

The **NORTH CAROLINA REGISTER**

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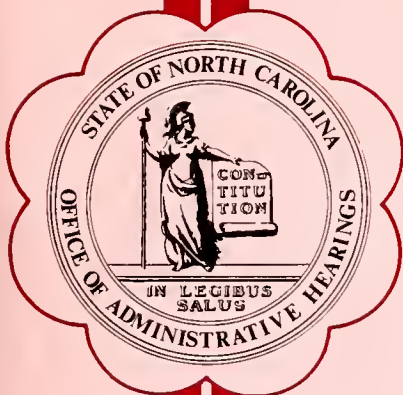
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ISSUE DATE: December 15, 1993

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

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. O. 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 may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The *North Carolina Administrative Code* (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 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.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

FOR INFORMATION CONTACT: Office of
Administrative Hearings, ATTN: Rules Division, P.O.
Drawer 27447, Raleigh, North Carolina 27611-7447, (919)
733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(July 1993 - May 1994)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

Note: Time is computed according to the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** 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 33
PERSIAN GULF WAR MEMORIAL
COMMISSION**

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

Section 1. Establishment and Membership.

There is hereby established the Persian Gulf War Memorial Commission whose membership shall consist of:

1. Two members of families who lost relatives in the Persian Gulf War.
2. One member from the North Carolina Veterans' Affairs Commission.
3. One at-large member.
4. The Secretary of the Department of Cultural Resources or her designee.
5. The Secretary of the Department of Administration or her designee.
6. The Secretary of the Department of Crime Control and Public Safety or his designee.

From among the membership, the Governor shall appoint a chair. The Commission shall meet at the call of the chair.

Section 2. Purpose.

The purpose of the Commission is to study the feasibility of the construction of a Persian Gulf War Memorial, including the areas of design, site selection, and funding. The chair periodically shall advise the Governor as to the progress of the Commission.

Section 3. Administration.

Administrative support for the Commission shall be provided by the Department of Administration. There shall be no per diem paid to members of the Commission; however, necessary travel and subsistence allowance may be paid in accordance with state law.

Section 4. Rescission.

Executive Orders 152, 160, and 167 of the Martin Administration are hereby rescinded. This is the successor organization to that Committee. All of the Committee's files, records, etc., shall be transferred to the Commission created herein.

This executive order shall be effective immediately.

Done in the Capital City of Raleigh, North

Carolina, this the 10 day of November, 1993.

**EXECUTIVE ORDER NUMBER 34
HIGHWAY SAFETY COMMISSION**

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

Section 1. Establishment.

The Highway Safety Commission ("Commission") is hereby established. The Commission shall be composed of fifteen members appointed by the Governor. Eight members shall serve two-year initial terms and seven members shall serve four-year initial terms. Thereafter, all terms shall be for four years. The Governor shall designate one of the members as Chair, who shall serve at his pleasure.

Section 2. Meetings.

The Commission shall meet regularly at the call of the Chair and may hold special meetings at the call of the Chair, the Governor, or the Secretary of Transportation.

Section 3. Administration and Expenses.

Members of the Commission shall be reimbursed for necessary travel and subsistence expenses as authorized by state law. Funds for reimbursement of such expenses shall be made available from the Governor's Highway Safety Program. The Program will also provide administrative and staff support services to the Commission.

Section 4. Duties.

The Commission shall have the following duties:

- (a) Establish statewide highway safety goals and objectives.
- (b) Review proposed highway safety legislation.
- (c) Monitor the operations of North Carolina's Highway Safety Management System.
- (d) Collect, analyze, and distribute information related to highway safety.
- (e) Survey public opinion, attitudes, and ideas on highway safety.
- (f) Establish innovative highway safety programs and activities.
- (g) Advise the Governor on ways to promote highway safety in North Carolina.

Section 5. Rescission.

Martin Administration Executive Order 12, as

amended, is hereby rescinded. All records of the Governor's Highway Safety Commission created pursuant to said Executive Order, are transferred to the Commission created herein, which shall be the successor to that Highway Safety Commission.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 23rd day of November, 1993.

**EXECUTIVE ORDER NUMBER 35
GOVERNOR'S STATE EMPLOYEE
ACTION COMMISSION**

WHEREAS, State employees are an important resource to state government; and

WHEREAS, Quality working conditions are necessary to retain the best state employees;

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

Section 1. Establishment.

The Governor's State Employee Action Commission is hereby established.

Section 2. Composition.

The Commission shall consist of the following members:

- (a) Governor's Ombudsman, Chair;
- (b) Secretary of Administration, or her designee;
- (c) Commissioner of Agriculture, or his designee;
- (d) Attorney General, or his designee;
- (e) State Auditor, or his designee;
- (f) Secretary of Commerce, or his designee;
- (g) President of the North Carolina System of Community Colleges, or his designee;
- (h) Secretary of Correction, or his designee;
- (i) Secretary of Crime Control and Public Safety, or his designee;
- (j) Secretary of Cultural Resources, or her designee;
- (k) Secretary of Environment, Health, and Natural Resources, or his designee;
- (l) Secretary of Human Resources, or his designee;
- (m) State Comptroller, or his designee;
- (n) Commissioner of Insurance, or his designee;
- (o) Commissioner of Labor, or his designee;

- (p) Superintendent of Public Instruction, or his designee;
- (q) Secretary of Revenue, or her designee;
- (r) Secretary of State, or his designee;
- (s) Secretary of Transportation, or his designee;
- (t) State Treasurer, or his designee;
- (u) A representative designated by the General Administration of the University System;
- (v) Director of the Office of State Personnel, or his designee;
- (w) State Budget Officer, or his designee;
- (x) Director of the Office of Administrative Hearings, or his designee;
- (y) Executive Director of the State Employees Association of North Carolina, Inc.;
- (z) Director of Government Relations of the State Employees Association of North Carolina, Inc.

The Chair may, when she deems appropriate, appoint sub-committees from among the membership.

Section 3. Duties.

The duties of the Commission are:

- (a) to consider the collective concerns and policy issues of state employees and make recommendations for change as necessary;
- (b) to report progress annually to the Governor.

Section 4. Meetings.

The full Commission shall meet at least once per year, at the call of the Chair. Sub-committees shall meet at the discretion of the Chair.

Section 5. Administrative Support.

The Office of the Governor shall provide the administrative support for the Commission. No travel or per diem expenses shall be paid to members of the Commission out of the Office of the Governor.

Section 6. Rescission.

Martin Administration Executive Order 89 is hereby rescinded.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 29th day of November, 1993.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:GS:NT:emr

DJ 166-012-3

93-3512

93-3945

93-4388

November 19, 1993

Jesse L. Warren, Esq.

City Attorney

P. O. Box 3136

Greensboro, North Carolina 27402-3136

Dear Mr. Warren:

This refers to four annexations (Ordinance Nos. 93-111, 93-113, 93-131, and 93-120) and the designation of the first three listed annexed areas to election districts of 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 submissions on September 20, October 15, and November 16, 1993.

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. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

James P. Turner

Acting Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

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

CHAPTER 10
WILDLIFE RESOURCES AND WATER SAFETY

JANUARY 24, 1994 HEARING

CHANGE IN SYLVA, NORTH CAROLINA HEARING LOCATION
PUBLISHED IN 8:17 NCR 1634-1662

The location of the 7:00 p.m. January 24, 1994 hearing has been changed from the Jackson County Courthouse in Sylva, North Carolina to the Southwestern Community College (formerly known as Southwestern Technical Institute), 275 Webster Road, Sylva, North Carolina. The Jackson County Courthouse will be posted with signs as to the location change and someone from the North Carolina Wildlife Resources Commission will be there to direct attendees to the new location.

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend rule cited as 1 NCAC 4G .0212.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 6, 1994 at the Department of Administration, Room 5106D, Conference Room, Administration Building, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action: To clarify process for receiving bids by electronic mediums.

Comment Procedures: Any interested person may present his/her comments either in writing 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 4 - AUXILIARY SERVICES

SUBCHAPTER 4G - SURPLUS PROPERTY

SECTION .0200 - STATE SURPLUS PROPERTY

.0212TELEFAX PROPOSALS (BIDS)

~~Telegraph or Telephone facsimile machine (FAX)~~ bids proposals may be considered if received prior to ~~specified the published~~ time and date of the bid opening. Any proposal which is faxed to the Office of State Surplus Property must include both the front and back of the State Surplus Property proposal form with the proposer's signature on the second or back page of the proposal form. The proposer acknowledges an intent to contract by submission of his bid by fax and waives the right to raise any defenses to contract related to his electronic submission of the fax proposal. Any bid which is faxed must be received by no later than 1:00 p.m. Eastern Standard Time on the published bid opening date. Any bid submitted under this

~~Rule which is not confirmed in writing and post-marked by midnight of the published date for receipt of bids will not be considered.~~

Statutory Authority G.S. 143-49.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce - Credit Union Division intends to adopt rule cited as 4 NCAC 6C .1401.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 14, 1994 at the Credit Union Division, 1110 Navaho Drive, Suite 300, Raleigh, North Carolina 27609.

Reason for Proposed Action: To give state-chartered credit unions the authority to become qualified guarantors.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Antonio Knox, Credit Union Division, 1110 Navaho Drive, Suite 300, Raleigh, North Carolina. Telephone 919-850-2929.

CHAPTER 6 -CREDIT UNION DIVISION

SECTION .1400 - SIGNATURE GUARANTEE SERVICES

.1401SIGNATURE GUARANTEE

(a) Provided the following conditions are satisfied, a credit union may offer its members signature guarantee services in connection with the transfer of securities, name change on a security certificate, replacement of lost certificates, or erasures on a security certificate.

(b) The credit union obtains an appropriate bond endorsement protecting it against any loss or liability resulting from granting an improper signature guarantee.

(c) The credit union participates in a signature guarantee program endorsed by the Securities Transfer Association.

approval of the Administrator before commencing its signature guarantee program.

(d) The credit union obtains the prior written

Statutory Authority G.S. 54-109.12; 54-109.21(25).

TITLE 10 -DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 3R .3001, .3020, .3030, .3032, .3040, .3050.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 14, 1994 at Room 201, Council Building, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To adopt as permanent rules the temporary rules adopted effective December 31, 1993, for the 1994 State Medical Facilities Plan.

Comment Procedures: Written comments must be submitted no later than January 14, 1994, to Mr. Jackie R. Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342.

Editor's Note: These Rules were filed as temporary amendments effective December 31, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3001 CERTIFICATE OF NEED REVIEW CATEGORIES

The agency has established ~~nine~~ 12 categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency may require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The ~~nine~~ 12 categories of facilities and services are:

- (1) Category A. Proposals, except those proposals included in Categories B through F and Categories H through ~~K~~ L, for acute health service facilities, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (2) Category B. Proposals for long-term nursing facility beds which are reviewed against the State Medical Facilities Plan.
- (3) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.
- (4) Category D. Proposals for new or expanded end-stage renal disease treatment facilities; and relocations of existing dialysis stations to another county.

- (5) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities.
- (6) Category F. Proposals for new or expanded ambulatory surgical facilities except those proposals included in Categories J or K.
- (7) Category G. Proposals involving cost overruns; expansions of existing continuing care facilities which are licensed by the Department of Insurance at the date the application is filed and are applying under exemptions from need determinations in 10 NCAC 3R .3030; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds; reallocation of beds or stations; proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals for new home health offices applying pursuant to 10 NCAC 3R .3050(b)(6); and any other proposal not included in Categories A through F, or Category H through Category ~~K~~ L.
- (8) Category H. Proposals for new continuing care facilities applying for exemption under 10 NCAC 3R .3050(b)(2) and new home health agencies or offices.
- (9) Category I. Proposals for converting hospital beds to nursing care under 10 NCAC 3R .3050(b)(1).
- (10) Category J. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplastic equipment, cardiac catheterization equipment, heart-lung bypass machine, gamma knife, lithotriptors, magnetic resonance imaging scanner, positron emission tomography scanners, and major medical equipment as defined in G.S. 131E-176 (14f).
- (11) Category K. Proposals for diagnostic centers and oncology treatment centers.
- (12) Category L. Proposals for new hospice home care programs, new hospice inpatient beds and new hospice residential beds.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in ~~1993~~ 1994:

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Person	IV	March 1, 1993
Hertford	VI	April 1, 1993
Macon	I	August 1, 1993
Mitchell	I	August 1, 1993
Johnston	IV	March 1, 1993
Harnett	V	October 1, 1993
Wayne	VI	April 1, 1993
Duplin	VI	October 1, 1993
Washington	VI	October 1, 1993
Wilkes	I	February 1, 1993
<u>Brunswick</u>	<u>V</u>	<u>April 1, 1994</u>
<u>Pender</u>	<u>V</u>	<u>April 1, 1994</u>

County	HSA	CON Beginning Review Date
<u>Greene</u>	<u>VI</u>	<u>April 1, 1994</u>

- (2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

Counties	HSA	CON Beginning Review Date
<u>Mecklenburg</u>	<u>II</u>	<u>May 1, 1993</u>
<u>Buncombe, Madison, Mitchell, Yancey</u>	<u>I</u>	<u>June 1, 1993</u> <u>1994</u>
<u>Gaston, Lincoln</u>	<u>III</u>	<u>November 1, 1994</u>
<u>Rowan, Iredell, Davie</u>	<u>III</u>	<u>May 1, 1994</u>
<u>Orange, Person, Chatham</u>	<u>IV</u>	<u>May 1, 1994</u>
<u>Halifax</u>	<u>VI</u>	<u>December 1, 1994</u>
<u>Moore, Hoke, Richmond, Montgomery, Anson</u>	<u>V</u>	<u>June 1, 1993</u>
<u>Craven, Jones, Pamlico, Carteret</u>	<u>VI</u>	<u>June 1, 1993</u>
<u>Pitt</u>	<u>VI</u>	<u>June 1, 1993</u>
<u>Beaufort, Washington, Tyrrell, Hyde, Martin</u>	<u>VI</u>	<u>December 1, 1993</u>
<u>Pitt</u>	<u>VI</u>	<u>December 1, 1994</u>
<u>Beaufort, Washington, Tyrrell, Hyde, Martin</u>	<u>VI</u>	<u>June 1, 1994</u>
<u>Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck</u>	<u>VI</u>	<u>June 1, 1994</u>

- (3) Category D. Subcategory End Stage Renal Disease Dialysis Stations. Dialysis station review shall be conducted under the provisions of 10 NCAC 3R .3032.
- (4) Category H. Subcategory Home Health Agencies or Offices.

