded for control systems installed before November 1, 1992 until November 1, 1995 or the next major modification, whichever occurs first; after November 1, 1995 or at the next major modification, these control systems shall prevent emissions of volatile organic compounds from exceeding 35 milligrams per liter of gasoline loaded;

(B) 35 milligrams per liter for control systems installed after November 1, 1992; and that is properly installed, in good working order, and in operation. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;

(2) Displaced vapors and gases are vented only to the vapor control system, or if the Director approves, displaced vapors and gases are vented to a flare;

(3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

(4) All loading and vapor lines are equipped with fittings which make vapor-tight connections and which are immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this ~~Regulation~~ Rule shall not:

(1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or

(2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by November 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank of 100 feet in diameter or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by November 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all new tanks storing gasoline at a bulk gasoline terminal when put into service and shall be

required on all existing tanks storing gasoline at a bulk gasoline terminal by November 1, 1995:

(1) rim-mounted secondary seals on all external and internal floating roof tanks,

(2) gaskets on roof and deck fittings or welded seams where possible, and

(3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) If, upon facility or operational modification of a bulk gasoline terminal that existed before November 1, 1992, an increase in benzene emissions results such that:

(1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and

(2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved as a result of compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) Within one year after November 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0610 PERMIT REQUIREMENTS FOR TOXIC AIR POLLUTANTS

(a) No person shall cause or allow any toxic air pollutant named in 15A NCAC 2D .1104 to be emitted into the atmosphere from any source without having received a permit from the commission in accordance with the following:

(1) Sources and modifications of sources which require a permit or permit modification because of the applicability of Sections in Subchapter 2D of this Chapter other than Section .1100 and which began construction after April 30, 1990, shall have received a permit or permit modification to emit toxic air pollutants before beginning construction and shall be in compliance with their permit when beginning operations.

(2) The owner or operator of any incinerator subject to 15A NCAC 2D .1200 which began construction or was in operation before October 1, 1991, shall apply for a permit or a permit modification to emit toxic air pollutants in accordance with the compliance schedules contained in 15A NCAC 2D .1209. All other sources at the facility with the incinerator shall be included, and the owner or operator of these sources shall apply for a permit or a permit modification to emit toxic air pollutants from these sources in accordance with Paragraph (b) or (c) of this Rule.

(3) Paragraph (a)(1) of this Rule does not apply to sources whose emissions result from combusting only unadulterated fossil fuels or unadulterated wood if the permit application is only for this type of combustion source and if the facility has not already been permitted or applied for a permit to emit toxic air pollutants.

(4) The owner or operator of any source other than sources required to have a permit under Paragraph (a)(1) of this Rule shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the division.

(5) When the director calls for permit applications for facilities pursuant to Paragraph (a)(4) of this Rule, he shall call for permit applications on the basis of standard industrial classifications, that is, he shall call at one time for permits for all facilities statewide that have the same four-digit standard industrial classification code, except those facilities located in certified local air pollution control agency areas. All sources at the facility regardless of their standard industrial classification code and including sources combusting only unadulterated fossil fuels or unadulterated wood shall be included in the call for permit applications. All members of a source or facility category not having a standard industrial classification code shall similarly be called at one time.

(6) The owner or operator of a source required to obtain a permit or permit modification before the date on which the guidelines in 15A NCAC 2D .1104(b) become effective shall be required to obtain the permit or permit modification only for toxic air pollutants named in 15A NCAC 2D .1104(a). However, the owner or operator of the source will later be required in accordance

with Paragraph (a)(4) of this Rule to obtain permit modifications covering toxic air pollutants named in 15A NCAC 2D .1104(b).

(7) Permit calls made under this Rule shall be limited to the emissions of toxic air pollutants.

(b) The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

(1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 2D .1104 to be exceeded; or

(2) demonstrate to the satisfaction of the commission or its delegate that the ambient concentration beyond the premises (contiguous property boundary) for the subject toxic air pollutant will not adversely affect human health even though the concentration is higher than the acceptable ambient level in 15A NCAC 2D .1104 by providing one of the following demonstrations:

(A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 2D .1104 are not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or

(B) new toxicological data that shows that the acceptable ambient level in 15A NCAC 2D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the toxicological data.

(c) This Paragraph shall not apply to any incinerator covered under Section 15A NCAC 2D .1200. The owner or operator of any source constructed before May 1, 1990, who cannot supply a demonstration described in Paragraph (b) of this Rule shall:

(1) submit a compliance schedule acceptable to the Director that will reduce the subject toxic air pollutant ambient concentration within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule to a level that will not exceed any acceptable ambient level listed in 15A NCAC 2D .1104;

(2) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 2D .1104 from being exceeded does not exist); or

(3) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 would result in serious economic hardship.

(d) If the owner or operator makes a demonstration to the satisfaction of the commission or its delegate pursuant to Paragraph (c)(2) or (3) of this Rule, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule.

(e) If the owner or operator of a source chooses to make a demonstration pursuant to Paragraph (b)(2) or (c)(2) or (3) of this Rule, the commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing. The public notice shall meet the requirements of Paragraph (d) of Rule .0603 of this Section. Any subsequent public hearing shall meet the requirements of Paragraph (e) of Rule .0603 of this Section except that the permit, if approved, shall not become part of the North Carolina State Implementation Plan for Air Quality.

(f) If the owner or operator of a facility demonstrates by modeling that any toxic air pollutant emitted from his facility contributes an incremental concentration to the ambient air concentration of that pollutant beyond his premises which is less than the acceptable ambient level values given in 15A NCAC 2D .1104, he does not have to provide any further modeling demonstration with his permit application. However, the commission may still require more stringent emission levels in accordance with its analysis under 15A NCAC 2D .1107.

(g) A permit to emit toxic air pollutants shall not be required for:

(1) the noncommercial use of household cleaners, household chemicals, or household fuels in private residences;

(2) asbestos demolition and renovation projects that comply with 15A NCAC 2D .0525 and that are being done by persons accredited by the Department of Environment, Health and Natural Resources under the Asbestos Hazard Emergency Response Act;

(3) emissions from gasoline dispensing facility or gasoline service station operations performed as a part of petroleum distribution to the ultimate consumer where the emissions comply with 15A NCAC 2D .0524, .0925, .0928, .0932 and .0933 and that receive gasoline from bulk gasoline

plants or bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 2D .0932;

(4) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 2D .1104 if such compounds are applied in accordance with agronomic practices acceptable to the North Carolina Department of Agriculture and the Commission;

(5) manholes and customer vents of wastewater collection systems;

(6) emissions from bulk gasoline plants that comply with 15A NCAC 2D .0524, .0925, .0926, .0932, and .0933 unless the Director finds that a permit to emit toxic air pollutants is required for a particular bulk gasoline plant;

(7) emissions from bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992, unless the Director finds that a permit to emit toxic air pollutants is required under this Rule for a particular bulk gasoline terminal.

(h) A permit to emit toxic air pollutants shall not be required for any facility whose actual emissions from all sources are no more than the following:

	lb/yr	lb/day	lb/hr	lb/15 min
(1) acetaldehyde				1.7
(2) acetic acid				0.24
(3) acrolein				0.005
(4) acrylonitrile	10			
(5) ammonia				0.17
(6) ammonium chromate	0.0056			
(7) ammonium dichromate	0.0056			
(8) aniline			0.25	
(9) arsenic and inorganic arsenic compounds	0.016			
(10) asbestos	1.9×10^{-6}			
(11) aziridine		0.13		
(12) benzene	8.1			
(13) benzidine and salts	0.0010			
(14) benzo(a)pyrene	2.2			
(15) benzyl chloride			0.13	
(16) beryllium	0.28			
(17) beryllium chloride	0.28			
(18) beryllium fluoride	0.28			
(19) beryllium nitrate	0.28			
(20) bis-chloromethyl ether	0.025			
(21) bromine				0.013
(22) 1,3-butadiene	12			
(23) cadmium	0.37			
(24) cadmium acetate	0.37			
(25) cadmium bromide	0.37			
(26) calcium chromate	0.0056			
(27) carbon disulfide		3.9		
(28) carbon tetrachloride	460			
(29) chlorine		0.79		0.057
(30) chlorobenzene		46		
(31) chloroform	290			
(32) chloroprene		9.2	0.89	
(33) chromic acid	0.0056			
(34) chromium (VI)	0.0056			
(35) cresol			0.56	
(36) p-dichlorobenzene				4.2
(37) dichlorodifluoromethane		5200		
(38) dichlorofluoromethane		10		
(39) di(2-ethylhexyl)phthalate		0.63		
(40) dimethyl sulfate		0.063		

(41)	1,4-dioxane		12		
(42)	epichlorohydrin	5600			
(43)	ethyl acetate			36	
(44)	ethylenediamine		6.3	0.64	
(45)	ethylene dibromide	27			
(46)	ethylene dichloride	260			
(47)	ethylene glycol monoethyl ether		2.5	0.48	
(48)	ethylene oxide	1.8			
(49)	ethyl mercaptan			0.025	
(50)	fluorides		0.34	0.064	
(51)	formaldehyde				0.010
(52)	hexachlorocyclopentadiene		0.013	0.0025	
(53)	hexachlorodibenzo-p-dioxin	0.0051			
(54)	n-hexane		23		
(55)	hexane isomers except n-hexane				23
(56)	hydrazine		0.013		
(57)	hydrogen chloride				0.045
(58)	hydrogen cyanide		2.9	0.28	
(59)	hydrogen fluoride		0.63		0.016
(60)	hydrogen sulfide				0.13
(61)	lithium chromate	0.0056			
(62)	maleic anhydride		0.25	0.025	
(63)	manganese and compounds		0.63		
(64)	manganese cyclopentadienyl tricarbonyl		0.013		
(65)	manganese tetroxide		0.13		
(66)	mercury, alkyl		0.0013		
(67)	mercury, aryl and inorganic compounds		0.013		
(68)	mercury, vapor		0.013		
(69)	methyl chloroform		250		16
(70)	methylene chloride	1600			
(71)	methyl ethyl ketone		78		5.6
(72)	methyl isobutyl ketone		52		1.9
(73)	methyl mercaptan			0.013	
(74)	nickel carbonyl		0.013		
(75)	nickel metal		0.13		
(76)	nickel, soluble compounds, as nickel		0.013		
(77)	nickel subsulfide	0.14			
(78)	nitric acid				0.064
(79)	nitrobenzene		1.3	0.13	
(80)	N-nitrosodimethylamine	3.4			
(81)	pentachlorophenol		0.063	0.0064	
(82)	perchloroethylene	13,000			
(83)	phenol			0.24	
(84)	phosgene		0.052		
(85)	phosphine				0.008
(86)	polychlorinated biphenyls	5.6			
(87)	potassium chromate	0.0056			
(88)	potassium dichromate	0.0056			
(89)	sodium chromate	0.0056			
(90)	sodium dichromate	0.0056			
(91)	strontium chromate	0.0056			
(92)	styrene			2.7	
(93)	sulfuric acid		0.25	0.025	
(94)	tetrachlorodibenzo-p-dioxin	0.00020			
(95)	1,1,1,2-tetrachloro-2,2-difluoroethane		1100		
(96)	1,1,2,2-tetrachloro-1,2-difluoroethane		1100		
(97)	1,1,1,2-tetrachloroethane	430			
(98)	toluene		98		3.6

(99)	toluene-2,4-diisocyanate		0.011	0.001
(100)	trichloroethylene	4000		
(101)	trichlorofluoromethane		140	
(102)	1,1,2-trichloro-1,2,2-trifluoroethane			60
(103)	vinyl chloride	26		
(104)	vinylidene chloride		2.5	
(105)	xylene		57	4.1

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule(s) cited as 16 NCAC 6C .0201 - .0202, .0205 - .0206.

The proposed effective date of this action is November 1, 1992.

The public hearing will be conducted at 9:30 a.m. on August 7, 1992 at the 3rd Floor Conference Room, Education Bldg., 116 West Edenton Street, Raleigh, NC 27603-1712.

Reason for Proposed Actions: Amendments are designed to implement legislative directive to strengthen the teacher education process.

Comment Procedures: Any interested person may submit written comments either before or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0200 - TEACHER EDUCATION

.0201 STATE EVALUATION COMMITTEE ON TEACHER EDUCATION

(a) The SBE appoints ~~an~~ a state evaluation committee on teacher education of ~~at least~~ 18 ~~persons who are~~ lay and professional representatives ~~of~~ from all ~~phases and~~ levels of education. Members serve three year staggered terms, and may consecutively serve no more than two ~~consecutive~~ terms. The SBE designates the chairman and secretary of the committee.