County	HSA	CON Beginning Review Date
<u>Davidson</u>	<u>H</u>	<u>April 1, 1993</u>
<u>Forsyth</u>	<u>H</u>	<u>April 1, 1993</u>
<u>Guilford</u>	<u>H</u>	<u>October 1, 1993</u>
<u>Dare</u>	<u>VI</u>	<u>February 1, 1993</u>
<u>Iredell</u>	<u>III</u>	<u>July 1, 1994</u>
<u>Mecklenburg</u>	<u>III</u>	<u>February 1, 1994</u>
<u>Durham</u>	<u>IV</u>	<u>February 1, 1994</u>
<u>Cumberland</u>	<u>V</u>	<u>February 1, 1994</u>

PROPOSED RULES

- (5) ~~All categories for which review dates are not specified in Subparagraph (1), (2), (3), (4) of this Rule. If a need has been identified for any health service or facility in 10 NCAC 3R .3030, applications for certificates of need for those services will be reviewed pursuant to the following review schedule, unless another schedule has been specified in Items (1) - (4) of this Rule.~~

CON BEGINNING REVIEW DATE	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1	--	--	--	--	--	--
February 1	B, G, I	B, G, I	A, G, E, H, I, <u>J, K</u>	A, G, E, H, I, <u>J, K</u>	A, G, E, H, I, <u>J, K</u>	A, G, E, H, I, <u>J, K</u>
March 1	--	--	B, G	B, G	--	--
April 1	A, G, E, H, <u>J, K</u>	A, G, E, H, <u>J, K</u>	--	--	B, G	B, G
May 1	--	--	C, G, F	C, G, F	--	--
June 1	A, C, G, F, D, <u>J, K</u>	A, C, G, F, D, <u>J, K</u>	D	D	A, C, G, F, D, <u>J, K</u>	A, C, G, F, D, <u>J, K</u>
July 1	--	--	A, G, H, <u>J, K</u>	A, G, H, <u>J, K</u>	--	--
August 1	B, G, <u>L</u>	B, G, <u>L</u>	--	--	G, E, H	G, E, H
September 1	--	--	B, G, E, I, K , <u>L</u>	B, G, E, I, K , <u>L</u>	--	--
October 1	G, E, H, I, K	G, E, H, I, K	--	--	B, G, I, K , <u>L</u>	B, G, I, K , <u>L</u>
November 1	--	A, C, G, F, <u>J, K</u>	A, C, G, F, <u>J, K</u>	A, C, G, F, <u>J, K</u>	--	--
December 1	A, C, D, G, F, <u>J, K</u>	D	D	D	A, C, D, G, F, <u>J, K</u>	A, C, D, G, F, <u>J, K</u>

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3030 FACILITY AND SERVICE NEED DETERMINATIONS

Facility and service need determinations are shown in Items (1) - ~~(14)~~ (16) of this Rule. The need determinations ~~are subject to reductions~~ shall be revised continuously throughout 1994 pursuant to 10 NCAC 3R .3040. ~~based on certificates of need awarded after September 17, 1992:~~

- (1) Category A. Acute Health Service Facilities. It is determined that there is no need for additional acute care beds and no reviews are scheduled.

C.J. Harris Community Hospital System — HSA I — 15 beds

- (2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds Needed
Person	IV	30
Hertford	VI	20
Macon	I	30
Mitchell	I	20
Johnston	IV	50
Harnett	V	90

County	HSA	Number of Nursing Beds Needed
Duplin	VI	30
Washington	VI	40
Wayne	VI	50
Wilkes	I	70
Brunswick	V	40
Pender	V	20
Greene	VI	10

(3) Category C.

- (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
- (b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Need Determination	
		<u>Child</u>	<u>Adult</u>
Mecklenburg	II	6	24
Buncombe, Madison, Mitchell, Yancey	I	6 0	6
Gaston, Lincoln	III	0	6
Rowan, Iredell, Davie	III	12	0
Orange, Person, Chatham	IV	6	0
Halifax	VI	12	0
Moore, Hoke, Richmond, Montgomery, Anson	V	18	0
Craven, Jones, Pamlico, Carteret	VI	6	0
Pitt	VI	6 12	0
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	6	18 6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	0	18

- (c) ~~Substance Abuse and Chemical Dependency Facility Treatment~~ Beds. It is determined that there is no need for additional chemical dependency treatment beds and no reviews are scheduled.
- (4) Category D. End-Stage Renal Disease Treatment Facilities. Need for end-stage renal dialysis facilities or stations is determined as is provided in 10 NCAC 3R .3032.
- (5) Category E. Inpatient Rehabilitation Facility Beds. It is determined that there is no need for additional rehabilitation beds and no reviews are scheduled.

HSA	Beds
I	0
II	0
III	20
IV	0
V	24
VI	29

- (6) Category F. Ambulatory Surgery ~~Facilities~~ Operating Rooms. It is determined that there is no need for additional ~~facilities~~ ambulatory surgery operating rooms and no reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section 1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility.
- (7) Category H. New Home Health Agencies or Offices.

County	HSA	Number of Agencies or Offices Needed
<u>Davidson</u>	II	3
<u>Forsyth</u>	II	2
<u>Guilford</u>	II	2
<u>Dare</u>	VI	4
<u>Iredell</u>	III	1
<u>Mecklenburg</u>	III	2
<u>Durham</u>	IV	1
<u>Cumberland</u>	V	1

- (8) Category J. Open heart surgery ~~operating rooms~~ services. It is determined that there is no need for additional ~~rooms and no reviews are scheduled.~~ open heart surgery services and no reviews are scheduled; except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services to meet specific needs if utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.
- (9) Category J. Heart-Lung Bypass Machines. It is determined that there is no need for additional heart-lung bypass machines and no reviews are scheduled; except that a health service facility that currently provides open heart surgery services may apply for a certificate of need to acquire additional heart-lung bypass machinery if the existing heart-lung machinery used by the health service facility is utilized at or above 80% of capacity.
- (10) Category J. Cardiac Angioplasty Equipment. It is determined that there is no need for additional cardiac angioplasty equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac angioplasty services may apply for a certificate of need to acquire additional cardiac angioplasty equipment if utilization of cardiac angioplasty equipment used by the health service facility exceeds 80% of capacity.
- (11) Category J. Cardiac Catheterization Equipment. It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for

- a certificate of need to acquire additional cardiac catheterization equipment if utilization of cardiac catheterization equipment used by the health service facility exceeds 80% of capacity.
- (12) ~~(9) Category J. Solid organ transplant services shall be developed and offered only by and allogeneic bone marrow transplant programs—It is determined that these programs are needed only in academic medical center teaching hospitals as defined under designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.~~
- (10) ~~Gamma knife—It is determined that there is no need for gamma knife stereotactic radiosurgery services in any facility and no reviews are scheduled.~~
- (13) Category J. Bone Marrow Transplantation Services. It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.
- (11) ~~Positron Emission Tomography—It is determined that there is no need for additional cyclotron-based positron emission tomography capacity in any facility and no reviews are scheduled.~~
- (14) Category J. Gamma Knife Equipment. It is determined that there is no need for gamma knife equipment and no reviews are scheduled.
- (15) Category J. Positron Emission Tomography Scanner. It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.
- (16) Category L.
(a) New Hospice Home Care Programs.

<u>County</u>	<u>HSA</u>	<u>Number of New Hospice Home Care Programs Needed</u>
<u>Graham</u>	<u>I</u>	<u>1</u>
<u>McDowell</u>	<u>I</u>	<u>1</u>
<u>Swain</u>	<u>I</u>	<u>1</u>
<u>Cumberland</u>	<u>V</u>	<u>1</u>
<u>Robeson</u>	<u>V</u>	<u>1</u>
<u>Edgecombe</u>	<u>VI</u>	<u>1</u>
<u>Hyde</u>	<u>VI</u>	<u>1</u>
<u>Onslow</u>	<u>VI</u>	<u>1</u>
<u>Wayne</u>	<u>VI</u>	<u>1</u>

- (b) New Hospice Inpatient Beds (Single Counties). It is determined that the following single counties have a need for six or more new Hospice Inpatient Beds:

<u>County</u>	<u>HSA</u>	<u>Number of New Hospice Inpatient Beds Needed</u>
<u>Forsyth</u>	<u>II</u>	<u>8</u>
<u>Guilford</u>	<u>II</u>	<u>7</u>

<u>County</u>	<u>HSA</u>	<u>Number of New Hospice Inpatient Beds Needed</u>
<u>Wake</u>	<u>IV</u>	<u>7</u>

- (c) New Hospice Inpatient Beds (Contiguous Counties). It has been determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the immediately surrounding North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

<u>County</u>	<u>HSA</u>	<u>Hospice Inpatient Bed Deficit</u>
<u>Alexander</u>	<u>I</u>	<u>1</u>
<u>Ashe</u>	<u>I</u>	<u>1</u>
<u>Avery</u>	<u>I</u>	<u>1</u>
<u>Buncombe</u>	<u>I</u>	<u>1</u>
<u>Burke</u>	<u>I</u>	<u>1</u>
<u>Cleveland</u>	<u>I</u>	<u>3</u>
<u>Henderson</u>	<u>I</u>	<u>4</u>
<u>Madison</u>	<u>I</u>	<u>1</u>
<u>Polk</u>	<u>I</u>	<u>1</u>
<u>Rutherford</u>	<u>I</u>	<u>2</u>
<u>Transylvania</u>	<u>I</u>	<u>1</u>
<u>Watauga</u>	<u>I</u>	<u>1</u>
<u>Wilkes</u>	<u>I</u>	<u>1</u>
<u>Yancey</u>	<u>I</u>	<u>1</u>
<u>Alamance</u>	<u>II</u>	<u>5</u>
<u>Caswell</u>	<u>II</u>	<u>1</u>
<u>Davidson</u>	<u>II</u>	<u>2</u>
<u>Randolph</u>	<u>II</u>	<u>4</u>
<u>Rockingham</u>	<u>II</u>	<u>3</u>
<u>Stokes</u>	<u>II</u>	<u>1</u>
<u>Surry</u>	<u>II</u>	<u>2</u>

County	HSA	Hospice Inpatient	
		Bed	Deficit
<u>Cabarrus</u>	<u>III</u>	<u>2</u>	
<u>Gaston</u>	<u>III</u>	<u>4</u>	
<u>Iredell</u>	<u>III</u>	<u>3</u>	
<u>Mecklenburg</u>	<u>III</u>	<u>4</u>	
<u>Rowan</u>	<u>III</u>	<u>3</u>	
<u>Stanly</u>	<u>III</u>	<u>1</u>	
<u>Union</u>	<u>III</u>	<u>2</u>	
<u>Chatham</u>	<u>IV</u>	<u>2</u>	
<u>Durham</u>	<u>IV</u>	<u>3</u>	
<u>Johnston</u>	<u>IV</u>	<u>1</u>	
<u>Lee</u>	<u>IV</u>	<u>1</u>	
<u>Orange</u>	<u>IV</u>	<u>1</u>	
<u>Bladen</u>	<u>V</u>	<u>1</u>	
<u>Brunswick</u>	<u>V</u>	<u>2</u>	
<u>Columbus</u>	<u>V</u>	<u>2</u>	
<u>Harnett</u>	<u>V</u>	<u>1</u>	
<u>Moore</u>	<u>V</u>	<u>2</u>	
<u>New Hanover</u>	<u>V</u>	<u>3</u>	
<u>Pender</u>	<u>V</u>	<u>1</u>	
<u>Richmond</u>	<u>V</u>	<u>1</u>	
<u>Scotland</u>	<u>V</u>	<u>1</u>	
<u>Bertie</u>	<u>VI</u>	<u>2</u>	
<u>Duplin</u>	<u>VI</u>	<u>1</u>	
<u>Greene</u>	<u>VI</u>	<u>2</u>	
<u>Hertford</u>	<u>VI</u>	<u>2</u>	
<u>Nash</u>	<u>VI</u>	<u>1</u>	
<u>Northampton</u>	<u>VI</u>	<u>1</u>	
<u>Onslow</u>	<u>VI</u>	<u>1</u>	
<u>Pitt</u>	<u>VI</u>	<u>1</u>	
<u>Wayne</u>	<u>VI</u>	<u>1</u>	
<u>Wilson</u>	<u>VI</u>	<u>1</u>	

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3032 DIALYSIS STATION NEED DETERMINATION

(a) The Medical Facilities Planning Section (MFPS) shall determine need for dialysis stations and facilities two times each calendar year, and shall make a report of such determinations available to all who request it. This report shall be called the MFPS Semiannual Dialysis Report (SDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc.
- (2) Certificate of need decisions, decisions appealed, appeals settled and awards, from the Certificate of Need Section, DFS.
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS.
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan, as provided in G.S. 131E-183.