(b) The committee performs the following functions:

(1) ~~meets as necessary to review state and National Council for Accreditation of Teacher Education (NCATE) visitation committee reports; to determine compliance with the 70 percent pass rate on the NTE (professional knowledge and specialty area); and to review performance data of graduates in the initial certification program which requires a 95 percent rate of success; and~~ reviews findings related to the compliance of IHEs with established SBE criteria for approval of teacher education programs, and

(2) makes reports and recommendations to the SBE regarding teacher education program approval based on the SBE criteria.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

.0202 APPLICATION FOR APPROVAL: CRITERIA

(a) Each IHE which seeks SBE approval for any teacher education program must file with the Department a preliminary application in the form prescribed by the SBE.

(b) The IHE will engage in self-study in accordance with the existing NCATE/state protocol agreement.

(c) When the IHE has completed all preparation phases of the self-study, the Department sends a visitation committee to verify the reports for all specialty areas for which approval is sought.

~~(d) The evaluation committee considers the NCATE/state visitation committee reports, together with any IHE response to the state report as well as student performance data. The evaluation committee makes recommendations to the SBE regarding approval.~~

~~(e) The SBE approves programs for a five-year period unless it considers a provisional approval period of from one to three years appropriate. IHEs on provisional approval must demonstrate annual progress toward meeting all requirements of unconditional approval.~~

(d) ~~(f)~~ The SBE notifies IHEs which are denied approval of the reasons for denial. The IHE may reapply after it has corrected the conditions which led to the denial of approval.

(e) ~~(g)~~ Each approved IHE shall continually review its programs. The SBE will annually mon-

itor student performance based upon required examinations and progression toward continuing certification. The IHE may request and/or the SBE may conduct a re-evaluation at any time.

(f) ~~(h)~~ During the final year of the current approval period, the IHE shall arrange for a re-approval committee visit.

(g) ~~(i)~~ Approved IHEs shall make annual reports of such information as the SBE requests.

(h) ~~(j)~~ The SBE must approve any revisions to approved programs.

(i) The SBE must approve each teacher education program before an IHE may recommend its graduates for certification. In making recommendations to the SBE and in determining the approval status of an IHE teacher education program and its specialty area program, such as mathematics or science, the state evaluation committee and the SBE, respectively, will weigh the following criteria:

(1) SACS accreditation of the IHE;

(2) either full accreditation or accreditation with stipulations of the professional education unit by the national council for accreditation of teacher education (NCATE) at the basic and advanced levels, as appropriate;

(3) approval of all IHE specialty area programs by the state program approval process in accordance with established SBE standards, guidelines and competencies at the undergraduate and graduate levels, as appropriate;

(4) evidence that the IHE requires a 2.50 grade point average on a 4.00 scale for formal admission into teacher education;

(5) evidence that during the two preceding consecutive years, 70 percent of the graduates of the IHE have passed the NTE on professional knowledge and on appropriate specialty area tests as established by Rule .0310 of this Subchapter;

(6) evidence that during the two preceding consecutive years, 95 percent of the graduates of the IHE employed by public schools in the State have earned a continuing certificate as provided by Rule .0304 of this Subchapter; and

(7) evidence that faculty members assigned by the IHE to teach undergraduate or graduate methods courses or to supervise field experiences for prospective teachers hold valid North Carolina teachers' certificates in the area(s) of their assigned responsibilities.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

.0205 STATE BOARD REVIEW STANDARDS AND APPROVAL ACTIONS

~~(a) In order to receive approval by the SBE, a teacher education program must:~~

~~(1) obtain Southern Association of Colleges and Schools (SACS) accreditation;~~

~~(2) obtain NCATE accreditation;~~

~~(3) obtain successful state review of the specialty studies and professional studies;~~

~~(4) demonstrate that its graduates have achieved a minimum 70 percent pass rate on the NTE (professional knowledge and appropriate specialty tests);~~

~~(5) demonstrate that at least 95 percent of its graduates perform successfully in the initial certification program; and~~

~~(6) require certification of all methods faculty.~~

~~(b) For purposes of state review each specialty area for which approval is sought will prepare a self-study addressing all state standards. On-site reviews will apply the state standards to each specialty area.~~

(a) ~~(c)~~ Each IHE seeking approval must present documentation for each specialty area that:

(1) the state-approved professional studies guidelines for all certificated school personnel are adequately addressed.

(2) the state-approved professional studies competencies common to all certificated school personnel are adequately addressed.

(3) candidates for admission to certification preparation programs meet minimum score requirements adopted by the SBE on Core Batteries I (Communication Skills) and II (General Knowledge) of the NTE before formal admission can occur. Undergraduate degree-seeking students do not complete more than one-half of the professional studies sequence (excluding student-teaching internship) before being formally admitted into the certification preparation program.

(4) sequentially planned field experiences for undergraduate degree-seeking students begin early in the student's program and culminate in a continuous and extended minimum ten-week period of student teaching in the area in which the student seeks certification. All field experiences are supervised and formal evaluations involving faculty, cooperating teachers and students occur as appropriate.

(5) preparation for entry certification at the advanced level includes supervised internship or field experiences appropriate to the role(s) for which students are being

prepared. These experiences are the basis for applying theory to practice, developing competencies at a high proficiency level, and evaluating the candidate's performance.

(6) the goals and objectives of the specialty studies are clearly stated in writing, are readily accessible to faculty, students and other consumers and reflect a clear conception of the role(s) in the public schools for which students are being prepared.

(7) an appropriate balance among general studies, specialty area studies and professional studies exists at the undergraduate level to assure a well-rounded education for students.

(8) the program of specialty studies complies with state-approved guidelines for the certification area in which the student is being prepared.

(9) the specialty studies complies with state-approved competencies for the certification area in which the student is being prepared.

(10) master's, sixth-year (e.g., CAS, Ed.S.) and doctoral curricula are clearly delineated and differentiated from one another and from the undergraduate curriculum.

(11) requirements for certification-only students are clearly described and comparable to those for degree-seeking students.

(12) each faculty member teaching in the specialty area demonstrates competence in the area(s) of assignment.

(13) one appropriately specialized faculty member full-time to the institution is assigned major responsibility for teaching in and coordinating each specialty area offered. To ensure diversity, there must be a sufficient number of additional faculty, appropriately specialized, to deliver the level(s) offered; e.g., undergraduate, master's, specialist. Each advanced degree program that leads to the doctorate has at least three full-time faculty who have earned the doctorate in the field of specialization for which the degree is offered.

(14) among the credentials of the faculty delivering (e.g., teaching, directing, coordinating) the specialty area, there is evidence of recent, substantive involvement with public school students, staff members or programs.

(15) among the credentials of adjunct part-time faculty delivering the specialty area there is evidence of recent, substantive involvement with the institution via students, other faculty or program development.

(16) specialized books and periodicals, current curriculum guides, textbooks and courses of study adopted by local school systems and the SBE, instructional media, equipment and other forms of technology, testing materials and supplies for the production of teacher-made materials and library resources for the specialty studies are available and adequate in number to serve the student population.

(17) instructional resources for the specialty area are organized for accessibility and there is evidence of use by both students and faculty.

(18) appropriate and sufficiently-equipped classroom space is provided to meet the needs of each specialty area.

(19) adequate facilities, including sufficient office space, are provided to serve the needs of staff and faculty, to counsel students, and to work effectively with local school personnel.

(20) an annual review of the specialty area is conducted and the resulting data are applied, as appropriate, for program improvement.

(b) ~~(d)~~ All IHEs with existing teacher education programs must have an ~~NCATE/SBE~~ NCATE/State review completed by December 31, 1992. ~~All IHEs admitting students in the fall of 1993 must be accredited by NCATE and approved by the SBE.~~ Students who have been formally admitted before June 30, 1993 into a program that leads to certification may complete that program and be eligible to be recommended for certification on the condition that they complete such programs no later than June 30, 1995. ~~IHEs which are not approved by NCATE/SBE by June 30, 1993 will not be eligible to reapply to begin the process for approval status for a period of a minimum of one year from the time the IHE is notified that its program has been denied approval by the SBE.~~ After December 31, 1992, IHEs seeking initial approval for teacher education must be reviewed by NCATE/State to be eligible for SBE approval.

(c) The SBE receives and considers recommendations for approval action on an IHE from its state evaluation committee on teacher education. The SBE will accept any comments or additional information submitted by the IHE before making its decision under this Rule. The SBE shall render separate approval decisions at all levels appropriate to an IHE and its specialty area programs as follows:

(1) Full approval. This status indicates that the IHE teacher education and specialty area programs at all levels are judged to be fully qualified to produce effective teachers for the public schools. The SBE grants approval for a five-year period. The SBE or the IHE may call for an interim on-site review at any time during the five year period if conditions warrant that action.

(2) Full approval with stipulation(s). This status specifies minor exceptions that the IHE must address within one year. The exceptions will be limited to those that can be easily corrected and verified in a written report or by a small on-site State visitation team. The SBE will grant full approval if the IHE corrects the exceptions within the specified time. If the IHE does not correct the exceptions within the specified time, the SBE will place the IHE on provisional status. Approval for a five-year period begins with the date of the initial action by the SBE.

(3) Provisional approval. This status specifies critical deficiencies that the IHE must address within three years. The SBE may provisionally approve all programs at the IHE or individual specialty area programs and/or levels. The IHE must:

(A) submit to the SBE an annual written report of its actions taken to correct the deficiencies;

(B) be visited annually by a consultant from the Division of Teacher Education Services of the Department, who monitors the IHE's progress; and

(C) be reevaluated for compliance by an on-site State visitation team.

The SBE will grant full approval or full approval with stipulations if the IHE corrects the deficiencies within the specified time. If the IHE does not correct the deficiencies within the specified time, the SBE will deny approval. Approval for a five-year period begins with the date of the initial action by the SBE.

(4) Denial of approval. This status occurs when an IHE and or one or more of its specialty areas and or levels are judged to be unqualified to produce effective teachers for the public schools. After the IHE receives notice of the denial, no students completing the program will be eligible for certification except those who were formally admitted to the program before the IHE received notice of the denial. An IHE must wait one year before beginning the process of seeking approval.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

.0206 CONSORTIUM-BASED PROGRAMS AND INNOVATIVE/EXPERIMENTAL PROGRAMS

(a) A consortium-based teacher education program is an alternative to the regular approved program which involves IHEs, public schools, professional groups and the Department in the planning and implementation of programs.

(b) The consortium shall receive approval by the SBE before it implements an alternative program. The application process described in Rule .0202 applies to alternative programs. The Department shall issue a certificate to all graduates of these approved programs who are recommended by the consortium and who otherwise meet certification requirements.

(c) When the Department receives a proposal to establish an alternative program, it will review the proposal, including making on-site visits with agencies as required. The State Evaluation Committee on Teacher Education considers staff recommendations and makes its own recommendations to the SBE for approval.

(d) The SBE will approve programs which meet the following standards:

(1) The program is planned, developed, implemented and evaluated by a consortium of agencies, including IHEs, local school administrative units, professional groups and the SBE.

(2) The program is appropriately organized and administered. Consortium-based programs are developed and implemented according to an established managerial structure which describes activities and relationships.

(3) The program has sufficient and appropriate supportive human and physical resources.

(4) The consortium develops entry requirements and levels of competency expected.

(5) The program addresses the needs of the students.

(6) The program includes exit levels of competence, a procedure for recommending certification, and a follow-up process.

(e) The SBE may grant approval to an IHE to develop an innovative or experimental teacher education program. The SBE will approve such a program separately from the criteria set out in Rule .0205 of this Section. The SBE will evaluate the program annually based on a written re-

port submitted to it by the IHE and/or by an on-site State visitation team to assure that the IHE is producing prospective teachers who can function effectively in the public schools of the State.

Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend rule(s) cited as 19A NCAC 2B .0164.

The proposed effective date of this action is October 1, 1992.

Instructions on how to demand a public hearing: A demand for a public hearing must be made in writing and mailed to the Department of Transportation, c/o A.D. Allison, II, P.O. Box 25201, Raleigh, N.C. 27611. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: The amendment is needed to enable the Department to contract with private firms for right of way acquisition services for highway projects when the workload and TIP schedule make it necessary.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to the Department of Transportation, c/o A.D. Allison, II, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer. A copy of the fiscal note prepared for this proposed amendment can be obtained from the Department of Transportation.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

.0164 USE OF RIGHT OF WAY CONSULTANTS

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules and Regulations are established as a guide for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars ($10,000.00).

Due to the diversity of contract types, some portions of these Rules and Regulations may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when deviations from portions of these Regulations are justified.

These Rules and Regulations have been developed in response to and in accordance with, the following directives and requirements:

(1) General Statute 136-28.1(f);

(2) 23 CFR 172, the FHWA regulations governing procurement of professional services;

(3) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements;

(4) Office of Management and Budget (OMB) Circular A-102, Section 36, "Procurement." (Revised version announced in Presidential memo dated March 12, 1987.);

(5) NCDOT Title VI Compliance Program.

All personnel involved with contracts for right of way acquisition services shall comply with G.S. 133-32 and the Department of Transportation Personnel Manual, Section VI, entitled "Employee Relations".

(b) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used herein:

(1) ~~Special Projects Administrator~~ Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.

(2) Cost per Unit of Work - A method of compensations based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.

(3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a preestablished fixed amount for operating margin.

(4) Cost Proposal - A detailed submittal specifying the amount of work anticipated

and compensation requested for the performance of the specific work or services as defined by the Department.

(5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.

(6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.

(7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workman compensation and other such benefits.

(8) Proposal - An expression of interest by a firm for performing specific work or services for the Department.

(9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.

(10) Contract Amendment - A formal amendment which modifies the terms of an existing contract.

(11) Termination Clause - A contract clause which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(c) Application. These Rules and Regulations shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars ($10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(d) Right of Way consultant selection committee. The Committee shall consist of the Branch Manager, Assistant Branch Managers, Unit Heads, and the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator and shall be chaired by the Branch Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(e) Pre-qualification of firms - general agreement. ~~On a yearly basis, the~~ The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation in June of each year or when necessitated by its projected workload. The advertisement will be published in the North Carolina Purchase Directory and/or the legal section of major newspapers. The response time will normally be two weeks after the advertising date. The response shall include the Federal Government's Forms 254 and 255, copies of the firms latest brochures, and such similar information. Additional firms may be considered for pre-qualification during the yearly period if they so request and if the Department recognizes a need for additional pre-qualified firms.

Evaluation of the firms expressing interest will be based on the following considerations:

(1) Possesses a high ethical and professional standing;

(2) Responsible personnel shall be recognized professionals in the field(s) of expertise required by the contract;

(3) Adequate experience in the field(s) of expertise required by the contract;

(4) Adequacy in both number and quality of staff to perform the required services;

(5) Ability to meet the time schedule established for the work;

(6) Financial ability to undertake the proposed work;

(7) Adequacy of the firms accounting system to identify costs chargeable to the project;

(8) Past performance by the firm on previous contracts with the Department of Transportation;

(9) Any other data pertinent to the contract under consideration;

(10) When pertinent, the firm shall possess the quality of equipment necessary to perform the required services to the standards acceptable to the Selection Committee.

~~All firms meeting~~ A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs (e)(1) through (e)(10) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation. The number of pre-qualified firms to be maintained under General Agreement shall be determined by the Manager of the Right of Way Branch prior to the selections based on the anticipated needs of the Department. ~~and a~~ A General Agreement shall be executed with each firm for a term covering the following year after review and acceptance of fixed billable rates by the Fiscal Section. Additional firms pre-qualifying during the yearly period shall execute a General Agreement for the remainder of the yearly period. Should the term of a General Agreement pass without utilizing any of the pre-

qualified firms under that Agreement on any Specific Projects, the Department may, at its discretion, extend the term of the General Agreements for an additional year without advertising for additional pre-qualified firms. This is to be accomplished by execution of a Supplemental Agreement which provides for changes to the Fixed Billable Rates subject to audit approval of the Fiscal Section of the Department.

(f) Fixed billable rates. The annual General Agreement will not be executed until the fixed billable rates submitted as Appendix E to the General Agreement have been reviewed by the External Audit Branch of the Department's Fiscal Section. The review will verify the accuracy of the proposed fixed billable rates based upon an examination of the average wage rates by employee classifications, overhead rates, as well as limitations on compensation and indirect salaries, wages and fringe benefits.

In order to perform the examination of Appendix E rates, the firm will be required to submit an analysis showing the computation of the average wage rate per classification with supporting documentation for the salary and wage rates used (i.e., payroll register, check stubs, etc.). The overhead rate shall be based upon the current completed year and audited by a State/Federal Agency. If unaudited, the firm must submit a detailed computation of overhead accompanied by a chart of accounts, financial statement, and statement of employment policy.

(g) Register of pre-qualified firms. The Right of Way ~~Special Projects Administrator~~ Consultant Coordinator will be responsible for maintaining a "Register of Pre-Qualified Firms" which have executed a General Agreement to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(h) Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way is responsible for determining when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Manager to solicit proposals for the work. The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

(1) non-availability of manpower,
(2) lack of expertise, or
(3) other reasons.

(i) Solicitations of specific project proposals. Specific Project Proposals will be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal.

The Right of Way ~~Special Projects Administrator~~ Consultant Coordinator, upon the approval of the Manager of Right of Way, shall be responsible for preparing the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall required that all firms shall attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(j) Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

(1) The monetary amount of the competitive proposal;
(2) The firm personnel and their qualifications who are currently available to perform right of way acquisition services on the specific project; and
(3) The ability of the firm to complete the work on time according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office in North Carolina; and may, at the discretion of the Department, be required to establish the office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Manager, the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator shall notify the firm chosen by the Selection Committee.

(k) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate will be used in evaluating the acceptability of the selected firm's cost proposal.

The format used for preparation of the in-house estimate will vary depending on the type of work required. Generally it will include an estimate of the manhours required, broken down by classifications, converted to a cost estimate by the application of the appropriate salaries. Payroll additives (provided by the Fiscal Section), overhead and an estimate of the necessary direct expenses should be included. This in-house estimate shall be documented, easy to review and permanently retained in the project files.

If considered necessary by the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions should include:

(1) Policies used by the Department for the type and scope of work involved;
(2) A copy of a contract in draft form;
(3) Methods of payment;
(4) Procedures for invoicing;
(5) Standard forms to be used;
(6) Fiscal requirements;
(7) Items and/or services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy of the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by signature of the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator and an approved copy will be returned to the firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a detailed breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review will be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. Where further negotiations are required, they shall be the responsibility of the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by External Audit Unit. The Right of Way ~~Special Projects Administrator~~ Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If acceptable contract cannot be negotiated, negotiations will be terminated, the firm will be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(l) Board of Transportation approval and execution of contract. Upon completion of final negotiations, the firm shall execute a minimum of two contract originals.

The contract shall then be submitted to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The proposed contract will then be submitted to the Board of Transportation for approval.

Upon approval by the Board of Transportation the contract will be executed by the Manager of Right of Way and returned to the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator. The Right of Way ~~Special Projects Administrator~~ Consultant Coordinator will transmit one original contract to the contracting firm and shall retain one in the project file. A copy of the contract will be provided to the Manager of the Program and Policy Branch, copy to be the Department's Fiscal Section and copy to the Federal Highway Administration when federal-aid funds are involved.

(m) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor will be responsible for submitting the proper supporting data to the Contract

Administrator for all work that is proposed to be sublet.

(n) Methods of compensation:

(1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be clearly defined and understood by both the Department and the contracting firm.

(2) Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined clearly and the Department needs more flexibility in expediting the work without excessive amendments to the contract.

(3) Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(4) Cost Plus a Percentage of Cost - This method of compensation shall not be used.

(o) Administration of contract. The administration of the contract shall be the responsibility of the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator. This will include the review of invoices and recommendation for payment to the Fiscal Section.

(p) Contract Amendments. Each contract should contain procedures for contract modifications and define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

The Right of Way ~~Special Projects Administrator~~ Consultant Coordinator with the concurrence of the Manager of Right of Way may authorize changes involving minor details of clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of work, or which causes a change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds a compensation for services, the contract amendment must be approved by the Federal Highway Administration. No work is to be performed by the contracting firm on additional or disputed items until the dispute is resolved and/or a contract amendment is executed.

Contract amendments shall be processed using the same procedures as described in Subparagraphs (b)(10) and (b)(11) of this Rule.

(q) Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator.

(r) Final payment. When it is determined that the work is complete, the final invoice shall be approved by the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(s) Termination of contracts. All contracts shall include a provision for the termination of the contract by the Department with prior notice to the contracting firm.

(t) Quarterly report. A quarterly report on the use of outside firms will be submitted to the Right of Way Branch Manager. This report shall be prepared by the Right of Way ~~Special Projects Administrator~~ Consultant Coordinator and will be in chart, graphic or other appropriate format. Copies shall be provided to the State Highway Administrator and the Assistant State Highway Administrator.

Statutory Authority G.S. 136-28.1(f).

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

AGRICULTURE

Food and Drug Protection

2 NCAC 9L .0509 - Consultant's Educational and Experience Reqmnts	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Plant Industry

2 NCAC 48A .0239 - Permit to Sell Bees	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
2 NCAC 48A .0240 - Form BS-11	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
2 NCAC 48A .0611 - Program Participation and Payment of Fees	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

4 NCAC 3C .0807 - Subsidiary Investment Approval	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3C .0901 - Books and Records	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3C .0903 - Retention: Reproduction/Disposition of Bank Records	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3D .0302 - Administration of Fiduciary Powers	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3H .0102 - Regional Bank Holding Company Acquisitions	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

Board of Alcoholic Control

4 NCAC 2R .0701 - Standards for Commission and Employees	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2R .0702 - Disciplinary Action of Employee	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*
4 NCAC 2R .1008 - Conflicts of Interest	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2R .1205 - Closing of Store	*RRC Objection*	*05/21/92*
Agency Repealed Rule	*Obj. Removed*	*06/18/92*
4 NCAC 2S .0102 - Applications for Permits: General Provisions	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .0106 - Special Requirements for Hotels	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .0503 - Pre-Orders	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*
4 NCAC 2S .0527 - Guest Rooms Considered Residence	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

4 NCAC 2S .0529 - Mixed Beverages Catering Permits in "Dry Areas"	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .1008 - Advertising of Malt Beverages and Wine by Retailers	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Community Assistance

4 NCAC 19L .0103 - Definitions	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 19L .0403 - Size and Use of Grants Made to Recipients	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 19L .0407 - General Application Requirements	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 19L .1301 - Definition	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

Savings Institutions Division: Savings Institutions Commission

4 NCAC 16F .0001 - Permitted Activities	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0008 - Finance Subsidiary Transactions With Parent	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0009 - Issuance of Securities by Finance Subsidiaries	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0011 - Holding Company Subsidiaries/Finance Subsidiaries	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*

Departmental Rules

15A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts	*RRC Objection*	*06/18/92*
15A NCAC 1J .0302 - General Provisions	*RRC Objection*	*06/18/92*
15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	*RRC Objection*	*06/18/92*

Environmental Health

15A NCAC 18A .3101 - Definitions	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Environmental Management

15A NCAC 2B .0101 - General Procedures	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0104 - Considerations in Assigning Water Supply Class	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0202 - Definitions	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0211 - Fresh Surface Water Classifications and Standards	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0301 - Classifications: General	*RRC Objection*	*05/21/92*

Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2O .0302 - Self Insurance	*RRC Objection*	*06/18/92*

Health: Epidemiology

15A NCAC 19H .0601 - Birth Certificates	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Radiation Protection

15A NCAC 11 .0338 - Specific Terms and Conditions of Licenses	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
15A NCAC 11 .0339 - Expiration of Licenses	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

Soil and Water Conservation

15A NCAC 6E .0007 - Cost Share Agreement	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Wildlife Resources and Water Safety

15A NCAC 10E .0004 - Use of Areas Regulated	*RRC Objection*	*06/18/92*

HUMAN RESOURCES

Day Care Rules

10 NCAC 46D .0305 - Administration of Program	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*
10 NCAC 46D .0306 - Records	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Facility Services