(b) Need for dialysis stations and facilities shall be determined as follows:

- (1) County Need
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of ~~1988~~ 1989 to the end of ~~1992~~ 1993 is multiplied by the county's ~~1992~~ 1993 year end total number of patients in the MFPS Semiannual Dialysis Report (SDR), and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total ~~1993~~ 1994 patients.
 - (B) The percent of each county's total patients who were home dialysis patients at the end of ~~1992~~ 1993 is multiplied by the county's projected total ~~1993~~ 1994 patients, and the product is subtracted from the county's projected total ~~1993~~ 1994 patients. The remainder is the county's projected ~~1993~~ 1994 in-center dialysis patients.
 - (C) The projected number of each county's ~~1993~~ 1994 in-center patients is divided by 3.2. The ~~dividend~~ quotient is the projection of the county's ~~1993~~ 1994 in-center dialysis stations.
 - (D) From each county's projected number of ~~1993~~ 1994 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's ~~1993~~ 1994 station need projection.
 - (E) If a county's ~~1993~~ 1994 station need projection is ~~seven~~ 10 or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the ~~1993~~ 1994 station need determination is the same as the ~~1993~~ 1994 station need projection.
- (2) Facility Need. A dialysis facility located in a county whose unmet need in the reference Semiannual Dialysis Report (SDR) is less than ~~7~~ 10 stations is determined to need additional stations to the extent that:
 - (A) Its utilization, reported in the SDR, is greater than 3.2 patients per station.
 - (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center hemodialysis patients ~~on December 31, 1991 reported in the previous SDR (SDR₁)~~ is subtracted from the number of ~~such in-center hemodialysis patients on December 31, 1992 and the remainder is divided by the number of in-center patients on December 31, 1991~~ reported in the current SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate.
 - (ii) The ~~dividend~~ quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
 - (iii) The ~~dividend~~ quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the SDR until the end of calendar ~~1993~~ 1994.
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the

facility's in-center patients reported in the SDR and that product is added to such reported number of in-center patients.

- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the ~~dividend quotient~~ is subtracted the facility's current number of certified and pending stations as recorded in the SDR. The remainder is the number of stations needed.

- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of ~~seven~~ 10 stations.

The schedule for publication of the Medical Facilities Planning Section's Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications based on each issue of this report in ~~1993~~ 1994 shall be as follows:

Date for Period Ending	Receipt of SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Dates
Dec. 31, 1992	Feb. 28, 1993	March 19, 1993	May 14, 1993	June 1, 1993
<u>Dec. 31, 1993</u>	<u>Feb. 28, 1994</u>	<u>March 19, 1994</u>	<u>May 16, 1994</u>	<u>June 1, 1994</u>
June 30, 1993	Aug. 31, 1993	Sept. 20, 1993	Nov. 15, 1993	Dec. 1, 1993
<u>June 30, 1994</u>	<u>Aug. 31, 1994</u>	<u>Sept. 20, 1994</u>	<u>Nov. 15, 1994</u>	<u>Dec. 1, 1994</u>

An application for a certificate of need pursuant to this Rule shall be accepted only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3040 REALLOCATIONS AND ADJUSTMENTS

(a) ~~Reallocations.~~ **REALLOCATIONS.**

- (1) Reallocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated.
- (2) Beds or services which are reallocated once in accordance with this policy shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.
- (3) ~~(4)~~ Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision has been appealed shall not be reallocated until the appeal is resolved.
 - (A) Appeals Resolved Prior to September 17: If an appeal is resolved in the calendar year prior to September 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next amendment to 10 NCAC 3R .3030.
 - (B) Appeals Resolved On Or After September 17: If the appeal is resolved on or after September 17 in the calendar year, the beds or services shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be given by the Certificate of Need Section no less than 45 days prior to the due date for receipt of new applications.

Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report. ~~Reallocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated. Beds or services which are reallocated once in accordance with this policy shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.~~

- (4) (2) Withdrawals and Relinquishments. A need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
- (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,
 - (B) the date on which an appeal of the withdrawal is finally resolved against the holder, or
 - (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be given no less than 45 days prior to the due date for submittal of the new applications.

(5) (3) Need Determinations for which No Applications are Received

- (A) Services or Beds with Scheduled Review on or Before September 17 ~~October 1~~: Need determinations, or portions of such need, for services or beds in this category include long-term nursing care beds, home health agencies or offices, dialysis stations, hospice home care programs, hospice inpatient beds, and beds in intermediate care facilities for the mentally retarded (ICF/MR) with the exception of ICF/MR ~~allocations~~ need determinations with a scheduled review that begins after ~~September 17~~ October 1. The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual amendment to 10 NCAC 3R .3030.
- (B) Services or Beds with ~~Two Scheduled Review Periods and ICF/MR Fall Review~~ After October 1: Need determinations for services or beds in this category include acute care beds, rehabilitation beds, ambulatory surgery operating rooms, medical technology, psychiatric beds, substance abuse beds, ~~and ICF/MR beds,~~ bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplastic equipment, cardiac catheterization equipment, heart-lung bypass machine, gamma knife, lithotriptors, magnetic resonance imaging scanner, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers and oncology treatment centers for which review commences after ~~September 17~~ October 1. A need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category G review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be given by the Certificate of Need Section no less than 45 days prior to the due date for submittal of new applications.

(6) (4) Need Determinations not Awarded because Application Disapproved.

- (A) Disapproval prior to September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before September 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual amendment to 10 NCAC 3R .3030 if no appeal is filed.
- (B) Disapproval on or After September 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after September 17, shall be reallocated by the Certificate of Need Section. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed no less than 80 days prior to the due date for submittal of the new applications.

(b) CHANGES IN NEED DETERMINATIONS. ~~Need determinations in 10 NCAC 3R .3030 and .3032 shall be revised after the effective date of this Rule as necessary to reflect:~~

- (1) ~~dialysis stations decertified after September 17, 1992~~
- (2) ~~health service facilities or beds delicensed after September 17, 1992~~
- (3) ~~psychiatric beds licensed pursuant to G.S. 131E-184(e),~~
- (4) ~~errors in inventories on which need determinations in 10 NCAC 3R .3030 are based.~~

- (1) The need determinations in 10 NCAC 3R .3030 and .3032 shall be revised continuously throughout 1994 to reflect all changes in the inventories of:
 - (A) the health services listed at G.S. 131E-176(16)(f);
 - (B) health service facilities;
 - (C) health service facility beds;
 - (D) dialysis stations;
 - (E) the equipment listed at G.S. 131E-176(16)(f1); and
 - (F) mobile medical equipment

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .3030 or .3032 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.
- (2) Inventories shall be updated to reflect:
 - (A) decertification of home health agencies or offices and dialysis stations;
 - (B) delicensure of health service facilities and health service facility beds;
 - (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16)(f1) and (s);
 - (D) elimination or reduction of a health service as listed at G.S. 131E-176(16)(f);
 - (E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
 - (F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
 - (G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
- (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .3030 or .3032 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

(e) ~~REVIEW PERIODS.~~ Determinations of need for nursing facility beds, home health agencies or offices, ICF/MR beds are available to be applied for only once during the calendar year. The review cycles for these allocations are specified in 10 NCAC 3R .3020 (1)-(4). All other allocations are available for the certificate of need review cycles specified in 10 NCAC 3R .3020 (5).

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3050 POLICIES

(a) ACUTE CARE FACILITIES AND SERVICES

- (1) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .1510 - Bed Capacity.
- (2) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered ~~to be more cost efficient than an alternative to new construction unless shown otherwise.~~ Hospitals falling below utilization targets are shown in 10 NCAC 3R .3050(a)(4) are assumed to have underutilized space. Any such hospital proposing new construction must clearly demonstrate that it is more cost-effective than conversion of existing space.
- (3) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .3030.
 - (A) ~~For purposes of this Rule, the following facilities are designated the State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospitals Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:~~
 - (A) ~~Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.~~
 - (B) ~~Houses extensive basic medical science and clinical research programs, patients and equipment.~~
 - (C) ~~Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.~~
 - (i) Duke University Hospital.

- (ii) Carolinas Medical Center,
- (iii) North Carolina Baptist Hospitals,
- (iv) Pitt County Memorial Hospital,
- (v) University of North Carolina Hospitals.

(B) Exemption from the provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

- (i) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
- (ii) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
- (iii) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(4) Reconversion to Acute Care. Facilities redistributing beds from acute care bed capacity to rehabilitation or psychiatric use shall obtain a certificate of need to convert this capacity back to acute care. Application for such reconversion to acute care of beds converted to psychiatry or rehabilitation shall be evaluated against the hospital's utilization in relation to target occupancies used in determining need shown in 10 NCAC 3R .3030 without regard to the acute care bed need shown in the Rule. These target occupancies are:

Licensed Bed Capacity	Percent Occupancy
1 - 49	65
50 - 99	70
100 - 199	75
200 - 699	80
700 - +	81.5

(5) Multi-Specialty Ambulatory Surgery. After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to "multi-specialty facilities programs" over single "specialty facilities programs" in areas where need is demonstrated in 10 NCAC 3R .3030. A multi-specialty ambulatory surgical facility program means a facility program providing services in at least three of the following areas: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedics, urology, and oral surgery. ~~A new multi-specialty~~ An ambulatory surgical facility shall have a minimum of two operating rooms, and no fewer than two provide at least two designated operating rooms with general anesthesia capabilities, and at least one designated recovery room.

(6) ~~Expansion of the Distribution of Inpatient Rehabilitation Beds System.~~ After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to ~~applicants proposing establishment of inpatient proposals that make rehabilitation programs so as to make these services available to the underserved populations.~~ services more accessible to patients and their families or are part of a comprehensive regional rehabilitation network.

(7) ~~Ambulatory Surgery Need Determination Exclusion.~~ ~~The determination of need for ambulatory surgical operating rooms defined in NCAC 3R .3030(6) shall not be considered in the review of an application for a certificate of need to convert existing operating rooms to a freestanding ambulatory surgical facility, if submitted by a hospital designated as a Rural Primary Care Hospital by the N. C. Office of Rural Health Services pursuant to section 1820(f) of the Social Security Act.~~

(b) LONG-TERM CARE FACILITIES AND SERVICES.

(1) Provision of Hospital-Based Long-Term Nursing Care. A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and other relevant rules, to convert up to ten beds from its licensed acute care bed capacity

for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .3030 if the hospital:

- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, ~~1993~~ 1994; and
- (B) on January 1, ~~1993~~ 1994, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Human Resources determines that the hospital is meeting the conditions outlined in this Rule.

"Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Determination of the patient's need for hospital-based long-term nursing care shall be made in accordance with existing criteria and procedures for determining need for long-term nursing care administered by the Division of Medical Assistance and the Medicare program.

Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

For purposes of this Rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need.

An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 3R .3050(a)(4), without regard to the acute care bed need shown in 10 NCAC 3R .3030. A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (i) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (ii) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;
- (iii) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need. Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (I) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 3R .3030; or
- (II) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (III) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499),

such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Rural Primary Care Hospitals pursuant to section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E 175-190, may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 3R .3030 and this Rule.

Beds certified as a "distinct part" under this Rule shall be noted as such in 10 NCAC 3R

.3000 and shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the February 1 review cycle. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 3R .3030. Continuation of this Rule shall be reviewed and approved by the Department of Human Resources annually. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1986 Plan are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. The Department of Human Resources shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

(2) Plan Exemption for Continuing Care Facilities.