10 NCAC 3J .2801 - Supervision	*RRC Objection*	*04/16/92*
Agency Revised Rule	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
10 NCAC 3J .3401 - Applicability - Construction	*RRC Objection*	*04/16/92*
Agency Revised Rule	*RRC Objection*	*04/16/92*
10 NCAC 3L .0902 - License	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0903 - Application for and Issuance of License	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0904 - Inspections	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0905 - Multiple Premises	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .1202 - Case Review and Plan of Care	*RRC Objection*	*04/16/92*
	Obj. Removed	*05/21/92*

Mental Health: General

10 NCAC 14M .0704 - Program Director	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

INSURANCE

Agent Services Division

11 NCAC 6A .0802 - Licensee Requirements	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Departmental Rules

11 NCAC 1 .0106 - Organization of the Department	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	*RRC Objection*	*06/18/92*

Seniors' Health Insurance Information Program

11 NCAC 17 .0005 - SHIIP Inquiries to Insurers and Agents	*RRC Objection*	*06/18/92*

LABOR

Elevator and Amusement Device

13 NCAC 15 .0402 - Responsibility for Compliance	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
13 NCAC 15 .0429 - Go Karts	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

LICENSING BOARDS AND COMMISSIONS

Cosmetic Art Examiners

21 NCAC 14N .0107 - Special Arrangements for Disabled	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Dietetics/Nutrition

21 NCAC 17 .0002 - Requirement of License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0003 - Qualifications for Licensure	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0004 - Applications	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0005 - Examination for Licensure	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0007 - Provisional License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0012 - Suspension, Revocation and Denial of License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*RRC Objection*	*05/21/92*
21 NCAC 17 .0014 - Code of Ethics for Professional Practice/Conduct	*RRC Objection*	*05/21/92*
Agency Revised Rule	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Nursing

21 NCAC 36 .0301 - Approval Body	*RRC Objection*	*05/21/92*

Agency Revised Rule	*Obj. Removed*	*05/21/92*

STATE PERSONNEL

Office of State Personnel

25 NCAC 1H .0603 - Special Recruiting Programs	*RRC Objection*	*05/21/92*
Agency Repealed Rule	*Obj. Removed*	*06/18/92*
25 NCAC 1J .1005 - Eligibility for Services	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission
BDA	Board of Dental Examiners
BME	Board of Medical Examiners
BMS	Board of Mortuary Science
BOG	Board of Geologists
BON	Board of Nursing
BOO	Board of Opticians
CFA	Commission for Auctioneers
COM	Department of Economic and Community Development
CPS	Department of Crime Control and Public Safety
CSE	Child Support Enforcement
DAG	Department of Agriculture
DCC	Department of Community Colleges
DCR	Department of Cultural Resources
DCS	Distribution Child Support
DHR	Department of Human Resources
DOA	Department of Administration
DOJ	Department of Justice
DOL	Department of Labor
DSA	Department of State Auditor
DST	Department of State Treasurer
EDC	Department of Public Instruction
EHR	Department of Environment, Health, and Natural Resources
ESC	Employment Security Commission
HAF	Hearing Aid Dealers and Fitters Board
HRC	Human Relations Commission
IND	Independent Agencies
INS	Department of Insurance
LBC	Licensing Board for Contractors
MLK	Milk Commission
NHA	Board of Nursing Home Administrators
OAH	Office of Administrative Hearings
OSP	Department of State Personnel
PHC	Board of Plumbing and Heating Contractors
POD	Board of Podiatry Examiners
SOS	Department of Secretary of State
SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
WRC	Wildlife Resources Commission

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alyee W. Pringle v. Department of Education	88 OSP 0592 88 EEO 0992	Morgan	03/27/92
Susie Woodle v. Department of Commerce, State Ports Authority	88 OSP 1411	Mann	03/25/92
Fernando Demeco White v. DHR, Caswell Center	89 OSP 0284	West	01/10/92
Cathy Faye Barrow v. DHR, Craven County Health Department	89 DHR 0715	Morgan	03/09/92
Barbara Trivette v. Department of Correction	90 OSP 0133	Morgan	05/20/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Hattie J. Blue v. Department of Public Instruction	90 OSP 0418 90 OSP 0516	Morgan	06/19/92
Jolene H. Johnson v. DHR, Division of Medical Assistance	90 DHR 0685	Morgan	02/21/92
Dover W. Walker v. Department of Environment, Health, & Natural Resources	90 OSP 0873 91 OSP 0180	Chess	05/06/92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04/15/92
Sgt. Carl Edmunds v. DHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Rafael Figueroa v. DHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03/30/92
Sammie L. Frazier v. DHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03/24/92
Melvin A. Edwards v. Department of Correction	90 OSP 1175	Nesnow	06/09/92
Richard A. Boyett v. DHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03/30/92
Lance McQueen v. DHR, Division of Social Services, CSE	90 CSE 1204	Morgan	03/30/92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02/12/92
Larry D. Oates v. Department of Correction	90 OSP 1385	Becton	04/06/92
Antonio S. Henderson v. DHR, Division of Social Services, CSE	90 CSE 1391	Becton	05/04/92
Fernando Guarachi v. DHR, Division of Social Services, CSE	90 CSE 1393	Morgan	04/07/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01/09/92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHR 0003	West	01/06/92
Gloria Jones/Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92
Shonn S. Peek v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0147	Gray	04/16/92
Willie C. Rorie v. DHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04/13/92
Thomas Sueh v. EHR and William W. Cobey Jr.	91 OSP 0202	Beeton	02/20/92
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DHR 0215	Morgan	02/27/92
Gliston L. Morrisey v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Galen E. Newsom v. Department of Correction	91 OSP 0282	Beeton	06/08/92
Deborah W. Clark v. DHR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Britthaven, Inc. d/b/a Britthaven of Louisburg v. DHR, Division of Facility Services, Licensure Section	91 DHR 0360	Morgan	06/04/92
Dora P. Lewis v. DHR (Disability Determination Services)	91 OSP 0394	Nesnow	06/24/92
Fred A. Wilkie v. Wildlife Resources Commission	91 OSP 0398	Chess	04/20/92
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02/14/92
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03/10/92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01/10/92
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01/08/92
Eric D. Pender v. Department of Crime Control & Public Safety	91 OSP 0466	Becton	06/19/92
Senior Citizens' Home Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02/18/92
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01/31/92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02/04/92
Dorothy "Cris" Crissman v. Department of Public Instruction	91 OSP 0581	Morrison	04/03/92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01/22/92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02/26/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Ten Broeck Hospital (Patient #110587, Medicaid #124-24-4801-C) Ten Broeck Hospital (Patient #110538, Medicaid #2403342545) Ten Broeck Hospital (Patient #110788, Medicaid #900-12-6762-T) v. DHR, Division of Medical Assistance	91 DHR 0618 91 DHR 0429 91 DHR 1265	Morrison	04/08/92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02/20/92
Denny W. Purser v. East Carolina University, N.C. State Health Plan	91 INS 0632	Becton	06/12/92
Lester L. Baker Jr. v. Bd of Trustees//Teachers'/St Employees' Retirement Sys	91 DST 0639	Becton	05/28/92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02/07/92
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01/15/92
Kidd's Day Care and Preschool v. Child Day Care Section	91 DHR 0666 91 DHR 0666	Becton	03/25/92 04/10/92
Mary Tisdale v. Hyde County Health Department and EHR	91 EHR 0679	Morgan	03/23/92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t/a Silvers	91 ABC 0680	Becton	02/26/92
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02/27/92
Keith Hull v. DHR - Division of Medical Assistance	91 DHR 0707	Chess	02/27/92
The Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0740	Morgan	06/04/92
Alcoholic Beverage Control Commission v. Spring Garden Bar & Grill Inc., T/A Spring Garden Bar & Grill	91 ABC 0753	Morrison	05/08/92
Nalley Commercial Properties v. Department of Environment, Health, & Natural Resources	91 EHR 0757	Becton	05/08/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01/13/92
Falcon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01/06/92
Michael F. Stone v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 0771	West	02/24/92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Daniel W. Sherrod v. DHR, O'Berry Center	91 OSP 0791	Mann	06/09/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01/17/92
Gloria J. Woodard v. Division of Motor Vehicles	91 OSP 0855 91 OSP 0855	Mann	04/09/92 04/13/92
Kay Long v. Department of Human Resources	91 DHR 0873	Reilly	03/17/92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t/a Ponderosa Lounge	91 ABC 0887	Morrison	01/31/92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02/11/92
Ossie Beard v. EHR & Wastewater Treatment Plant Certification Comm.	91 EHR 0893	Nesnow	03/12/92
Almetta Tyson v. Pitt County Board of Education	91 EDC 0897	Morrison	06/19/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Thomas A. Ritter v. Department of Human Resources	91 OSP 0907	Mann	05/19/92
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t/a Trinity College Cafe	91 ABC 0915	West	02/11/92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03/12/92
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great, American Food Store	91 ABC 0923	Becton	02/26/92
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01/09/92
Benjamin C. Dawson v. Department of Correction, Central Prison	91 OSP 0942	West	06/11/92
Betty Davis d/b/a ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01/31/92
Thomas J. Hailey v. EHR and Rockingham County Health Department	91 EHR 0957	Becton	01/15/92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02/24/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0981	Gray	03/24/92
James K. Moss Sr. v. DHR, Division of Social Services, CSE	91 CSE 0985	Reilly	05/18/92
David J. Anderson v. DHR, Division of Social Services, CSE	91 CSE 0989	Morgan	04/20/92
David Lee Watson v. DHR, Division of Social Services, CSE	91 CSE 0992	Reilly	05/18/92
Herbert R. Clayton v. DHR, Division of Social Services, CSE	91 CSE 1000	Mann	04/02/92
Roy Shealey v. Victims Compensation Commission	91 CPS 1002	Morrison	01/31/92
Joe L. Williams Jr. v. DHR, Division of Social Services, CSE	91 CSE 1014	Morrison	04/30/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01/28/92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03/05/92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02/18/92
Paulette R. Smith v. DHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02/27/92
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
Elijah Jefferson Jr. v. DHR, Division of Social Services, CSE	91 CSE 1055	Gray	04/20/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
Ronnie C. Glenn v. DHR, Division of Social Services, CSE	91 CSE 1066	Nesnow	05/05/92
James D. Robinson v. DHR, Division of Social Services, CSE	91 CSE 1068	Gray	04/29/92
William H. Hogsed v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Gary A. Hamper v. DHR, Division of Social Services, CSE	91 CSE 1077	Morrison	06/03/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
William F. Driscoll v. DHR, Division of Social Services, CSE	91 CSE 1080	Mann	04/28/92
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Bio-Medical Applications of North Carolina, Inc., D/B/A BMA of Lenoir v. Certificate of Need Section, Div of Facility Services, DHR and Charlotte Artificial Kidney Clinic, Inc. and Delta Medical Properties	91 DHR 1086	Reilly	06/22/92
Charlotte Artificial Kidney Clinic, Inc. and Delta Medical Properties v. Certificate of Need Section, Div of Facility Services, DHR and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA Lenoir	91 DHR 1089	Reilly	06/22/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92
Gerald Richardson v. DHR, Division of Social Services, CSE	91 CSE 1112	Morgan	05/06/92
Edmund D. Hester v. DHR, Division of Social Services, CSE	91 CSE 1113	Mann	04/21/92
Raymond Junior Cagle v. DHR, Division of Social Services, CSE	91 CSE 1123	Mann	03/30/92
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Pathia Miller v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1135	Mann	03/31/92
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
Darrel D. Shields v. DHR, Division of Social Services, CSE	91 CSE 1141	Morgan	03/30/92
John H. Price v. DHR, Division of Social Services, CSE	91 CSE 1142	Morgan	05/06/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Jerry Dexter Morrison Sr. v. DHR, Division of Social Services, CSE	91 CSE 1144	Nesnow	05/21/92
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02/18/92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01/27/92
United Screen Printers, Inc. v. EHR, Division of Environmental Management	91 EHR 1179	Mann	06/04/92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02/10/92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02/10/92
Ralph W. Burns v. DHR, Div of Social Services, CSE	91 CSE 1185	Morgan	06/18/92
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03/13/92
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02/04/92
Jeddie R. Bowman v. DHR, Division of Social Services, CSE	91 CSE 1195	Morrison	04/30/92
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02/26/92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02/04/92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02/10/92
Charles W. Norwood Jr. v. DHR, Division of Social Services, CSE	91 CSE 1215	Mann	05/19/92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02/14/92
Allen Anthony v. DHR, Div of Social Services, CSE	91 CSE 1226	Nesnow	06/18/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02/28/92
Sering O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03/11/92
Jimmie McNair, D.B.A. Pleasure Plus v. Alcoholic Beverage Control Commission	91 ABC 1235	Gray	05/04/92
Michael L. Braton v. DHR, Division of Social Services, CSE	91 CSE 1238	Mann	06/05/92
Arthur Thomas McDonald Jr. v. DHR, Division of Social Services, CSE	91 CSE 1252	Morrison	03/31/92
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04/92
Gene Weaver v. DHR, Division of Social Services, CSE	91 CSE 1264	Reilly	03 25 92
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02/25/92
Terrance Freeman v. DHR, Division of Social Services, CSE	91 CSE 1283	Nesnow	05/04/92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Peter Gray Coley v. DHR, Division of Social Services, CSE	91 CSE 1297	Reilly	04 21/92
Enos M. Cook v. DHR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03 09 92
Stevie Wayne Yates v. EHR and The Jones County Health Department	91 EHR 1305	Mann	05 29 92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01 14 92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alex Page v. DHR, Division of Facility Services, CSE	91 CSE 1323	Reilly	06/03/92
Coleen Lynn Anderson v. Criminal Justice Education & Training Standards Comm	91 DOJ 1324	Chess	06/15/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Mary T. Blount v. EHR and Hyde County Health Department	91 EHR 1331	Reilly	05/21/92
Anthony T. McNeill v. DHR, Division of Social Services, CSE	91 CSE 1336	Becton	04/20/92
Jeffrey Lynn Cook v. Crime Victims Compensation Commission	91 CPS 1338	Chess	06/10/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Wallace Day Care Center v. DHR, Division of Facility Services	91 DHR 1343	Nesnow	05/04/92
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
William A. Sellers v. DHR, Division of Social Services, CSE	91 CSE 1395	Gray	04/01/92
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Betty Davis, D B A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1408	Chess	03/30/92
Bill Jones Jr. and Jessie F. Jones v. Department of Human Resources	91 DHR 1411	Nesnow	05/01/92
Leroy Robinson, Frank's Lounge v. Alcoholic Beverage Control Commission	91 ABC 1416	Gray	05/28/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Connie Flowers v. EHR and Hyde County Health Department	91 EHR 1420	Reilly	05/21/92
Charley Joe Milligan v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
All States Asbestos Professionals v. EHR, Office of General Counsel	91 EHR 1432	Nesnow	06/02/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Janet Thompson v. DHR, Div/Facility Svcs, Durham Cty Dept/Social Svcs	91 DHR 1452	Gray	05/19/92
AB&S Exteriors (Arthur F. Williams Jr., Pres) v. Department of Labor, Wage & Hour Division	92 DOL 0001	Chess	05/18/92
Ollie Robertson v. Crime Victims Compensation Commission	92 CPS 0002	Morrison	04/15/92
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92
Ellen Allgood, The Red Bear Lounge, Inc., 4022 North Main St., High Point, NC 27265 v. Alcoholic Beverage Control Commission	92 ABC 0007	Chess	04/07/92
Robert Gooden v. Department of Labor, Wage & Hour Division	92 DOL 0009	West	05/14/92
Mrs. Gillie L. Edwards, Swift Mart #3 v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0022	Morrison	05/18/92
Private Protective Services Board v. Robert R. Missildine, Jr.	92 DOJ 0025	Becton	03/23/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03/16/92
Mr. Kenneth L. Smith, Pitt County Mart, Inc. v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0085	Becton	04/15/92
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03/04/92
Margaret Coggins v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0095	Becton	04/28/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Paula Dail v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0098	Becton	04/28/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92
Donald M. Condren v. Department of Environment, Health, & Natural Resources	92 EHR 0115	Chess	05/28/92
A.S. Pierce and Mary Lou Pierce Administrators, Tri-City Rest Haven v. DHR, Division of Facility Services, Licensure Section	92 DHR 0118	Gray	06/16/92
Merle M. Lee v. Department of Correction	92 OSP 0167	Reilly	06/10/92
Charles W. Parker v. Department of Agriculture	92 OSP 0177	Reilly	04/27/92
Potters Industries, Inc. v. William J. Stuckey, St Purchasing Off, & NC Div of Purchase & Contract	92 DOA 0180	Nesnow	05/20/92
Brunswick County v. Department of Environment, Health, & Natural Resources	92 EHR 0195	Morrison	04/21/92
Jessie Draft, Owner Sabrina's Day Care Ctr v. Department of Human Resources	92 DHR 0197	Reilly	06/01/92
Connestee Falls Property Owners Assoc, Inc. v. Wildlife Resources Commission	92 WRC 0207	Chess	05/28/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John Marley Jr. v. Department of Correction	92 OSP 0213	Reilly	05/18/92
N.C. Private Protective Services Board v. Lawrence Donnell Morrissey	92 DOJ 0215	Chess	05/13/92
N.C. Private Protective Services Board v. Sherrill David Beasley	92 DOJ 0216	Chess	05/13/92
Percy Lee Davis v. Caledonia Correctional Inst.	92 OSP 0230	West	06/04/92
Timothy B. Milton v. Crime Victims Compensation Commission	92 CPS 0265	Reilly	05/18/92
Leon Scott Wilkinson v. Criminal Justice Education & Training Standards Comm	92 DOJ 0280	West	04/24/92
Thomas L. Rogers v. DHR, Division of Youth Services	92 OSP 0287	Gray	04/30/92
Larry A. Person Sr. v. Department of Transportation	92 OSP 0304	Reilly	05/28/92
Paul M. Fratazzi, LPN v. Polk Youth Institute	92 OSP 0325	Nesnow	05/01/92
Robert S. Scheer v. Department of Crime Control & Public Safety	92 CPS 0339	Gray	05/18/92
Jimmy Wayne Livengood v. Department of Correction	92 OSP 0352	Nesnow	05/27/92
Jeffrey Mark Drane v. Private Protective Services Board	92 DOJ 0372	Mann	05/12/92
Danny G. Hicks v. Private Protective Services Board	92 DOJ 0373	Mann	05/12/92
Max Bolick v. Private Protective Services Board	92 DOJ 0374	Mann	05/12/92
Fred Henry Hampton v. Criminal Justice Education & Training Stds Comm	92 DOJ 0393	West	04/23/92
Milton M. Maynard v. UNC Chapel Hill NC	92 OSP 0417	West	06/22/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Northwood Nursing Center, Inc., d/b/a Northwood Manor v. DHR, Division of Facility Services, Licensure Section	92 DHR 0426	West	06/16/92
Herman James Goldstein v. University of North Carolina at Chapel Hill	92 OSP 0472	West	06/23/92
N.C. Alarm Systems Licensing Board v. Eddie Sisk	92 DOJ 0495	Nesnow	06/04/92
Britthaven, Inc., d/b/a Britthaven of Raleigh v. DHR, Division of Facility Services, Licensure Section	92 DHR 1425	Gray	06/16/92

STATE OF NORTH CAROLINA COUNTY OF PITT	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 91 INS 0632

DENNY W. PURSER,
Petitioner

v.

EAST CAROLINA UNIVERSITY,
N.C. STATE HEALTH PLAN,
Respondent.

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on May 1, 1992, in Greenville, North Carolina. The testimony of Dr. Paul Bondy was taken by deposition on March 16, 1992.

APPEARANCES

For Petitioner: WARD and SMITH, Attorneys at Law, Greenville, North Carolina; A. Charles Ellis appearing.

For Respondent: F.J. Di Pasquantonio, Associate Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

ISSUE

Whether a bowel evacuation apparatus such as the Avatar Personal Bowel Care System is covered under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

Stipulated Facts

1. "The Petitioner was involved in an auto accident in June of 1985 and suffered injuries which resulted in quadriplegia; and since that time has had an atonic colon, which has presented problems with him emptying his bowels voluntarily in a normal manner."

2. "The Petitioner initially accomplished bowel movements through the use of suppositories and laxatives; however, in December of 1987, the Petitioner began requiring digital stimulation to remove stool in addition to the use of suppositories and laxatives, which procedure has continued to the present time."

3. "The Petitioner, through his physician, Craig Simpson, M.D., requested approval by the [N.C. Teachers' and State Employees' Comprehensive Major Medical] Plan [hereinafter 'Plan'] for the purchase of the Avatar Personal Bowel Care System by letter dated February 6, 1990 to aid the Petitioner in emptying his bowel. The Plan denied the request by letter dated March 14, 1990 to Dr. Simpson, based on the information provided and in accordance with the Plan's guidelines. Dr. Simpson followed up by letter dated March 20, 1990 requesting the Plan to reconsider its position. The purchase price for the system for an agreement length of one year as of May, 1990 was $4770 plus applicable state and local taxes. Once the initial contract had been completed, renewal contracts for supplies ranged from $1608 for one year to $6480 for five years. The Plan by letter dated June 18, 1990 confirmed its position of denial on the basis that the system was

non-covered durable medical equipment, and informed the Petitioner of his right to appeal the decision."

4. "Paul V. Bondy, M.D., who assumed responsibility for medical treatment of the Petitioner from Dr. Simpson, appealed the decision of the Plan on behalf of the Petitioner by letter dated July 24, 1990. The Plan, by letter dated August 14, 1990 responded by indicating that it continued to maintain its position of denial based on the fact that the system was a non-covered durable medical equipment item, and informed Dr. Bondy that a second level review could be requested."

5. "The Petitioner, by letter dated September 4, 1990 requested a second level review. The Plan, by letter dated October 24, 1990, determined that there was no evidence to support the medical necessity of the Avatar Personal Bowel Care system to warrant approval, and that it would therefore have to continue its position of denial. The Petitioner was informed that a final review pursuant to General Statute 135-39.7 providing for review by the Executive Administrator and the Board of Trustees of the Plan was available to him."

6. "The Petitioner, by letter dated February 5, 1991, requested a final level review. The Petitioner's physician, Dr. Bondy, submitted information by letter dated March 12, 1991 in support of the Petitioner's request for approval for the system."

7. "The Plan, by letter dated May 15, 1991, informed the Petitioner that his appeal was presented to the Board of Trustees and the Executive Administrator of the Plan on April 24, 1991; and that based on the issues and facts available, the decision was to deny the appeal. The denial was based on G.S. 135-40.6(8)e, in that the equipment was primarily for the convenience of the patient or his family."

8. "The Petitioner filed a 'Petition for a Contested Case Hearing' with the Office of Administrative Hearings by letter dated July 8, 1991."

9. "A Hearing was scheduled for November 21, 1991 in Pitt County; however, the Hearing was continued upon motion of the Petitioner and agreement of the parties."

10. "A deposition of Paul V. Bondy, M.D. was scheduled for the offices of the Petitioner's counsel on February 6, 1992; however, the date was changed upon request of the Respondent and agreement of counsel for the Petitioner to March 16, 1992, the next available date mutually convenient for Dr. Bondy and counsel for the Petitioner."

11. "The deposition was taken of Dr. Bondy in the law offices of counsel for the Petitioner on March 16, 1992, with such deposition being taken in lieu of direct testimony by Dr. Bondy in the Administrative Hearing."

Adjudicated Facts

12. At the time that the Petitioner suffered his spinal cord injury, the nerves leading to his intestines, specifically those nerves under voluntary control, were rendered unusable to him. He has no voluntary control of his intestinal function. His body is limited indicating to him that he has a full colon and will need to evacuate. He cannot voluntarily empty his colon because his voluntary nerves were injured.

13. Since April or May of 1987, approximately every third day the Petitioner undergoes digital disimpaction in order to evacuate his bowels. His wife, Cheryl Page Purser performs the digital disimpaction for the Petitioner. This process can take anywhere from forty-five minutes to two hours.

14. In order to have his bowels digitally disimpacted, the Petitioner lies in bed on a pad. A suppository is inserted in his rectum approximately thirty minutes prior to the disimpaction process. Mrs. Purser puts on plastic gloves and inserts her fingers into the Petitioner's rectum and digs out the stool until she has gotten all that is within reach of her fingers or until the Petitioner starts to bleed.

15. During the digital disimpaction, the Petitioner sweats profusely, experiences abdominal pain, and sometimes bleeds from the rectum.

16. After digital disimpaction, the Petitioner usually has a bowel accident during the night while he is asleep. Occasionally, he will also experience some bowel leakage the following day.

17. The Petitioner's stools are, for the most part, hard stools. Despite the use of stool softeners and bulk, bran, and fiber products, the Petitioner continues to have very hard stools, and as a result, he is at risk for developing a complete bowel obstruction.