(A) Qualified continuing care facilities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .3030. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

(i) ~~(A)~~ Will only be developed concurrently with, or subsequent to construction on the same site, of facilities for both of the following levels of care:

(I) ~~(i)~~ independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms within a suitable structure;

(II) ~~(ii)~~ domiciliary care (home for the aged) beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.

(ii) ~~(B)~~ Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and regulations) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract. Financial consideration paid by persons purchasing a continuing care contract shall be equitable between persons entering at the "independent living" and "domiciliary" levels of care.

(iii) ~~(C)~~ Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.

(iv) ~~(D)~~ Will not be certified for participation in the Medicaid program.

(B) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1985 SMFP are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983, or Chapter 445, Session Laws 1985 shall not be amended except by law.

(3) Development of Home Health Services. After applying other required criteria, when superiority among two or more competing home health agency or office certificate of need applications is uncertain, favorable consideration shall be given to proposals which:

(A) provide an expanded scope of services (including nursing, physical therapy, speech therapy, and home health aide service);

(B) provide the widest range of treatments within a given service; and

(C) have the ability to offer services on a seven days per week basis as required to meet patient needs.

(4) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body,

votes to discontinue the agency's provision of home health services; and

- (A) the agency is the only home health agency with an office physically located in the county; and
- (B) the agency is not being lawfully transferred to another entity;
need for a new home health agency or office in the county is thereby established through this Rule.

Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one home health agency or office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

- (5) Availability of Dialysis Care. After applying other required criteria, when superiority among two or more competing dialysis facility or station certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing to provide or arrange for:
 - (A) home training and backup for patients suitable for home dialysis in the ESRD dialysis facility or in a facility that is a reasonable distance from the patient's residence;
 - (B) ESRD dialysis service availability at times that do not interfere with ESRD patients' work schedules;
 - (C) services in rural, remote areas.
- (6) Need for an Additional Home Health Agency Office Within an Existing Home Health Service Area. When an existing home health agency is serving 150 home health patients or more on an annual basis (as documented on the agency's ~~1993~~ most recent license renewal application or as documented and certified by the agency for a 12 month period to the satisfaction of the Division of Facility Services) in a county in its authorized service area as defined in 10 NCAC 3R .0320 in which the agency has no home health office, the agency shall be allowed to apply for a CON to open a home health agency office within that county. Such application must document to the satisfaction of the Certificate of Need Section that the additional home health agency office will provide improved client service at a lower cost. The additional home health agency office shall only be allowed to provide services within the agency's authorized service area. No applications shall be received under this provision for additional home health agency offices in counties outside of a home health agency's authorized service area or for any county within the service area where the agency already has one or more home health agency offices or where the agency is not serving at least 150 home health patients on an annual basis. This Rule shall allow no expansion of home health services outside of the agency's service area as defined by 10 NCAC 3R .0320.

(c) MENTAL HEALTH FACILITIES AND SERVICES.

- (1) Appropriate Provision of Care. Hospitalization shall be considered the most restrictive form of therapeutic intervention or treatment and shall be used only when this level of 24-hour care and supervision is required to meet the patient's health care needs.
- (2) Linkages Between Treatment Settings. Anyone applying for a certificate of need for psychiatric, ICF/MR or substance abuse beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services, relative to their endorsement of the project and involvement in the development of a client admission and discharge agreement.
- (3) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. The process of transferring beds shall not result in a net change in the number of psychiatric beds available, but rather in the location of beds counted in the existing inventory. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a

written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Human Resources, and the person submitting the proposal.

- (4) Inpatient Psychiatric Services for Children and Adolescents. Inpatient psychiatric treatment of children and adolescents which is more extensive than stabilization shall occur in units which are separate and distinct from both adult psychiatric units and general pediatric units. In order to maximize efficiency and ensure the availability of a continuum of care, psychiatric beds for children and adolescents shall be developed in conjunction with outpatient treatment programs.
- ~~(5) Adjustment to Psychiatric Bed Allocations. The Medical Facilities Planning Section shall reduce any psychiatric bed need determinations for any affected planning area by the number of beds permitted by the provisions of G.S. 131E-184(e) contracted subsequent to the preparation of any need determination shown in 10 NCAC 3R .3030 and prior to the beginning of the review period for which an application is submitted.~~
- (5) (6) Involuntarily Committed Patients. All certificate of need applications for psychiatric beds shall indicate the proponents' willingness to be designated to serve involuntarily committed patients.
- (6) (7) Substance Abuse Programs to Treat Adolescents. Adolescents shall receive substance abuse treatment services that are distinct from services provided to adults.
- (7) (8) Determination of Intermediate Care Bed Need for Mentally Retarded/Developmentally Disabled Persons. After applying other required criteria, when superiority among two or more competing ICF/MR certificate of need applications is uncertain, favorable consideration shall be given to counties that do not have ICF/MR group homes when such counties are part of a multi-county area for which a need is shown in 10 NCAC 3R .3030.
- (8) (9) Transfer of Beds from State Mental Retardation Centers. Facilities proposing to transfer ICF/MR beds from State mental retardation centers to communities shall demonstrate that they are committed to serving the same type of residents normally served in the State mental retardation centers. To ensure that relocated beds will serve those persons, any certificate of need application for beds allocated under the above policy must meet the requirements of Chapter 858 of the 1983 Session Laws. The application for transferred beds shall include a written agreement by the applicant with the following representatives which outlines the operational aspects of the bed transfers: Director of the Area MH/DD/SAS Program serving the county where the program is to be located; the Director of the applicable State Mental Retardation Center; the Chief of Developmental Disability Services in the DMH/DD/SAS; and the Secretary of the Department of Human Resources.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26H .0105.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 18, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action: Rule necessary to continue Return of Equity payments to Nursing Facilities.

Comment Procedures: Written comments concerning this amendment must be submitted by January 18, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, 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 26H - REIMBURSEMENT

PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0105 RETURN ON EQUITY

(a) In addition to the prospective rates described in Rule .0104, proprietary providers are eligible to receive a return on equity capital payment each year.

(b) ~~The rate of return shall equal the lower of 11.875 percent or the interest rate for the return on equity paid to Skilled Nursing Facilities by the Medicare Program for the appropriate cost reporting period. Effective October 1, 1993, the rate of return shall equal the lower of 6.125 percent or the published interest rate for the cost report period as prepared by the Office of the Actuary, Health Care Financing Administration for Proprietary Skilled Nursing Facilities. This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).~~

(c) The rate is calculated on a capital base determine to be the total assets of the provider, its related home office, if any, that are required to provide nursing care less related liabilities. The value of the fixed assets is the historical cost less accumulated depreciation of buildings and improvements, all equipment, and vehicles. Leases and direct capitalized expenditures are not to be included in this calculation. Working capital shall not be recognized beyond a level equal to 16.5 percent of the facility's total annual cost.

(d) Liabilities must include all liabilities related to the assets of the facility regardless of nature or named payor. If the state determines that the liability has been incurred to acquire an asset named on the balance sheet that liability shall be counted.

(e) Providers have a positive obligation to identify all liabilities that may bear upon reported assets. Failure to disclose a liability later determined to be related to a reported asset shall result in a suspension of Return on Equity payments for the year(s) in which the failure occurred and up to five additional years at the discretion of the state. If the state determines that the provider's failure to report a related liability was an unintentional oversight, the potential five year penalty shall not be applied.

(f) The value of assets and related capital indebtedness when asset ownership changes shall be established in conformance with the provisions of Rule .0104(c).

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to repeal rule cited as 10 NCAC 42A .0310.

The proposed effective date is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 14, 1994 at the Albemarle Building, Room 844, 325 North Salisbury Street, Raleigh, NC 27603-5905.

Reason for Proposed Action: To eliminate a rule governing Foster Care Services to Adults, since rules governing Adult Placement Services will replace Foster Care Services to Adults.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of this rule by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603-5905, (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42A - ADULT PLACEMENT SERVICES

SECTION .0300 - FOSTER CARE SERVICES FOR ADULTS

.0310 USE OF DOMICILIARY HOMES IN OTHER COUNTIES

~~(a) Placement in a licensed domiciliary home made by one county in another county is made through the county department of social services where the home is located. The plan is worked out between the county department of social services where the home is located and the administrator on the basis of full social and medical information. There must be a definite agreement about the plan and mutual responsibilities between the two counties before admission is made.~~

~~(b) Forms FL 2 or MR 2 (medical forms) and DSS 1865 (resident register) are sent to the home prior to or at the time of admission and to the county department of social services supervising the home.~~

~~(c) The county of legal residence requests the county supervising the home to assume responsibility for providing placement services to residents being placed in the supervising county, reviewing the need for services under Title XX of the Social Security Act in addition to foster care services and reporting back to the county of legal residence, as needed.~~

~~(d) Workers may not contact homes in other counties directly regarding admissions. After a resident is placed, counties may reach an agreement about contacts.~~

~~(e) Since the county of legal residence retains the responsibility for providing financial assistance, it will be responsible for planning for new living arrangements for the resident, if the need should arise, and will maintain an open income maintenance case so long as financial assistance is provided. With regard to services, the case will frequently be open in more than one county at the same time.~~

~~(f) It must be remembered that a resident of a group home has the right to accept or decline services. Therefore, after the initial foster care services are completed to the satisfaction of the client and his family, the case might be closed for services in both counties. The case will be re-opened by the appropriate county when a new request for services is initiated. If the request involves planning for new living arrangements, the county of legal residence would be responsible.~~

~~(g) When county department of social services is making plans for a resident to go to a home in another county, the department of social services of the county in which the home is located and the administrator of the home shall know in advance the plan for transportation and the time of arrival. If the placement is arranged by relatives without the knowledge of the county departments of social services and later the county department is approached for financial assistance, this is to be provided by the county from which the client was placed.~~

Statutory Authority G.S. 143B-153.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Labor intends to

amend rules cited as 13 NCAC 7F .0101 and .0401.

The proposed effective date of this action is March 1, 1994

The public hearing will be conducted at 10:00 a.m. on January 5, 1994 at the Seaboard Building, Conference Room, 413 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action:

13 NCAC 7F .0101 - Update of exposure levels reflecting new research since 1971; proposed levels are consistent with levels proposed by federal OSHA.

13 NCAC 7F .0401 - Correction to obvious typographical error.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department within three business days prior to the hearing date. Written comments will be accepted until January 15, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSH, 413 N. Salisbury Street, Raleigh, NC 27603-5942.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are adopted by reference except ~~that~~ as follows:

- (1) ~~within~~ Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, §1910.120(q)(6) is amended by adding a new level of training:

"(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
- (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
- (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
- (D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
- (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

- (2) Subpart Z -- Toxic and Hazardous Substances, 29 CFR 1910.1000, Air Contaminants:

Re-adoption of revised permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2496 -2533 and pages 2668 - 2695 as follows:

"RESPIRATORY EFFECTS

<u>Chemical Name</u>	<u>CAS No.</u>	<u>PEL</u>
<u>Aluminum</u>	<u>7429-90-5</u>	<u>15 mg/m³ TWA Total Dust</u> <u>5 mg/m³ TWA Resp. fraction</u>
<u>Bismuth telluride, Undoped</u>	<u>1304-82-1</u>	<u>15 mg/m³ TWA Total Dust</u> <u>5 mg/m³ TWA Resp. fraction</u>
<u>Chlorine dioxide</u>	<u>10049-04-4</u>	<u>0.1 ppm TWA</u> <u>0.3 ppm STEL</u>
<u>Chromium metal (as Cr)</u>	<u>7440-47-3</u>	<u>1 mg/m³ TWA</u>
<u>Coal Dust (<5% quartz) Resp. fraction</u>	<u>None</u>	<u>2 mg/m³ TWA</u>
<u>Coal Dust (>5% quartz)</u>	<u>None</u>	<u>0.1 mg/m³ TWA</u>
<u>Respirable quartz fraction</u>		
<u>Ethyl acrylate</u>	<u>140-88-5</u>	<u>5ppm TWA</u> <u>25 ppm STEL, Skin</u>
<u>Ferrovandium dust</u>	<u>12604-58-9</u>	<u>1 mg/m³ TWA</u> <u>3 mg/m³ STEL</u>
<u>Grain Dust (oat,wheat,barley)</u>	<u>None</u>	<u>10 mg/m³ TWA</u>
<u>Graphite, natural, Resp. Dust</u>	<u>7782-42-5</u>	<u>2.5 mg/m³ TWA</u>
<u>Indium & compounds (as In)</u>	<u>7440-74-6</u>	<u>0.1 mg/m³ TWA</u>
<u>Iron oxide (dust & fume)</u>	<u>1309-37-1</u>	<u>10 mg/m³ TWA</u>
<u>Methylene bis</u>	<u>5124-30-1</u>	<u>0.01 ppm Ceiling, Skin</u>
<u>(4-Cyclohexylisocyanate)</u>		
<u>Mica, Respirable Dust</u>	<u>12001-26-2</u>	<u>3 mg/m³ TWA</u>
<u>Nitrogen dioxide</u>	<u>10102-44-0</u>	<u>1 ppm STEL</u>
<u>Oxygen difluoride</u>	<u>7783-41-7</u>	<u>0.05 ppm Ceiling</u>
<u>Ozone</u>	<u>10028-15-6</u>	<u>0.1 ppm TWA</u> <u>0.3 ppm STEL</u>
<u>Paraquat,Respirable Dust</u>	<u>4685-14-7</u>	<u>0.1 mg/m³ TWA, Skin</u>
<u>Silica, crystalline</u>	<u>14464-46-1</u>	<u>0.05 mg/m³ TWA</u>
<u>cristobalite, Respirable Dust</u>		
<u>Silica, crystalline quartz,</u>	<u>14808-60-7</u>	<u>0.1 mg/m³ TWA</u>
<u>Respirable Dust</u>		
<u>Silica, crystalline</u>	<u>15468-32-3</u>	<u>0.05mg/m³ TWA</u>
<u>tridymite, Respirable Dust</u>		
<u>Silica, crystalline tripoli</u>	<u>1317-95-9</u>	<u>0.1 mg/m³ TWA</u>
<u>(as quartz) Respirable Dust</u>		
<u>Silica, fused, Respirable Dust</u>	<u>60676-86-0</u>	<u>0.1 mg/m³ TWA</u>
<u>Soapstone, total dust</u>	<u>None</u>	<u>6 mg/m³ TWA</u>
<u>Soapstone, Respirable Dust</u>	<u>None</u>	<u>3 mg/m³ TWA</u>
<u>Sulfur dioxide</u>	<u>7446-09-5</u>	<u>2 ppm TWA</u> <u>5 ppm STEL</u>
<u>Sulfur tetrafluoride</u>	<u>7783-60-0</u>	<u>0.1 ppm Ceiling</u>
<u>Talc (containing no asbestos)</u>	<u>14807-96-6</u>	<u>2 mg/m³ TWA</u>
<u>Respirable Dust</u>		
<u>Tin oxide (as Sn)</u>	<u>7440-31-5</u>	<u>2 mg/m³ TWA</u>
<u>Trimellitic anhydride</u>	<u>552-30-7</u>	<u>0.005 ppm TWA</u>
<u>Wood dust, hard</u>	<u>None</u>	<u>5 mg/m³ TWA</u> <u>10 mg/m³ STEL</u>
<u>Wood dust, soft</u>	<u>None</u>	<u>5 mg/m³ TWA</u> <u>10 mg/m³ STEL</u>
<u>Wood dust, allergenic</u>	<u>None</u>	<u>2.5 mg/m³ TWA</u>
<u>(Western Red Cedar)</u>		

AVOIDANCE OF CANCER

<u>Chemical Name</u>	<u>CAS No.</u>	<u>PEL</u>
<u>Acrylamide</u>	<u>79-06-1</u>	<u>0.03mg/m³ TWA, Skin</u>
<u>Amitrole</u>	<u>61-82-5</u>	<u>0.2 mg/m³ TWA</u>
<u>Carbon tetrachloride</u>	<u>56-23-5</u>	<u>2 ppm TWA</u>
<u>Chloroform</u>	<u>67-66-3</u>	<u>2 ppm TWA</u>
<u>Chromic acid</u>	<u>1333-82-0</u>	<u>0.1 mg/m³ Ceiling</u>
<u>Dimethyl sulfate</u>	<u>77-78-1</u>	<u>0.1 ppm TWA, Skin</u>
<u>2-Nitropropane</u>	<u>79-46-9</u>	<u>10 ppm TWA</u>
<u>Perchloroethylene</u>	<u>127-18-4</u>	<u>25 ppm TWA</u>
<u>o-Toluidine</u>	<u>95-53-4</u>	<u>5 ppm TWA, Skin</u>
<u>p-Toluidine</u>	<u>106-49-0</u>	<u>2 ppm TWA, Skin</u>
<u>Vinyl bromide</u>	<u>593-60-2</u>	<u>5 ppm TWA</u>
<u>Vinyl cyclohexene dioxide</u>	<u>106-87-6</u>	<u>10 ppm TWA, Skin."</u>

(b) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

- (1) Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit- Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993).
- (2) Subpart Z -- Toxic and Hazardous Substances:
 - (A) evocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and adopted by the North Carolina Department of Labor on September 24, 1993.
 - (B) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A.0302 for the costs involved and from whom copies may be obtained.

Statutory Authority G.S. 95-131; 95-133; 150B-21.6.

**SECTION .0400 - SHOPS FABRICATING
STRUCTURAL STEEL AND STEEL PLATE**

.0401 GENERAL REQUIREMENTS

(a) Application. This standard establishes safety requirements for handling, storing, preparing, fitting, fastening, and shipping structural and plate steel at fabricated structural steel fabricating shops of firms primarily engaged in fabricating structural steel and steel plate. This standard does not apply to businesses where fabrication of structural steel and steel plate is incidental to the principal business, or to the final in-place field erection site.

(b) Incorporated Standards. Standards concerning issues of occupational safety and health which are of general application without regard to this or any specific industry are incorporated herein as set forth in Part 1910 -- Occupational Safety and Health Standards, Code of Federal Regulations Title 29, Chapter XVII, June 27, ~~2974~~ 1974, and its amendments.

Statutory Authority G.S. 95-131.

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

**SECTION .0200 - CLASSIFICATIONS
AND WATER QUALITY STANDARDS
APPLICABLE TO SURFACE WATERS
OF NORTH CAROLINA**

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0211; repeal rules cited as 15A NCAC 2H .0301 - .0306.

The proposed effective date of this action is March 1, 1994.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission conduct a public hearing on these proposed rules must submit a written request to Suzanne Keen, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, NC 27626-0535 by January 1, 1994. Mailed written requests must be postmarked no later than January 1, 1994.

Reason for Proposed Action:

15A NCAC 2B .0211 - The purpose of this amendment is to correct a clerical error make in a previous filing.

15A NCAC 2H .0301 - .0306 - On July 14, 1992 the North Carolina General Statutes were modified to transfer the authority for most subsurface systems previously permitted by the Division of Environmental Management (DEM) to local health departments. This repeal removes rules that have been made obsolete by other legislative and rule changes.

Comment Procedures: All persons interested in this proposed amendment is encouraged to submit written comments. Comments must be postmarked by January 15, 1994 and submitted to Suzanne Keen, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, NC 27626-0535.

**CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT**

**SUBCHAPTER 2B - SURFACE
WATER STANDARDS:
MONITORING**

**.0211 FRESH SURFACE WATER
CLASSIFICATIONS AND
STANDARDS**

(a) General. The water quality standards for all fresh surface waters are the basic standards applicable to Class C waters. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Paragraphs (c) through (f) of this Rule.

(b) All fresh surface waters (Class C).

- (1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes;
- (2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to all fresh surface waters:
 - (A) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other slow-moving waters not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other slow-moving waters designated as trout waters (not applicable to lakes and reservoirs less than ten acres in surface area); the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
 - (B) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout

waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

- (C) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes as will not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;
- (D) Gases, total dissolved: not greater than 110 percent of saturation;
- (E) Organisms of the coliform group: fecal coliforms not to exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period; nor exceed 400/100ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the membrane filter technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results, the MPN 5-tube dilution technique will be used as the reference method;
- (F) Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b) which are hereby incorporated by reference including any subsequent amendments and

additions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).

- (G) pH: shall be normal for the waters in the area, which generally shall range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (H) Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
- (I) Radioactive substances:
 - (i) Combined radium-226 and radium-228: the maximum average annual activity level (based on at least four samples collected quarterly) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
 - (ii) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
 - (iii) Beta Emitters: the maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (J) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C

(89.6 degrees F) for lower piedmont and coastal plain waters. The temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);

(K) Turbidity: the turbidity in the receiving water will not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity will not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;

(L) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all fresh surface waters:

- (i) Arsenic: 50 ug/l;
- (ii) Beryllium: 6.5 ug/l;
- (iii) Cadmium: 0.4 ug/l for trout waters and 2.0 ug/l for non-trout waters;
- (iv) Chlorine, total residual: 17 ug/l for trout waters (Tr); (Action Level of 17 ug/l for all waters not classified as trout waters (Tr); see Paragraph (b)(4) of this Rule);
- (v) Chromium, total recoverable: 50 ug/l;
- (vi) Cyanide: 5.0 ug/l;
- (vii) Fluorides: 1.8 mg/l;
- (viii) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be

required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;

(ix) MBAS (Methylene-Blue Active Substances): 0.5 mg/l;

(x) Mercury: 0.012 ug/l;

(xi) Nickel: 88 ug/l;

(xii) Pesticides:

(I) Aldrin: 0.002 ug/l;

(II) Chlordane: 0.004 ug/l;

(III) DDT: 0.001 ug/l;

(IV) Demeton: 0.1 ug/l;

(V) Dieldrin: 0.002 ug/l;

(VI) Endosulfan: 0.05 ug/l;

(VII) Endrin: 0.002 ug/l;

(VIII) Guthion: 0.01 ug/l;

(IX) Heptachlor: 0.004 ug/l;

(X) Lindane: 0.01 ug/l;

(XI) Methoxychlor: 0.03 ug/l;

(XII) Mirex: 0.001 ug/l;

(XIII) Parathion: 0.013 ug/l;

(XIV) Toxaphene: 0.0002 ug/l;

(xiii) Polychlorinated biphenyls: 0.001 ug/l;

(xiv) Selenium: 5 ug/l;

(xv) Toluene: 11 ug/l or 0.36 ug/l in trout waters;

(xvi) Trialkyltin compounds: 0.008 ug/l expressed as tributyltin.

(4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which

Action Levels are listed in this Subparagraph will be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent;

- (A) Copper: 7 ug/l;
- (B) Iron: 1.0 mg/l;
- (C) Silver: 0.06 ug/l;
- (D) Zinc: 50 ug/l;
- (E) Chloride: 230 mg/l;
- (F) Chlorine, total residual: 17 ug/l in all waters except trout waters (Tr); [a standard of 17 ug/l exists for waters classified as trout waters and is applicable as such to all dischargers to trout waters; see Subparagraph (b)(3)(L)(iv) of this Rule];

For purposes other than consideration of NPDES permitting of point source discharges as described in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, will be considered as numerical ambient water quality standards.

(c) Class WS-I Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, and any best usage specified for Class C waters;
- (2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within essentially natural and undeveloped watersheds with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class must be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for

drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-I Waters:

- (A) Nonpoint Source Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
- (B) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
- (C) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (D) Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph; or Rule .0104 of this Subchapter;
- (E) Solids, total dissolved: not greater than 500 mg/l;
- (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption

and fish tissue consumption for non-carcinogens in Class WS-I waters:

- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:
 - (I) Beryllium: 6.8 ng/l;
 - (II) Benzene: 1.19 ug/l;
 - (III) Carbon tetrachloride: 0.254 ug/l;
 - (IV) Chlorinated benzenes: 488 ug/l;
 - (V) Dioxin: 0.000013 ng/l;
 - (VI) Hexachlorobutadiene: 0.445 ug/l;
 - (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
 - (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
 - (IX) Tetrachloroethylene: 0.8 ug/l;
 - (X) Trichloroethylene: 3.08 ug/l;
 - (XI) Vinyl Chloride: 2 ug/l;
 - (XII) Aldrin: 0.127 ng/l;
 - (XIII) Chlordane: 0.575 ng/l;
 - (XIV) DDT: 0.588 ng/l;
 - (XV) Dieldrin: 0.135 ng/l;
 - (XVI) Heptachlor: 0.208 ng/l.

(d) Class WS-II Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in predominantly undeveloped watersheds; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm

events and other stormwater discharges are allowed in the entire watershed; new domestic and industrial discharges of treated wastewater are not allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-II Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in either Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and

chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:

(I) Low Density Option: Development density must be limited to either no more than one dwelling unit per acre or 12 percent built-upon area in the watershed outside of the critical area;

(II) High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development not to exceed 30 percent built-upon area;

(III) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire watershed area at the time of classification; All new development meets this density requirement on a project-by-project basis;

(IV) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas shall be designed and sited to

minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;

(V) A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built-upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(i)(II) of this Paragraph. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new non-residential development which exceeds the low density requirements;

(VI) If local governments choose the high density development option which requires stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

- (VII) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(ii)(II) of this Paragraph; otherwise a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;
- (VIII) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of BMPs;
- (IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (X) No new discharging landfills are allowed;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
 - (I) New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials [as defined by 15A NCAC 2B .0202] are either used, stored or manufactured on the premises;
- (II) Low Density Option: New development is limited to either no more than one dwelling unit per two acres or six percent built-upon area;
- (III) High Density Option: If new development density exceeds either one dwelling unit per two acres or six percent built-upon area, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development density not to exceed 24 percent built-upon area;
- (IV) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;
- (V) No new landfills are allowed;
- (C) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause: taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:
 - (I) Barium: 1.0 mg/l;
 - (II) Chloride: 250 mg/l;
 - (III) Manganese: 200 ug/l;
 - (IV) Nickel: 25 ug/l;
 - (V) Nitrate nitrogen: 10 mg/l;

- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP: 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
 - (I) Beryllium: 6.8 ng/l;
 - (II) Benzene: 1.19 ug/l;
 - (III) Carbon tetrachloride: 0.254 ug/l;
 - (IV) Chlorinated benzenes: 488 ug/l;
 - (V) Dioxin: 0.000013 ng/l;
 - (VI) Hexachlorobutadiene: 0.445 ug/l;
 - (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
 - (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
 - (IX) Tetrachloroethylene: 0.8 ug/l;
 - (X) Trichloroethylene: 3.08 ug/l;
 - (XI) Vinyl Chloride: 2 ug/l;
 - (XII) Aldrin: 0.127 ng/l;
 - (XIII) Chlordane: 0.575 ng/l;
 - (XIV) DDT: 0.588 ng/l;
 - (XV) Dieldrin: 0.135 ng/l;
 - (XVI) Heptachlor: 0.208 ng/l;

(e) Class WS-III Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in low to moderately developed watersheds; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges are allowed in the entire watershed; treated domestic wastewater discharges are allowed in the entire watershed but no new domestic wastewater discharges are allowed in the critical area; no new

industrial wastewater discharges except non-process industrial discharges are allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; the Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-III Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which

may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

- (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
- (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:
 - (I) Low Density Option: Development density must be limited to either no more than two dwelling units per acre or 24 percent built-upon on area in watershed outside of the critical area;
 - (II) High Density Option: If new development density exceeds two dwelling units per acre or 24 percent built-upon area then development must control runoff from the first inch of rainfall; new development not to exceed 50 percent built-upon area;
 - (III) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire watershed area; All new development meets these density requirements on a project-by-project basis;
 - (IV) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow; Remainder of

tract to remain in vegetated or natural state;

- (V) A maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new non-residential development projects of up to 70 percent built-upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Subparagraphs (e)(3)(B)(i)(I) or (e)(3)(B)(i)(II) of this Paragraph. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development then appropriate engineered stormwater controls (wet detention basins) must be employed for the new non-residential development which exceeds the low density requirements;
- (VI) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (VII) Minimum 100 foot vegetative buffer is required for all new development activities that

- exceed the low density requirements as specified in Subparagraphs (e)(3)(B)(i)(I) or (e)(3)(B)(ii)(II) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;
- (VIII) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- (IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;
- (X) No new discharging landfills are allowed;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (I) New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises;
- (II) Low Density Option: New development limited to one dwelling unit per acre or 12 percent built-upon area;
- (III) High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development not to exceed 30 percent built-upon area;
- (IV) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;
- (V) No new landfills are allowed;
- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption

and fish tissue consumption for carcinogens in Class WS-III waters:

- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l;

(f) Class WS-IV Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges and domestic wastewater discharges are allowed in the protected and critical areas; treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area are required to meet the provisions of 15A NCAC 2B .0201(d)(1)(B)(iv), (v) and (vii), and 15A NCAC 2B .0203; new industrial connections and expansions to existing municipal discharges with a

pretreatment program pursuant to 15A NCAC 2H .0904 are allowed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

- (3) Quality Standards Applicable to Class WS-IV Waters:
 - (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
 - (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:
 - (I) Low Density Option:

- Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than either: two dwelling units per acre or 24 percent built-upon area; or three dwelling units per acre or 36 percent built-upon area for projects without curb and gutter street system in the protected area outside of critical area;
- (II) High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the requirements of Subparagraphs (f)(3)(B)(i)(I) of this Rule then development must control the runoff from the first inch of rainfall; new development not to exceed 70 percent built-upon area;
- (III) Land within the critical and protected area will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification meets the density requirement when densities are averaged throughout the entire area; All new development meets these density requirements on a project-by-project basis;
- (IV) Clustering of development is allowed on a project-by-project basis as follows: Overall density of the project meets associated density or stormwater control requirements; Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimizes concentrated stormwater flow; Remainder of tract to remain in vegetated or natural state;
- (V) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;
- (VI) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (f)(3)(B)(i)(I) or (f)(3)(B)(ii)(I) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank shoreline stabilization;
- (VII) No new development is allowed in the buffer; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- (VIII) Maintain inventory of all hazardous materials used and stored in the watershed or protected area; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and

- appropriate recycling of materials is encouraged;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (I) Low Density Option: New development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than two dwelling units per acre or 24 percent built-upon area;
- (II) High Density Option: If new development density exceeds either two dwelling units per acre or 24 percent built-upon area then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new development not to exceed 50 percent built-upon area;
- (III) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;
- (IV) No new landfills are allowed;
- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:
- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l;
- (g) Class WS-V Waters.
- (1) Best Usage of Waters. Waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water

supply purposes; no categorical restrictions on watershed development or wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of waters downstream of receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;

- (2) Conditions Related to Best Usage. Waters of this class are protected water supplies; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

- (3) Quality Standards Applicable to Class WS-V Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

- (B) Nonpoint Source and Stormwater

Pollution: none that would adversely impact the waters for use as water supply or any other designated use;

- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;

- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;

- (F) Total dissolved solids: not greater than 500 mg/l;

- (G) Toxic and other deleterious substances:

- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-V waters:

(I) Barium: 1.0 mg/l;

(II) Chloride: 250 mg/l;

(III) Manganese: 200 ug/l;

(IV) Nickel: 25 ug/l;

(V) Nitrate nitrogen: 10.0 mg/l;

(VI) 2,4-D: 100 ug/l;

(VII) 2,4,5-TP (Silvex): 10 ug/l;

(VIII) Sulfates: 250 mg/l.

- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-V waters:

(I) Beryllium: 6.8 ng/l;

(II) Benzene: 1.19 ug/l;

(III) Carbon tetrachloride: 0.254 ug/l;

- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(h) Class B Waters.

- (1) Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification;
- (2) Conditions Related to Best Usage. The waters will meet accepted standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to Class B waters:
 - (A) Sewage, industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission will consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation;
 - (B) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml

in more than 20 percent of the samples examined during such period.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SUBCHAPTER 2H - PROCEDURES
FOR PERMITS: APPROVALS

SECTION .0300 - SEPTIC TANK SYSTEMS

.0301 SCOPE

~~(a) This Section of rules governs the subsurface disposal of wastewater under the jurisdiction of the Environmental Management Commission. This includes subsurface disposal of industrial wastewater and subsurface disposal of sewage from public or community sewage systems. The Commission for Health Services has jurisdiction over all other non-discharging sanitary sewage disposal systems.~~

~~(b) Definitions. For the purpose of these Regulations, the following definitions shall apply:~~

- ~~(1) Alluvial Soils. The term "alluvial soils" shall mean stratified soils without distinct horizons, deposited by flood waters.~~
- ~~(2) Approved. The term "approved" shall mean that which has been considered acceptable to the state or local agency.~~
- ~~(3) Approved Sewerage System. The term "approved sewerage system" shall mean a public, community or institutional sewerage system for the collection and treatment of sewage or other liquid wastes constructed and operated in compliance with applicable requirements of the state or local agency.~~
- ~~(4) Areas Subject to Frequent Flooding. The term "areas subject to frequent flooding" shall mean those areas consisting of alluvial soils, indicating soils deposited from flooding of less than a 10-year frequency.~~
- ~~(5) Horizon. The term "horizon" shall mean a layer of soil, approximately parallel to the surface, that has distinct characteristics produced by soil-forming processes.~~
- ~~(6) "Local health director" means the local health director as defined in G.S. 130A-2(6) or his authorized representative.~~
- ~~(7) Nitrification Field. The term~~

- "nitrification field" shall mean the system of nitrification lines or field lateral lines which receive the septic tank effluent.
- (8) ~~Nitrification Lines or Field Lateral Lines.~~ The terms "nitrification lines" or "field lateral lines" shall mean the open-jointed pipe, drain lines, or especially designed porous blocks which receive the septic tank effluent for nitrification, distribution and absorption.
- (9) ~~Organic Soils.~~ The term "organic soils" shall mean those organic mucks and peats consisting of more than 20 percent organic matter to depths of 18 inches or greater.
- (10) ~~Ped.~~ The term "ped" shall mean a unit of soil structure such as an aggregate, crumb, prism, block, or granule, formed by natural processes.
- (11) ~~Pereh.~~ The term "pereh" shall mean restricting vertical movement of liquids.
- (12) ~~Person.~~ The term "person" shall mean any individual, firm, association, organization, partnership, business trust, corporation or company.
- (13) ~~Place of Business.~~ The term "place of business" shall mean and include any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building, or other places where people work.
- (14) ~~Place of Public Assembly.~~ The term "place of public assembly" shall mean and include fairgrounds, auditoriums, stadiums, churches, campgrounds, theaters, and other places where people assemble.
- (15) ~~Septic Tank.~~ The term "septic tank" shall mean a water-tight, covered receptacle designed and constructed to receive the discharge of sewage from a building sewer; separate settleable and floating solids from the liquid; digest organic matter by anaerobic bacterial action; store digested solids through a period of detention; and allow clarified liquids to discharge for additional treatment and final disposal.
- (16) ~~"Septic Tank System" or "Conventional Septic Tank System"~~ means a ground absorption sewage treatment and disposal system consisting of a septic tank, a gravity-fed nitrification field, necessary pipe lines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.
- (17) ~~"Sewage"~~ means the liquid and solid human body waste, and liquid waste generated by domestic water-using fixtures and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial wastewater.
- (18) ~~Sewer Connection.~~ The term "sewer connection" shall mean a connection with an approved community or public sewerage system which provides for the collection and disposal of sewage or other liquid wastes.
- (19) ~~Site.~~ The term "site" shall be that area in which the septic tank system is to be located and the area required to accommodate and permit proper functioning of the system.
- (20) ~~Soil.~~ The term "soil," for the purposes of subsurface sewage disposal, shall mean the unconsolidated mineral and organic material on the land surface. It consists of sand, silt, and clay minerals and variable amounts of organic materials. It exists as natural, undisturbed material or as disturbed material (such as cut and fill).
- (21) ~~Soil Absorption System.~~ The term "soil absorption system" shall mean a system that utilizes the soil for absorption of treated sewage.
- (22) ~~State or Local Agency.~~ The term "state or local agency" shall mean the state or local agency having jurisdiction, or its authorized representative.
- (23) ~~Structure.~~ The term "structure" (as it relates to soils) shall mean the arrangement of primary soil particles into compound particles or clusters that are separated from adjoining aggregates and have properties unlike those of an equal mass of unaggregated primary soil particles.
- (24) ~~Subsurface Disposal.~~ The term "subsurface disposal" shall mean the process of sewage treatment in which sewage effluent is applied to land by distribution beneath the surface of the

ground through open-jointed pipes, approved drains or approved specially designed porous block.

(e) ~~Sanitary Sewage Disposal Requirements.~~ Every residence, place of business or place of public assembly as defined herein, shall be provided with either an approved number of privies constructed in accordance with the requirements of the Commission for Health Services, a septic tank system constructed in accordance with the provisions of these Regulations, or connection to an approved sewer system.

(d) ~~Construction~~

(1) ~~Septic Tank~~

(A) The "septic tank" shall be of water tight construction, structurally sound and not subject to excessive corrosion or decay. Tanks of rectangular design, similar to that specified in Division of Health Services Bulletin No. 519, approved by the State Board of Health March 17, 1960, are recommended. If prefabricated tanks, or tanks of other design are used, they shall be constructed in accordance with plans which have been approved by the state agency, and shall comply with all other requirements of this Subdivision. Septic tanks of 1,600 gallon liquid capacity or larger shall be of two compartment design and construction. The inlet compartment of a two compartment tank shall be between two thirds and three fourths of the total capacity. Two compartment septic tanks are recommended for tanks of less than 1,600 gallon capacity. A dosing syphon or pump shall be used for discharging septic effluent into nitrification lines when the volume of the tank is more than 3,000 gallons and the total length of such lines is 500 feet or more. When the total length of such lines is 1,000 feet or more, alternating syphons or pumps shall be used. Discharges from syphon or pump systems shall be of such design so as to fill the nitrification lines 60 percent to 75 percent of their capacity at each discharge.

(B) ~~Minimum liquid capacities for septic~~

tanks shall be in accordance with the following:

(i) ~~Residential Septic Tanks (for each individual residence)~~

Equivalent	Number	
	Minimum	of Liquid Capacity per Bedrooms Capacity
<u>Bedroom</u>		
	2 or less	750 gallons 3-7-5
gallons		
	3 or less	900 gallons 3-0-0
gallons		
	4 or less	1,000 gallons 250
gallons		

For each additional bedroom add 250 gallons. These figures provide for use of garbage grinders, automatic clothes washers, and other household appliances.

(ii) ~~Septic Tank Other Than Residential.~~ Septic tank for commercial or institutional installations shall be sized according to accepted engineering practices and the size of each installation shall be determined on the basis of specific needs. For determining required minimum capacities for installations serving other than residences, use the daily flows in Regulation .0304 of this Section.