18. The bleeding that the Petitioner sometimes experiences during digital disimpaction is evidence that the tissue of his rectum and colon have been broken and separated and this provides an access for bacterial from the feces to penetrate into that tissue and could cause it to become quite infected.

19. It is not acceptable medical practice to do nothing to try to alleviate or stop the Petitioner's bleeding, abdominal pain, and bowel accidents.

20. The frequent insertion of the fingers into the rectal opening can cause loss of sphincter tone. Decreased sphincter tone could lead to overflow of stool, thereby causing bowel accidents. The Petitioner is limited in his capacity to clean himself up. If the Petitioner were to be sitting in stool, it would be caustic to the tissues of his legs and buttocks and would eventually cause breakdown of those tissues and infection.

21. The failure to remove all stool during digital disimpaction can lead to a bowel obstruction which may ultimately require surgery to remove the stool and most likely then require diversion colostomy.

22. The Avatar Personal Bowel Care System (hereinafter "Avatar System") uses a smooth nozzle or speculum which is inserted into the rectum. The nozzle attempts to mechanically interrupt and soften the feces which are in the vault and in the lower colon with intermittent low-pressure pulsation of body temperature water and cause the feces and water to flow out of the colon into a sealed waste container that is part of the nozzle. The Avatar System, unlike the finger, is specifically designed for removing feces from the colon. It is designed as a small, smooth device which is very amenable to lubrication and placement into the rectum. It does not require repeated introduction, removal, and re-introduction since it allows for outflow of the feces with it in place. It is less likely to abrade and traumatize the tissue than the use of the finger for disimpaction. The low pressure pulsations of water are more likely to reach higher than the finger can physically reach and more likely to interrupt the feces and disperse them in the water, allowing them to flow out with less trauma. Digital disimpaction requires removal of bulk stool, and if it is hard stool, like the Petitioner's, it may be large bulk along with the finger which is more likely to cause trauma.

23. The Avatar System is less likely to stretch the sphincter and cause decrease in sphincter tone.

24. Dr. Bondy is of the opinion that Avatar System will eliminate the abdominal pain and other symptoms the Petitioner currently experiences with digital disimpaction. Dr. Bondy is also of the opinion that the Avatar System is more likely to reduce the need for future medical treatment for the Petitioner than continued digital disimpaction.

25. Although the Petitioner may initially require an assistant to place the Avatar apparatus, he may ultimately be able to learn how to do this himself.

26. The Avatar System should decrease the amount of time it takes to evacuate the Petitioner's bowel.

27. The Avatar System is medically necessary to assist the Petitioner in evacuating his bowels and to avoid the complications associated with digital disimpaction and bowel obstruction.

28. The Avatar System replaces a physiological function: bowel evacuation.

29. The Avatar System is required for the medically necessary treatment of the Petitioner's atonic colon.

30. The Avatar System is not being prescribed for the personal convenience of the Petitioner or his wife.

31. The Avatar System is generally not useful to a person in the absence of an injury such as that experienced by the Petitioner and it is appropriate for use in the home by the Petitioner.

32. Hospitals and outpatient clinics use the Avatar procedure to address episodes of impactions caused by head trauma, Stroke, or spinal cord injury.

33. The Avatar System can withstand repeated use.

34. The Petitioner's current condition is medically unacceptable in light of the existence of a medically acceptable alternative such as the Avatar System.

35. Durable Medical equipment is defined at section 135-40.6(8)e as an item that is provided solely for the use of the participant and is standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home.

36. The Avatar System is an item of durable medical equipment.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Petitioner is the covered dependent of State Health Plan member Cheryl Page Purser.

2. The Petitioner is entitled to the benefits provided for in Article 3 of Chapter 135 of the North Carolina General Statutes.

3. Durable medical equipment is eligible for coverage pursuant to the provisions of North Carolina General Statutes section 135-40.6(8)e.

4. The Petitioner has carried his burden of proof by the preponderance of evidence and by its greater weight that the Avatar Bowel Care System meets all of the definitional requirements of durable medical equipment.

5. As a piece of durable medical equipment, the Avatar Personal Bowel Care System for the use of the dependent insured falls within the statutory prior approval requirement of section 135-40.6A(a)(5) of the North Carolina General Statutes before it is deemed a covered benefit.

6. Digital disimpaction is no longer a medically acceptable method of bowel evacuation for the Petitioner because of the attendant complications of such procedure. Therefore, alternative methods of disimpaction are medically indicated. In the opinion of the Petitioner's treating physicians, the Avatar System is the next alternative short of surgical intervention.

7. The Avatar System is medically necessary for the Petitioner because it replaces a necessary biological function and because other alternative methods of effecting bowel evacuation have proven to be either unsuccessful or medically unacceptable because of attendant complications.

8. Since the Avatar is both medically necessary and an item of durable medical equipment, there is no reason that it should not receive the approval required pursuant to section 135-40.6A(a)(5).

9. Since the Avatar System is medically necessary and is an item of durable medical equipment as defined by statute, the Petitioner is eligible to have the expense of this purchase paid for as a medical benefit.

RECOMMENDED DECISION

The Board of Trustees and the Executive Administrator of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan will make the Final Decision in this contested case. It is recommended that the agency adopt the Findings of Fact and Conclusions of Law set forth above and grant the Petitioner the prior approval required by section 135-40.6A(a)(5) of the North Carolina General Statutes for the purchase of an Avatar Personal Bowel Care System.

NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record and to the Office of Administrative Hearings.

This the 12th day of June, 1992.

Brenda B. Becton
Administrative Law Judge

STATE OF NORTH CAROLINA COUNTY OF PITT	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 91 EDC 0897

ALMETTA TYSON, Petitioner	)	
v.	)	DECISION
PITT COUNTY BOARD OF EDUCATION, Respondent	)	

This matter was heard before Fred Gilbert Morrison Jr., Senior Administrative Law Judge, on March 23 and May 11, 1992, in Greenville, North Carolina. At the conclusion of the hearing the parties were given thirty days to submit proposed decisions for consideration and any additional written arguments. The parties filed their proposals within this time period, and the parties had previously waived the time limitation for holding a hearing and rendering a decision. The Administrative Law Judge has considered the parties' proposals and their written arguments and has considered all matters presented at the hearing.

APPEARANCES

FOR THE PETITIONER:
Jack Hansel
Pamlico Sound Legal Services
P. O. Box 7283
Greenville, NC 27835-7283

FOR THE RESPONDENT:
Phillip R. Dixon
Dixon, Doub & Conner
P.O. Drawer 8668
Greenville, NC 27835-8668

ISSUES

1. Whether the Respondent has failed to provide Marcus Tyson with an appropriate individualized education program pursuant to State and federal law.

2. Whether the Respondent has denied Marcus Tyson his right to a free appropriate education by failing to educate him in the least restrictive appropriate setting.

FINDINGS OF FACT

1. Marcus Tyson is a fifth grade student who is eleven years of age and at the time of hearing of this case was identified by the Respondent as a Behaviorally and Emotionally Handicapped child and was placed in a self-contained class at W. H. Robinson Elementary School in Winterville, Pitt County, North Carolina. He resides with his mother, Almetta Tyson.

2. He was placed in this manner pursuant to an individualized education program completed on August 22, 1991.

3. Respondent Pitt County Board of Education is a local education agency receiving monies pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et seq., and operated the school system which Marcus Tyson attends.

4. Marcus was first enrolled in the Pitt County Schools in 1986 for kindergarten at Elmhurst Elementary School, and the following school year was enrolled in Eastern Elementary in Pitt County for the first grade and the beginning of the second grade.

5. An Exceptional Children Referral Form was completed on May 12, 1988, and Petitioner agreed to psychological testing for Marcus at that time, which testing was performed by Gail L. McIntosh, MA, School Psychologist II in May, 1988.

6. Ms. McIntosh found in her report that "Marcus exhibited deficits on visual - motor - perceptual tasks that required recognition of part - to - whole relationships, figure integration, perceptual organization, and motor planning", however, she found no indication of a specific learning problem and concluded that Marcus exhibited maladaptive and inappropriate behaviors so as to "warrant consideration for identification as Behaviorally / Emotionally Handicapped."

7. Ms. McIntosh recommended in her report of that evaluation that Marcus "receive special education services on a consultative and / or resource basis and that he continue to remain in the regular education setting for as much time as possible."

8. Ms. McIntosh stated in the report that Marcus "should be closely monitored while working on visual - motor - perceptual activities so that these activities can be modified or discontinued before Marcus becomes frustrated" and she also recommended that "home and school work together in a cooperative, consistent manner for Marcus to make maximum progress."

9. Marcus was determined to be appropriate for placement in the Exceptional Children Program but before services were provided pursuant to such a placement, Petitioner enrolled Marcus in private school at St. Gabriel's Catholic Church School for the last month or so of the second grade, and he remained there through the third grade. Marcus was not placed in a special education placement while attending St. Gabriel's.

10. Marcus re-enrolled in the Pitt County Schools at the beginning of his fourth grade in the 1990-1991 school year, and he was placed in a regular classroom at W. H. Robinson Elementary school.

11. A new individualized education program was devised for Marcus for the period November, 1990 to November, 1991, which identified Marcus as Behaviorally / Emotionally Handicapped, and recommended that he receive fourteen percent of his education in exceptional education and related services with the remainder of his time in the regular classroom. The exceptional education services provided were in the form of a Learning Disabled resource room math class.

12. Petitioner requested a re-evaluation of Marcus and a psychological evaluation was performed by Jenny Thigpen, School Psychologist II on March 28, 1991.

13. Ms. Thigpen recommended in the summary of her evaluation that Marcus continue to be identified as BEH, but she also noted that he "does appear to have some difficulty with abstract visual perceptual reasoning and visual - motor integration" and she stated that "[t]o what extent this represents a specific weakness or a behavioral component is difficult for the examiner to ascertain."

14. Ms. Thigpen stated in her report that due to Marcus' behavioral problems placement in "a more restrictive setting such as a self-contained BEH classroom or in a BEH classroom for several periods a day" might be considered and she also recommended that "[b]ecause of his possible visual - motor - perceptual weaknesses, written assignments may be particularly difficult for Marcus" and that he "should be closely monitored while working on these tasks so that they can be modified or discontinued when he becomes overly frustrated." She recommended that "[w]ritten tasks should be broken down into components and checked as these are completed" which she felt would "help reduce frustration as well as allow a highly structured on-task behavior."

15. A conference was held on August 22, 1991, at which it was recommended by the school-based committee that Marcus be placed in a separate BEH classroom.

16. Petitioner did not and does not approve of the change in placement for Marcus proposed by the education program of August 22, 1991, and therefore filed her petition herein and has pursued this matter as a contested case.

17. After the filing of the petition herein, the parties stipulated that an independent psychological and educational evaluation should be performed upon Marcus by Dr. Raymond E. Webster, Ph.D., NCSP, and such an evaluation was performed on December 11, 1991.

18. Dr. Webster found in the summary of his evaluation that Marcus suffers from two special needs in that he is both behaviorally and emotionally handicapped as well as having a specific learning disability. He found that the tests administered indicated that Marcus had a "significant visual - perceptual - motor dysfunction which would interfere with school progress and achievement", and more specifically he found that Marcus "has a visual short-term memory capacity deficit" as well as "great difficulty in storing and retrieving information from long-term memory when presented verbally to him."

19. Dr. Webster also found "Marcus is experiencing levels of anxiety and internal discomfort which are well beyond those to be expected at this state of psychosocial development".

20. Dr. Webster stated that Marcus' overall diagnostic picture was one of Dysthymic disorder and Mixed specific developmental disorder and he (Webster) testified that Marcus' behavioral and emotional disability and his learning disability were co-equal in the significance of their impact upon his educational needs.

21. The findings of Dr. Webster as noted in the preceding paragraphs are credible and persuasive.

22. Dr. Webster's finding of a significant visual - perceptual - motor dysfunction is consistent with the findings of the school psychologists noted above regarding possible visual - motor - perceptual weaknesses and deficits on visual - motor - perceptual tasks and his finding in this regard is credible and persuasive.

23. During the pendency of this contested case proceeding, through compromise by the parties, Marcus' placement has been changed so that he receives thirty-five percent of his education in a BEH self-contained class and sixty-five percent in an LD placement.