(iii) ~~The minimum capacity of any septic tank shall be 750 gallons.~~

(c) ~~Sites for Soil Absorption Systems~~

(1) ~~Site Evaluation.~~ The state or local agency shall investigate each proposed site. The investigation shall include the evaluation of the following factors:

(A) ~~Topography;~~

(B) ~~Soil characteristics:~~

(i) ~~texture;~~

(ii) ~~structure;~~

(iii) ~~depth;~~

(iv) ~~restrictive horizons;~~

(v) ~~drainage;~~

(C) ~~Ground water elevation;~~

(D) ~~Depth of impervious strata;~~

(E) ~~Pereolation Tests.~~ Evaluations shall be made in accordance with Regulation .0302 of this Section, and other accepted public health principles. Based on this evaluation, each of the

factors [Items (A) to (E) of this Subdivision] shall be classified as suitable, provisionally suitable, or unsuitable.

(2) Application Rates

- (A) In determining the volume of sewage from residences, the flow rate shall be 75 gallons per person per day; and each bedroom shall be considered the equivalent of two persons. For establishments other than residences, the flow rate shall be determined from Regulation .0304 of this Section. In calculating the amount of square feet of area needed for the nitrification field in trench system, the maximum trench width used in the calculations shall be 36 inches, even though the actual trench width may be constructed larger. Trenches shall be not less than eight feet on centers. The state or local agency may permit the use of a bed system in lieu of a trench system for the nitrification field when it has been determined that the trench system is impractical or impossible because of topography or space limitations. In such cases, the amount of square feet of area needed shall be increased by 50 percent over what would be required for a trench system; or in lieu of the added area, the amount of gravel or stone under the drain lines shall be increased to a depth of not less than 12 inches. The extra area is needed to compensate for the loss of trench sidewall area in bed systems. Drain lines shall be at least 18 inches from the side of the bed and shall not be less than three feet on centers.
- (B) Sites classified as suitable may receive application of septic tank effluents up to 1.5 gallons per square foot per day.
- (C) Sites classified as provisionally suitable may receive septic tank effluents up to 0.75 gallons per square foot per day; except that where percolation rates exceed 60 minutes per inch, the application rate shall not exceed 0.5 gallons per square foot per day.
- (D) Sites classified as unsuitable shall not be used for soil absorption disposal systems, unless engineering,

hydrogeologic, and soil studies indicate to the state or local agency that a suitable septic tank system or a suitable alternate system can reasonably be expected to function satisfactorily.

- (3) Available Space. Sites shall have sufficient available space to permit the installation and proper functioning of ground absorption sewage disposal systems, based upon the square footage of nitrification field required for the application rate previously determined. Sites classified as provisionally suitable should have sufficient available space to accommodate a replacement nitrification field. All systems with a design capacity of over 3,000 gallons per day shall have provided sufficient area to accommodate a replacement nitrification field.

(f) Location of Septic Tank Systems

- (1) Every septic tank system shall be located at least the minimum horizontal distance from the following:
 - (A) any private water supply: 100 feet, or maximum feasible distance, but in no case less than 50 feet;
 - (B) any community water supply: 100 feet;
 - (C) streams classified as WS I, WS II, WS III: 50 feet;
 - (D) waters classified as SA: 100 feet from normal high tide mark;
 - (E) any other stream, canal, marsh or coastal waters: 50 feet;
 - (F) any class I or class II impounded reservoir used as a source of drinking water: 100 feet from high water line;
 - (G) any other lake or impoundment: 50 feet from high water line;
 - (H) any building foundation: 10 feet;
 - (I) any basement: 15 feet;
 - (J) any property line: 10 feet;
 - (K) top of slope of terraces, embankments or cuts: 15 feet;
 - (L) any water line: 10 feet.
- (2) Septic tank systems shall not be installed in fill ground unless the site complies essentially with the requirements of these Regulations, and is specifically approved by the state or local agency.
- (3) Septic tank systems shall not be installed in swampy areas.

- (4) ~~Septic tank systems shall be located downhill from wells or springs, if possible.~~
- (5) ~~Septic tank systems shall not be located in areas subject to frequent flooding.~~
- (6) ~~Septic tank systems shall not be located where ground water may become contaminated.~~
- (7) ~~Septic tank systems shall not be located under paved areas or driveways, except that a solid cast iron or other suitable pipe may be permitted to convey the effluent under a driveway from the septic tank to the nitrification field.~~

(g) ~~Maintenance~~

- (1) ~~Septic Tanks. Any person owning or controlling the property upon which a septic tank system is installed shall be responsible for the following items regarding the maintenance of the system:~~
- (A) ~~Septic tanks shall be maintained at all times to prevent seepage of sewage or effluents to the surface of the ground.~~
- (B) ~~Septic tanks need occasional cleaning and should be checked at least each three years to determine if sludge needs removing (once a year if garbage grinders are discharging to the tank).~~
- (C) ~~Contents removed from septic tanks shall be discharged into an approved sewer system, buried or plowed under at an approved location within 24 hours, or otherwise disposed of at a location and in a manner approved by the state or local agency.~~

(h) ~~Permits~~

- (1) ~~No person shall install or cause to be installed any sewage disposal system above 3,000 gallons design capacity without first having obtained a written permit from the Division of environmental management. Permits shall become invalid after 12 months from the date of issuance, if the installation has not been completed during that time period, unless otherwise specified in writing. When a permit has become invalid, the installation shall not be commenced or completed until a new permit has been obtained.~~
- (2) ~~Any person other than the owner, tenant or manager of a residence, place~~

~~of business, or place of public assembly, who engages in the business of constructing or installing septic tank systems, of the cleaning of septic tanks, shall register with the local health director in the county where he operates before constructing or installing septic tank systems, or collecting and disposing of septic tank contents.~~

Statutory Authority G.S. 130A-335; 143-215.1.

.0302 TECHNICAL GUIDE FOR EVALUATION OF SOIL ABSORPTION SITES

(a) ~~Purpose. This technical guide shall be used in the evaluation of proposed sites for soil absorption systems except where the state or local agency determine that peculiar or unusual circumstances justify the use of other criteria which shall be consistent with good public health practice.~~

(b) ~~Site Factors~~

(1) ~~Topography~~

- (A) ~~In order to determine whether a site can be used for disposing of a septic tank effluent, a number of factors shall be taken into consideration. These factors include topography, soil characteristics, ground water elevation, depth of impervious strata, and percolation tests.~~
- (B) ~~Uniform slopes under 15 percent shall be considered suitable with respect to topography. When slopes are less than two percent, provisions shall be made to insure good surface drainage of rainfall or runoff from buildings or paved areas. Complex slope patterns and slopes dissected by deep gullies and ravines are not suitable. The surface area on or around a soil absorption system shall be graded to provide adequate drainage; and such a system shall not be located in a depressed area. Good surface drainage is essential and shall be provided to prevent soil saturation around the system during rainy periods.~~
- (C) ~~Uniform slopes between 15 percent and 30 percent shall be considered provisionally suitable with respect to topography, if the soils are deep and~~

there are no restrictive horizons. Complex slope patterns and slopes dissected by deep gullies and ravines are not suitable. Slopes within this range may require installation of drainage lines up slope from the soil absorption system to remove all excess water that might be moving laterally through the soil during wet periods of the year. The interception of lateral ground water movement shall be provided where necessary to prevent soil saturation around the soil absorption system. Usable areas larger than minimum are ordinarily required in this slope range.

(D) Slopes greater than 30 percent shall be considered unsuitable unless a thorough study of the soil characteristics indicate that a soil absorption system will function satisfactorily and sufficient ground area is available to properly install such a system.

(2) Soil Characteristics. Unless soil characteristics have been previously established, soil borings shall be taken in the area to be used for soil absorption systems. Such borings shall be taken to depths of at least 48 inches. From these soil borings and observation of core samples, most of the significant soil characteristics can be evaluated; and a determination can be made as to the suitability of the soil to absorb septic tank effluent. The important soil characteristics which shall be determined are as follows:

(A) Texture. The relative amounts of the different sizes of mineral particles in a soil is referred to as soil texture. All soils are composed of sand (2.0 to 0.05 mm in size), silt, which includes intermediate-sized particles that cannot be seen with the naked eye, but feels like flour when pressed between the fingers (0.05 to 0.002 mm in size), and clay, which is extremely small in size and is the mineral particle that gives cohesion to a soil (less than 0.002 mm in size). The texture of the different horizons of soils may be classified into three general classes:

(i) Sandy Textures. Soils that exhibit

a gritty feel when rubbed between the fingers, that crumble when moist or wet, and that will not leaf out when pressed between the thumb and index finger, should be classified as sandy textures. Sandy soils contain more than 70 percent sand-sized particles in the soil mass. These soils do not have enough clay to be cohesive. Sandy soils have favorable percolation rates, but may have a low filtering capacity. Sandy soils shall be considered suitable with respect to texture.

(ii) Loamy Soils. When moist or wet, loamy soils may be rolled into a ball that will stick together, but is easily crushed. When pressed between the fingers, loamy soil will leaf out from between the fingers to one fourth to one half inch before breaking. Loamy soils contain less than 70 percent sand-size particles and more than 18 percent clay-sized particles in the soil mass. They exhibit little or no stickiness. Loamy soils generally have favorable percolation rates and are excellent filters. Loamy soils are the most desirable for effluent treatment and shall be considered suitable with respect to texture.

(iii) Clayey Soils. These are soils with more than 40 percent of the soil mass made up of clay particles. Clayey soils, when moist or wet, may be rolled into a compact, smooth ball and resist pressure when crushed between the fingers. When wet and pressed between the fingers, clayey soils will leaf out one half inch or more in length before breaking. The type or kind of clay in soils is very significant. There are two major types of clays: the 1:1 clays (kaolinite) which does not shrink when dry or swell when wet; and the 2:1 clays (montmorillonite) that will shrink when dry and swell when wet. The 2:1 clays crack when dry and allow water or septic tank

effluent to move freely through the soil for 48 to 72 hours. They then become saturated and swell, resulting in no movement of liquids through the soil. The 2:1 clays may sometimes be identified by the presence of cracks in the soil when dry, and are plastic and sticky when wet. These clays will have an olive and greyish mottled appearance, or splotches intermingled with the yellow and red clay colors. The 1:1 clay soils shall be considered provisionally suitable as to texture; 2:1 clays shall be considered unsuitable as to texture.

(iv) Organic soils shall be considered unsuitable as to texture.

(B) Soil Structure. In many soils, the sand, silt, and clay particles tend to cling or stick to one another to form a ped or a clump of soil. This is known as soil structure. Soil structure may have a significant effect on the movement of effluent through a soil. The structure may determine the rate of movement of liquids through clayey soils. Structure is not very important in sandy textured soils or in loamy textured soils, and these types of soils shall be considered suitable as to structure. The three kinds of soil structure that are most significant in movement of sewage effluent through soils are blocky, platy, and the absence of soil structure of massive conditions:

(i) Blocky Soil Structure

(I) In clayey soils, if the soil exhibits many peds or angular and subrounded peds, then the soils have blocky structure. The sewage effluent may move between the cracks of these blocky types of peds. Blocky soil structure in clayey soils is frequently destroyed by mechanical equipment manipulating the soil when it is too wet. Trenches for nitrification lines being placed in clayey soils with blocky structure should only be dug

when soils are moist or dry. Blocky soil structure in clayey soils shall be considered provisionally suitable as to structure.

(II) Some rocks, even though weathered, such as slates or gneisses or fractured rocks, exhibit blocky structure, which is not changed by moving water, thereby allowing fluids to move downward without filtration. Such soils shall be considered unsuitable as to structure.

(ii) Platy Soil Structure. If clayey soils fall out into platelike sheets, then the soils would have platy structure; and water or effluent movement through these horizons would be extremely slow, and the structure shall be considered unsuitable.

(iii) Absence of Soil Structure. Some clayey soils exhibit no structure aggregates; and in these kinds of soils, percolation would be zero or extremely slow. Such structure shall be considered unsuitable.

(C) Soil Depth. The depth of soils classified as suitable or provisionally suitable as to texture and structure shall be at least 48 inches when conventional ground absorption systems are to be utilized.

(D) Restrictive Horizons. Restrictive layers or horizons in soils may generally be recognized by the resistance offered in digging a hole or in using a soil auger. Restrictive horizons are variable in their characteristics. Massive or solid bedrock may be classed as a restrictive horizon. Where this bedrock lies shallower than 48 inches to the surface, it will perch sewage effluent and in many instances will allow sewage effluent to move laterally and seep to the surface on a lower part of the landscape. Another restrictive horizon may be caused by iron pans or plinthite. These horizons may generally be recognized by their brittleness and by the presence of red and grey colored soil materials. The

red materials quite frequently will be in the form of nodules or very brittle fragments. These kinds of horizons will also perch sewage effluent and limit the storage capacity of a soil being used for disposition of effluent. The third common restrictive horizon is a cemented iron-aluminum-organic hardpan. This is very brittle when dry and will perch sewage effluent. Soils in which restrictive horizons are less than 48 inches below the ground surface or less than 12 inches below the trench bottom of subsurface nitrification lines shall be considered unsuitable, except in cases where restrictive horizons occurring close to the ground surface have underlying soil strata suitable for subsurface disposal, and the ground water table is at least 48 inches below the restrictive horizon. In these cases, the soil shall be considered suitable with respect to restrictive horizons, provided the restrictive horizon is penetrated.