24. The testimony and evidence of the Petitioner and the testimony of Dr. Webster clearly demonstrate that the Petitioner is opposed to and hostile to the proposal of any placement involving a BEH classroom setting and Marcus Tyson is also opposed to being educated in a BEH separate classroom.

25. Marcus continues to exhibit behavioral problems in the BEH classroom but has not demonstrated any such serious problems in the LD classroom placement for sixty-five percent of his school day.

26. Marcus suffers from a behavioral and emotional handicapping condition as well as from a specific learning disability, both of which must be taken into consideration in determining the appropriate educational placement and program for Marcus.

27. Dr. Webster found and the evidence supports his finding that Marcus may be able to be successful in the regular classroom for part of his school day with supportive services from the BEH and LD teachers to the regular classroom teacher.

28. Dr. Webster suggested various management strategies for teachers to use with Marcus, all of which are appropriate for his education needs, including "LD consultation services to regular education staff in addition to resource room participation and regular daily check-in meetings with the school counselor in the morning and afternoon to serve as a support base" and Petitioner is in agreement with the findings and recommendations of Dr. Webster.

29. Although the parties disagree substantially as to the nature of Marcus Tyson's handicapping condition or conditions, they are in agreement and there is no dispute that he is a child with special needs and is a child with a disability for purposes of the Individuals with Disabilities Act and N.C.G.S. 115C-106 et seq.

CONCLUSIONS OF LAW

1. Marcus Tyson is a child with a disability for purposes of the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400 et seq.

2. Marcus Tyson is a child with special needs for purposes of N.C.G.S. Section 115C-109.

3. Respondent is obligated to provide a free, appropriate public education in the least restrictive environment to Marcus Tyson under IDEA and N.C.G.S. Section 115C-106 et seq.

4. The individual education program proposed by Respondent for Marcus Tyson for the period of August, 1991 to August, 1992, failed to propose a free appropriate public education for Marcus Tyson in the least restrictive environment, and the individual education program actually provided by Respondent during this period of time and to the present has failed to provide Marcus a free appropriate public education in the least restrictive environment.

5. In developing an individual education program for Marcus Tyson, the Respondent has failed to properly consider the extreme objection and hostility of Petitioner and Marcus himself to any placement involving a separate BEH classroom for him, which hostility under the circumstances of this case militates strongly against including the BEH separate classroom as part of the individual education program for Marcus Tyson.

6. In developing an individual education program for Marcus Tyson, the Respondent has failed to give proper consideration to the specific learning disability which Marcus has and his education needs resulting from that disability.

7. The Respondent has failed to provide Marcus Tyson the opportunity to be educated, to the maximum extent possible, with children who are not exceptional.

8. The recommendations of Dr. Webster contained in his psychological evaluation of December 11, 1991, and his letter of February 17, 1992, are reasonably calculated to provide Marcus Tyson with a free and appropriate education in the least restrictive environment.

9. The thirty-five percent of his educational day which Marcus Tyson has recently spent in a separate BEH classroom is an appropriate amount of time for him to receive education in a regular classroom with appropriate supportive services for his handicapping conditions.

IT IS THEREFORE DECIDED that in order to provide Marcus Tyson the free appropriate education in the least restrictive environment to which he is entitled, these following recommendations merit implementation:

1. Immediately modify Marcus Tyson's individual education program by removing any provision allowing for any part of Marcus' education to take place in a BEH separate classroom or BEH resource room.

2. Immediately incorporate into Marcus Tyson's individual education program the provision that Marcus spend thirty-five percent of his school day in the regular classroom with appropriate LD and BEH consultation services to the regular education staff and that Marcus receive the remainder of his education in an LD classroom or resource room with the provision of consultative services of a BEH teacher to the LD teacher.

3. Immediately incorporate into Marcus Tyson's individual education program regular daily check-ins of Marcus with an appropriate school counselor, psychologist or social worker, in the mornings and afternoons of school days to serve as a support base for Marcus.

4. Immediately incorporate into Marcus Tyson's individual education program the requirement that the management strategies and other recommendations for meeting Marcus' education needs contained in Dr. Raymond E. Webster's psychological evaluation of December 11, 1991, be taken into consideration by teachers and other staff in developing educational strategies for Marcus.

5. Development of a systematic behavior modification program with rewards or special privileges for appropriate behavior and loss of privileges for inappropriate behavior.

6. Immediate access to a specified school staff member with whom the student has rapport to discuss and try to resolve any problem arising.

7. Preventive measures to avoid troublesome activities.

NOTICE

This decision becomes final and not subject to final review unless appealed. Any party aggrieved by this decision may appeal it within thirty (30) days after receipt of this notice by filing a written notice of appeal with the Superintendent of Public Instruction. G.S. 115C-116(h) & (i).

This the 19th day of June, 1992.

Fred G. Morrison, Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA COUNTY OF BURKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
BIO-MEDICAL APPLICATIONS OF NORTH CAROLINA, INC.,D/B/A BMA OF LENOIR, Petitioner, v. CERTIFICATE OF NEED SECTION, DIVISION OF FACILITY SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, Respondent, and CHARLOTTE ARTIFICIAL KIDNEY CLINIC, INC. and DELTA MEDICAL PROPERTIES, Respondent-Intervenors.	91 DHR 1086
CHARLOTTE ARTIFICIAL KIDNEY CLINIC, INC. and DELTA MEDICAL PROPERTIES, Petitioners, v. CERTIFICATE OF NEED SECTION, DIVISION OF FACILITY SERVICES, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, Respondent, and BIO-MEDICAL APPLICATIONS OF NORTH CAROLINA, INC., d/b/a BMA LENOIR, Respondent-Intervenor.	91 DHR 1089

RECOMMENDED DECISION BASED ON STIPULATED FACTS

These consolidated contested cases came on for hearing before the undersigned based upon stipulated facts submitted by the parties, BIO-MEDICAL APPLICATIONS OF NORTH CAROLINA, INC., D/B/A BMA LENOIR (hereinafter "BMA"), CHARLOTTE ARTIFICIAL KIDNEY CLINIC, INC. (hereinafter "CAKC"), DELTA MEDICAL PROPERTIES ("DELTA"), and the CERTIFICATE OF NEED SECTION, DIVISION OF FACILITY SERVICE, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES (hereinafter "CON Section" or the "Agency"), all of the parties to the captioned contested cases. Those Stipulations have previously been filed with this office.

ISSUES

1. Whether the conditional approval of the applications by BMA and CAKC and DELTA conform to all applicable plans, standards, and criteria.

2. Whether the approval of the BMA application as a 12-station facility, best meets the dialysis needs of residents of Burke County.

OFFICIAL NOTICE

Per parties' request, official notice is taken of the 1991 State Medical Facilities Plan and the 1992 State Medical Facilities Plan.

JURISDICTION

1. All parties are properly before the Office of Administrative Hearings, and that the Office of Administrative Hearings has jurisdiction over the parties and over the subject matter of this contested case hearing.

2. All parties have been correctly designated, and that there are no issues as to nonjoinder or misjoinder of parties. The parties are not aware of any other person seeking to intervene.

FACTS

3. The human kidney functions essentially as a filter removing the waste by-products of metabolic processes, as well as excess concentrations of various minerals and other molecules.

4. Like any organ, the kidney can be affected by infections, trauma, or chronic diseases such as diabetes and hypertension, any of which can result in a progressive deterioration of the kidneys' function.

5. End Stage Renal Disease (ESRD) is a condition of the human kidney in which progressive failure of the kidney to perform its function has reached the stage at which both kidneys are essentially dysfunctional.

6. When a patient reaches ESRD, some interventional treatment is needed in order to replace the function of the dysfunctional kidneys and keep the patient alive.

7. One method of replacing the kidneys' function is transplantation, in which a donor's kidney is transplanted into the patient, but the availability of donor kidneys, the possibility of rejection of the transplant, and the inability of some patients to undergo the surgery all limit the efficacy of transplantation.

8. For most ESRD patients, treatment will take the form of various kinds of dialysis in which artificially prepared fluids are used to induce a redistribution of excess concentrations of water, chemicals, and minerals out of the blood stream.

9. In the case of peritoneal dialysis, this process occurs through the introduction of a dialysis solution into the peritoneal cavity, where there is an abundant concentration of blood vessels. Through osmosis, the lower concentration of water, chemicals and minerals in the dialysate solution induces the migration of these materials across the membranes out of the blood vessels and into the dialysate solution. The dialysate solution is then drained off after a sufficient period of time has elapsed to allow for the process to be complete.

10. In the case of hemodialysis, the patient's blood is routed through a catheter introduced in a vein through a dialysis machine where the blood is passed over membranes through which the same osmotic process occurs to transfer the water, chemicals, and minerals out of the blood stream and into a dialysate solution on the other side of the membrane.

11. Dialysis treatments are reimbursed to dialysis facilities under the Medicare program.

12. In North Carolina, new dialysis facilities are subject to the Certificate of Need Law, but do not obtain a license from the Department of Human Resources. However, in order to participate in Medicare reimbursement, any dialysis facility must be certified by the Health Care Financing Administration and meet certain basic requirements.

13. The 1991 State Medical Facilities Plan did not contain a methodology for projecting the need for additional dialysis stations. Instead, the 1991 SMFP contained a methodology that permitted the

addition of stations only in existing end-stage renal disease facilities which document that they are overcrowded. See "The ESRD Projection of Need Method," page 98 of the 1991 State Medical Facilities Plan.

14. The 1991 SMFP did not include a policy or methodology regarding the addition of stations to proposed new facilities.

15. On May 16, 1991, BMA applied for a certificate of need to transfer 8 stations from its existing dialysis facility in Lenoir, North Carolina to establish a new dialysis facility in Morganton, North Carolina, Project I.D. No. E-4308-91 (hereinafter "BMA Application").

16. The BMA Application and the CAKC and DELTA Application were deemed complete for review and accepted for a June 1, 1991, batch of applications for dialysis facilities; these applications were initially deemed to be competitive applications by CON.

17. On August 9, 1991 a public hearing was held in Morganton, North Carolina.

18. On September 27, 1991, the CON Section approved, with conditions, the BMA Application for a certificate of need to establish a new 8-station kidney dialysis facility in Morganton, North Carolina, by relocating 8 kidney dialysis stations from an existing facility in Lenoir, North Carolina.

19. On 27 September 1991, the CON Section simultaneously approved, with conditions, CAKC and DELTA's Application for a certificate of need to establish a new 6-station kidney dialysis facility in Morganton, North Carolina, by relocating 6 kidney dialysis stations from an existing facility in Matthews, North Carolina.

20. BMA and CAKC and DELTA filed separate petitions for a contested case hearing in the Office of Administrative Hearings on 28 October 1991, in which CAKC and DELTA appealed the CON Section's approval of the BMA Application, and BMA appealed the CON Section's approval of the CAKC and DELTA Application.

21. The BMA Application and the CAKC and DELTA Application each proposed to serve residents of Burke, McDowell and Rutherford Counties. The CAKC and DELTA Application also proposed to serve residents of Lincoln County.

22. The 1991 State Medical Facilities Plan in effect at the time these applications were reviewed did not contain a methodology for projecting the need for additional dialysis stations in these counties or elsewhere.

23. The BMA Application and the CAKC and DELTA Application each projected a need for no more than 12 ESRD stations in their respective proposed service areas by the end of 1994.

24. The CON Section's decisions conditionally approving both the BMA Application and the CAKC and DELTA Application were based on Agency findings that there would be a need for 16 ESRD stations in the service area (consisting of Burke, McDowell, Rutherford and Lincoln Counties) by the end of 1994; thus, the Agency concluded there was a need for the total of 14 ESRD stations proposed by BMA and CAKC and DELTA combined, that both applications conformed with all applicable review criteria, including those pertaining to need, as conditioned, and both applications could be, and were, approved.

25. Before the CON Section's decisions on these two applications, the final draft of the 1992 State Medical Facilities Plan was published, including a chapter on End Stage Renal Disease (ESRD) which projected the need for dialysis stations across North Carolina.

26. The draft plan which was ultimately adopted by the Governor showed a total 1992 dialysis station need for Burke County of 12.70 stations. Following the standard CON Section practice, this need is rounded down to 12 stations.

28. The 1992 SMFP in its draft form showed a need for 12.7 ESRD stations to serve Burke County, 3.38 stations to serve McDowell County, 6.74 stations to serve the residents of Rutherford County, and 7.26 stations to serve the needs of Lincoln County.

29. The 1992 SMFP in its final form identifies ESRD planning areas for which stations are allocated as follows:

Planning Area#	County	Allocation
9	Lincoln	7 Stations
6	Rutherford	7 Stations
5	Burke, McDowell	2 Stations

The allocation for stations to serve Burke and McDowell Counties was adjusted to reflect the award of the 14 stations to the two applicants in this contested case. The allocation would have been 16 stations if the two applications which are the subject of this contested case had not been approved. Applications have been received in 1992 to address the need in Rutherford and Lincoln Counties.

30. It is the policy of the CON Section to make ESRD services available in such a manner to ensure that no patient must drive more than 30 miles to obtain ESRD services, as travelling for dialysis services creates a significant hardship on ESRD patients and their families.

31. According to statistics provided by the Southeastern Kidney Council, at least 27 Burke County residents travelled to other counties in 1991 to obtain ESRD treatment.

32. BMA's application and supporting materials showed that at least 25 patients in its Lenoir facility were Burke County residents who expressed a desire to transfer to its proposed Morganton facility.

33. The BMA Application is conforming, as conditioned, with all applicable review criteria.

34. CAKC and DELTA, separate and apart from the other parties, stipulate and agree that their application should be found nonconforming with certain applicable review criteria based upon the issuance of a certificate of need for a 12-station dialysis facility to BMA.

Based upon the foregoing stipulated facts, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Based upon the 1991 and 1992 State Medical Facilities Plan ("SMFP"), and the CON Section's analysis during the review of the need in Burke County for ESRD stations, there is a need for twelve ESRD stations to meet the needs of Burke County residents.

2. In view of the discrete need identified for Rutherford and Lincoln Counties in the 1992 SMFP, and the pending applications to address that need, it is neither necessary nor prudent to consider these counties in the service area for any Morganton dialysis facility.

3. Since both the BMA application and the CAKC/DELTA application did not propose to serve significant portions of McDowell County, it is most reasonable to base the determination of need for the station complement of a dialysis facility in Morganton exclusively upon the twelve stations needed for Burke County.

4. The Agency will not exceed the need established for Burke County if it awards a Certificate of Need for twelve stations to BMA for a Morganton facility, by transfer of eight stations from its Lenoir facility, and the addition of four stations.

5. Neither the Certificate of Need statute, G.S. § 131E-175, et seq., the Administrative Procedure Act, G.S. Chapter 150B, nor the applicable regulations, prohibit the Agency from awarding BMA a twelve station ESRD facility under the facts as set out hereinabove.

6. After due consideration of the Certificate of Need statute, the regulations promulgated thereunder, the 1991 and 1992 State Medical Facilities Plans, the stipulated facts, affidavits of record, and other applicable information, the undersigned concludes that the development of one twelve station ESRD facility in Morganton, North Carolina, by BMA, would meet all applicable plans, standards and criteria of the Agency, and would meet the need of end stage renal disease patients in Burke County.

DISCUSSION

In addition to the stipulated facts, the Agency offered the Affidavit of Lee B. Hoffman, Chief of the Certificate of Need Section. Ms. Hoffman's Affidavit expressed the opinion that even though the Agency has identified the need for at least 14 ESRD stations in Burke County, the Agency cannot approve a 12-station facility for three reasons, which, as addressed below, are unpersuasive as a matter of law. The Agency can approve a 12-station facility for BMA, and the Administrative Law Judge can recommend that the Agency do so.

First, Ms. Hoffman opines that the Agency cannot approve a 12-station facility for BMA because the 1991 SMFP did not "permit" the approval of additional stations for a proposed new facility. However, the 1991 SMFP contains no methodology for projecting the need for additional dialysis stations. See Finding of Fact No. 13. Therefore, the 1991 SMFP neither permits nor prohibits applicants from applying for additional stations.

In any case, the Agency cannot rely solely upon the SMFP to determine whether there is a need for health cure services. The Courts have required the Agency to also look to other evidence establishing actual need. Lenoir Memorial Hospital, Inc. v. North Carolina Department of Human Resources, 98 N.C. App. 178, 390 S.E.2d 448 (1990). "We hold that the Certificate of Need decision is not bound solely by the bed-need formula in the . . . . SMFP and that other criteria should be considered and weighed when the Agency is making its decision . . . . " 390 S.E.2d at 452-53.

Indeed, the Agency has already done so in this case. The Agency's own project analyst undertook an independent need analysis and concluded that there was a need in 1991 for at least 14 stations in the service area. The stipulated facts indicate that there currently is a need for 12 stations in Burke County alone, and that the need in the other counties encompassing the service area is being addressed in other applications. All of the undisputed evidence shows that an award of one 12-station facility will best meet the needs of Burke County ESRD patients.

Second, Ms. Hoffman opines that the Agency cannot approve a 12 station facility for BMA because the original BMA application only requested 8 stations. Once a contested case hearing has been filed, the Agency has the authority to look at all of the evidence available to it to determine what best meets the health care needs of the patients in the service area, even when that evidence was not specifically included in an application. In re Application of Wake Kidney Clinic, 85 N.C.App. 639, 355 S.E.2d 788 (1987). "[T]he hearing officer is not limited to that part of the evidence before it that the Section actually relied upon in making its decision." 85 N.C.App. at 643. Thus the fact that BMA did not initially apply for the 4 additional ESRD stations does not prevent the Agency from awarding those additional stations to BMA in this contested case, nor does it prevent the Administrative Law Judge from recommending that this be done.

Third, Ms. Hoffman opines that the Agency cannot approve a 12-station facility for BMA because a subsequent site change due to circumstances beyond BMA's control and the expenses associated with the extra 4 stations would constitute amendments to BMA's original application.

BMA has been compelled to obtain a new site due to the fact that its first two proposed sites have since been leased. Such a site change does not constitute an amendment to its application as a matter of law. The Agency regularly approves the use of new sites under the same or similar circumstances

and does not consider such a change to be a per se amendment to an application, as demonstrated by a long series of declaratory rulings directly on point.

Although BMA's original application did not ask for the additional 4 stations and some further expenses will be involved, it is clear from the Affidavit of Ms. Linda C. Upchurch that BMA's additional capital expenditures will in no event exceed 15% of its original capital expenditures. This supplemental expense would not require the filing of a new application under the Certificate of Need Law and cannot therefore be considered an amendment. N.C.G.S. § 131E-176(16)e.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that the final decision maker order that a Certificate of Need be issued to BMA for a 12 station end stage renal disease facility, based upon the transfer of 8 stations from BMA's Lenoir facility, and the addition of 4 stations, as being the most reasonable alternative to meet the criteria of the Certificate of Need statute and applicable regulations, and the needs of Burke County.

NOTICE

The Agency making the final decision in this contested case is required to give each party the opportunity to file exceptions to this recommended decision and to present written arguments to those in the Agency who will make the final decision. G.S. § 150B-36(a). The Agency that will make the final decision in this contested case is the North Carolina Department of Human Resources.

This the 22nd day of June, 1992.

Robert R. Reilly
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration
2	Agriculture
3	Auditor
4	Economic and Community Development
5	Correction
6	Council of State
7	Cultural Resources
8	Elections
9	Governor
10	Human Resources
11	Insurance
12	Justice
13	Labor
14A	Crime Control and Public Safety
15A	Environment, Health, and Natural Resources
16	Public Education
17	Revenue
18	Secretary of State
19A	Transportation
20	Treasurer
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges
24	Independent Agencies
25	State Personnel
26	Administrative Hearings

LICENSING BOARDS	CHAPTER
Architecture	2
Auctioneers	4
Barber Examiners	6
Certified Public Accountant Examiners	8
Chiropractic Examiners	10
General Contractors	12
Cosmetic Art Examiners	14
Dental Examiners	16
Dietetics/Nutrition	17
Electrical Contractors	18
Electrolysis	19
Foresters	20
Geologists	21
Hearing Aid Dealers and Fitters	22
Landscape Architects	26
Landscape Contractors	28
Martial & Family Therapy	31
Medical Examiners	32
Midwifery Joint Committee	33
Mortuary Science	34
Nursing	36
Nursing Home Administrators	37
Occupational Therapists	38
Opticians	40
Optometry	42
Osteopathic Examination and Registration (Repealed)	44
Pharmacy	46
Physical Therapy Examiners	48
Plumbing, Heating and Fire Sprinkler Contractors	50
Podiatry Examiners	52
Practicing Counselors	53
Practicing Psychologists	54
Professional Engineers and Land Surveyors	56
Real Estate Commission	58
Refrigeration Examiners	60
Sanitarian Examiners	62
Social Work	63
Speech and Language Pathologists and Audiologists	64
Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX
(April 1992 - March 1993)

1992 - 1993

Pages			Issue		
1	-	105	1	-	April
106	-	173	2	-	April
174	-	331	3	-	May
332	-	400	4	-	May
401	-	490	5	-	June
491	-	625	6	-	June
626	-	790	7	-	July
791	-	902	8	-	July

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
TR - Temporary Rule

NORTH CAROLINA ADMINISTRATIVE CODE

The full publication consists of 53 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 - 12	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 - 3W	Human Resources	30.00	_____	_____
16	10	4 - 6	Human Resources	30.00	_____	_____
17	10	7	Human Resources	30.00	_____	_____
18	10	8 - 9	Human Resources	30.00	_____	_____
19	10	10	Human Resources	30.00	_____	_____
20	10	11 - 14	Human Resources	60.00	_____	_____
21	10	15 - 17	Human Resources	45.00	_____	_____
22	10	18	Human Resources	75.00	_____	_____
23	10	19 - 30	Human Resources	90.00	_____	_____
24	10	31 - 33	Human Resources	30.00	_____	_____
25	10	34 - 41	Human Resources	60.00	_____	_____
26	10	42	Human Resources	45.00	_____	_____
27	10	43 - 51	Human Resources	90.00	_____	_____
28	11	1 - 15	Insurance	90.00	_____	_____
29	12	1 - 12	Justice	90.00	_____	_____
30	13	1 - 6	Labor	30.00	_____	_____
31	13	7	OSHA	45.00	_____	_____
32	13	8 - 16	Labor	45.00	_____	_____
33	14A	1 - 11	Crime Control and Public Safety	45.00	_____	_____
34	15A	1 - 2	EHNR (includes EMC)	90.00	_____	_____
35	15A	3 - 6	EHNR	45.00	_____	_____
36	15A	7	Coastal Management	45.00	_____	_____
37	15A	8 - 9	EHNR	30.00	_____	_____
38	15A	10	Wildlife	45.00	_____	_____

Continued

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
39	15A	11 - 18	EHNR	90.00	_____	_____
40	15A	19 - 26	EHNR (includes Breathalizer)	75.00	_____	_____
41	16	1 - 6	Education	30.00	_____	_____
42	17	1 - 6	Revenue	75.00	_____	_____
43	17	7 - 11	Revenue	60.00	_____	_____
44	18	1 - 8	Secretary of State	30.00	_____	_____
45	19A	1 - 6	Transportation	90.00	_____	_____
46	20	1 - 9	Treasurer	45.00	_____	_____
47	21	1 - 16	Licensing Boards	75.00	_____	_____
48	21	17 - 37	Licensing Boards	75.00	_____	_____
49	21	38 - 70	Licensing Boards			
	22	1 - 2	Administrative Procedures	75.00	_____	_____
50	23	1 - 2	Community Colleges	10.00	_____	_____
51	24	1 - 3	Independent Agencies	10.00	_____	_____
52	25	1	State Personnel	60.00	_____	_____
53	26	1 - 4	Administrative Hearings	10.00	_____	_____
			(North Carolina Subscribers add 6% sales tax)	**Total**	_____	_____

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

MAIL TO:

OFFICE OF ADMINISTRATIVE HEARINGS
POST OFFICE DRAWER 27447
RALEIGH, NORTH CAROLINA 27611-7447

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

lease enter my subscription for the *North Carolina Register* to start with the_____issue.
$105.00)/year subscription) (N.C. Subscribers please add sales tax.)

enew *North Carolina Register*

heck Enclosed ☐ Please bill me

e make checks payable to Office of Administrative Hearings

E _____ ADDRESS_____

_____ STATE _____ ZIP _____

NE_____

rn to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY STATE ZIP

2. New Address

NAME

ADDRESS

CITY STATE ZIP

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY
VAN HECKE-WETTACH 064-A
CHAPEL HILL NC 27599