- (E) ~~Soil Drainage.~~ Soils with seasonally high water tables are of major concern in evaluating sites for sewage effluent disposal. These are the soil areas that give good percolation rates during dry seasons of the year but force sewage effluent to the surface during the wetter seasons. The depth of the seasonal high water table can commonly be recognized by those examining soil profiles. The criteria for recognition of high water tables is that of soil color. Subsurface horizons that are in colors of reds, yellows and browns indicate good soil aeration and drainage throughout the year. Subsurface horizons that are in colors of grey, olive or bluish colors indicate poor aeration and poor soil drainage. These dull or greyish colors may occur as a solid mass of soil or may be in mottles or localized spots. The volume of greyish colors is indicative of the length of time that free water stands in that soil profile. There are soils that have light colored mottles which are relief from the light colored rock from which the soils have weathered. These soils

would not have highwater tables, so one must distinguish between a true soil composed of sand, silts and clays, or the rock material that may still exist in the soil profile. Any soil profile that has the greyish colors, indicative of high water tables, or is subject to tidal or periodic high water, within 36 inches of the surface shall generally be considered unsuitable as to drainage. Where the soil is considered suitable as to structure and texture, and modifications can be made to keep the ground water table at least 12 inches below the bottom of the trench, such soils shall be considered provisionally suitable as to drainage.

- (3) ~~Percolation Tests.~~ Unless soil characteristics have been previously established, at least three percolation tests shall be made in the exact area where the nitrification lines are to be installed. Such percolation tests shall be conducted in accordance with procedures outlined in DHS Bulletin No. 519, approved by the State Board of Health on March 17, 1960. If the average time for the water to fall one inch in the test hole is 30 minutes or less, the percolation test shall be considered suitable; between 30 minutes and 60 minutes, provisionally suitable; and over 60 minutes, unsuitable. However, if the soil texture and structure are classified as suitable or provisionally suitable, percolation rates up to 120 minutes may be considered provisionally suitable. There is dissension over the validity of percolation tests. It is certain that one percolation hole on a site does not indicate the ability of a soil area to handle sewage effluent. Where percolation tests are used, three percolation tests should be conducted in the exact area that nitrification fields will be installed. Variability in percolation tests result for the following reasons: percolation test holes represent only a small portion of the filter field; root channels and worm holes intercepting the percolation hole will give erroneous percolation results; moisture conditions at the time of the

pereolation test will give wide variability in results; mechanical digging or auger boring for the pereolation hole will often destroy soil structure; dry clays, with shrink-swell potential, will give good pereolation rates for as long as 48 to 72 hours; the characteristics of sewage effluent are different from those of the water used in pereolation tests. Soils with sandy or loamy textured profiles, without restrictive horizons, or in the absence of high water tables will give pereolation rates of less than 60 minutes per inch. Soils with clayey profiles will commonly have pereolation rates of greater than 60 minutes per inch, dependent on soil structure, kind of clay, and past land use.

(4) ~~Determination of Soil Suitability.~~ All of the criteria under topography, soil characteristics and pereolation tests [(1) to (3) of this Subdivision] shall be determined to be suitable, provisionally suitable or unsuitable as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall determination, and is summarized in Regulation .0305 of this Section:

- (A) ~~If the soil structure is classified as unsuitable, the overall classification will be unsuitable, regardless of the classification of the other criteria.~~
- (B) ~~If the soil texture is classified as unsuitable, and the soil structure is provisionally suitable, the soil texture may be reclassified as provisionally suitable.~~
- (C) ~~When soil depth is classified as unsuitable, it may be reclassified as provisionally suitable if shallower trenches or a mound system can be constructed.~~
- (D) ~~When the restrictive horizon is classified unsuitable, it may be reclassified as suitable under the conditions outlined in (2)(D) of this Subdivision.~~
- (E) ~~When drainage (ground water level) is unsuitable, it may be reclassified as~~

provisionally suitable under the conditions outlined in (2)(E) of this Subdivision:

- (F) ~~Pereolation rates in excess of 60 minutes, but not exceeding 120 minutes may be classified as provisionally suitable under conditions outlined in (3) of this Subdivision.~~
- (5) ~~Available Space.~~ Sites shall have sufficient available space to permit the installation and proper functioning of ground absorption sewage disposal systems, based upon the square footage of nitrification field required for the application rate previously determined. Sites classified as provisionally suitable should have sufficient available space to accommodate a replacement nitrification field. All systems with a design capacity of over 3,000 gallons per day shall have provided sufficient area to accommodate a replacement nitrification field.
- (6) ~~Application Rates.~~ In determining the volume of sewage from residences, the flow rate shall be 75 gallons per person per day; and each bedroom shall be considered the equivalent of two persons. For establishments other than residence, the flow rate shall be determined from Regulation .0304 of this Section. In calculating the amount of square feet of area needed for the nitrification field in trench system, the maximum trench width used in the calculations shall be 36 inches, even though the actual trench width may be constructed larger. Trenches shall be not less than eight feet on centers. The state or local agency may permit the use of a bed system in lieu of a trench system for the nitrification field when it has been determined that the trench system is impractical or impossible because of topography or space limitations. In such cases, the amount of square feet of area needed shall be increased by 50 percent over what would be required for a trench system; or in lieu of the added area, the amount of gravel or stone under the drain lines shall be increased to a depth of not less than 12 inches. The extra area is needed to compensate for the loss of trench sidewall area in the bed systems. Drain lines shall be at least 18 inches from the

side of the bed and shall be not less than three feet on centers:

(A) ~~Sites classified as suitable may receive application of septic tank effluents up to 1.5 gallons per square foot per day.~~

(B) ~~Sites classified as provisionally suitable may receive septic tank effluents up to 0.75 gallons per square foot per day; except that where percolation rates exceed 60 minutes per inch, the application rate shall not exceed 0.5 gallons per square foot per day.~~

(C) ~~Sites classified as unsuitable shall not be used for soil absorption disposal systems, unless engineering, hydrogeologic, and soil studies indicate to the state or local agency that a suitable alternative to a septic tank system can reasonably be expected to function satisfactorily.~~

(7) ~~Other Applicable Factors Involving Accepted Public Health Principles. The site evaluation should include consideration of any other applicable factors involving accepted public health principles, such as:~~

(A) ~~the proximity of a large capacity water supply well, the cone of influence of which would dictate a larger separation distance than the minimum distance specified in Regulation .0301(f) of this Section;~~

(B) the potential public health hazard of possible failures of soil absorption systems involving large quantities of sewage, which would dictate larger separation distances than the minimums specified in Regulation .0301(f) of this Section;

(C) the potential public health hazard of possible massive failures of soil absorption systems proposed to serve large numbers of residences, as in residential subdivisions or mobile home parks;

(D) other circumstances peculiar to individual situations.

Statutory Authority G.S. 130A-160; 143-215.1.

.0303 INTERPRETATION AND TECHNICAL ASSISTANCE

~~The provisions of this technical guide shall be interpreted, as applicable, in accordance with the recognized principles and practices of soil science. State agencies will provide technical assistance. Local agencies shall obtain technical assistance from soil scientist personnel, and local soil survey information.~~

Statutory Authority G.S. 130A-160; 143-215.1.

.0304 TABLE NO. I

The following estimates of sewage quantities are the minimums required for use in determining whether or not a sewage disposal system has a design capacity of above 3,000 gallons and for determining the flow rate for establishments other than residences. The figures include volume necessary to handle the sewage flow and provide sludge storage, and may differ from estimated sewage flows used in the design of municipal or community sewerage systems:

<u>Type of Establishments</u>	<u>Daily Flow For Design</u>
Airports, also RR Stations, bus terminals, (not including food service facilities)	5 gal/passenger
Barber Shops	100 gal/chair
Beauty Shops	125 gal/booth or bowl
Bowling Alleys	50 gal/lane
Camps	
Construction or work camps	50 gal/person
Summer camps	50 gal/person
Camp grounds	150 gal/campsite
Churches	5 gal/member
Country Clubs — Resident members	75 gal/person
— Non-resident members	20 gal/person

PROPOSED RULES

Day Care Facilities	15 gal/person
Factories (exclusive of industrial wastes) — per shift	25 gal/person
Hospitals	300 gal/bed
Laundries (self-service)	500 gal/machine
Motels/Hotels	75 gal/room
With cooking facilities in room	125 gal/room
Resort	200 gal/room
Offices — per shift	25 gal/person
Nursing/Rest Homes — With laundry	150 gal/bed
Without laundry	75 gal/bed
Residential Care Facilities	75 gal/person
Restaurants	40 gal/seat
Schools: Day Schools	15 gal/person
Note: Use 20 gal/person if aerobic treatment is proposed	
Boarding Schools	75 gal/person
Day Workers	25 gal/person
Service Stations	250 gal/water closet or urinal
Stores — Note: if food service is included, add 40 gal/seat	250 gal/water closet or urinal
Swimming Pools and Bathhouses	10 gal/person
Theaters — Auditoriums	3 gal/seat
Drive In	5 gal/car space
Travel Trailer Parks	150 gal/space

Statutory Authority G.S. 130A-160; 143-215.1.

.0305 TABLE NO. II

Possible modifications of initial classification (This table does not include all possible combinations, but includes those which could result in up-grading the initial classification.):

<u>Criteria</u>	<u>Initial Classification</u>	<u>Modifying Factors</u>	<u>Final Classifications</u>
1. Topography	Unsuitable	Soil Characteristics	Provisionally
		Suitable or Provis	Suitable
		ionally Suitable;	
		and Sufficient Area	
		Available	
2. Soil Characteristics			
(a) Texture	Unsuitable	Soil Structure	Provisionally
		Provisionally	Suitable
		Suitable, Soil	
		Depth, Restrictive	
		Horizon and-	
		Drainage Suitable	
(b) Structure	Unsuitable	None	Unsuitable
(c) Depth	Unsuitable	Use of Shallow	Provisionally
		Trench Use of	Suitable
		Mount System	
(d) Restrictive	Unsuitable	Restrictive Hori	Suitable

PROPOSED RULES

Horizon		Close to Surface; Underlying	
		Soil Strata Suitable;	
		Water Table One Foot	
		or More Below Bottom	
		of Trench	
(e) Drainage	Unsuitable	Lower Ground	Provisionally
		Water Table to	Suitable
		at Least One Foot	
		Below Bottom of	
		Trench	
3. Ground Water	Unsuitable	Lower Ground	Provisionally
Elevation		Water Table to	Suitable
		at Least One Foot	
		Below Bottom of	
		Trench	
4. Depth to	Unsuitable	Restrictive	Provisionally
Impervious		Horizon Close to	Suitable
Strata		Surface; Underlying	
		Soil Strata Suitable;	
		Water Table One Foot	
		or More Below Bottom	
		of Trench	
5. Percolation	Unsuitable	Soil Structure	Provisionally
Test	(60-120 min/in)	and Texture	Suitable
		Suitable or	
		Provisionally	
		Suitable	

Statutory Authority G.S. 130A-160; 143-215.1.

.0306 APPLICABILITY: VIOLATIONS

For applicability of rules and regulations for ground absorption systems of 3,000 gallons or less design capacity, see regulation of the Commission for Health Services. Any violations of the rules and regulations of this Section shall be subject to the sanctions provided in North Carolina General Statutes 143-215.6.

Statutory Authority G.S. 130A-160; 143-215.1; 143-215.6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10B .0115.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 7:00 p.m. on January 10, 1994 at the Buncombe County Courthouse, 60 Court Plaza, Asheville, NC 28801.

Reason for Proposed Action: - To establish a prohibition against shining lights in Buncombe County.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from December 15, 1993 to January 14, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**CHAPTER 10 - WILDLIFE
RESOURCES COMMISSION**

**SUBCHAPTER 10B - HUNTING
AND TRAPPING**

SECTION .0100 - GENERAL
REGULATIONS

.0115 SHINING LIGHTS IN DEER AREAS

(a) It having been found upon sufficient evidence that certain areas frequented by deer are subject to substantial unlawful night deer hunting, or that residents in such areas have been greatly inconvenienced by persons shining lights on deer, or both, the shining of lights on deer in such areas is limited by Paragraphs (b) and (c) of this Rule, subject to the exceptions contained in Paragraph (d) of this Rule.

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Beaufort -- entire county;
- (2) Bladen -- entire county;
- (3) Brunswick -- entire county;
- (4) Camden -- entire county;
- (5) Chowan -- entire county;
- (6) Currituck -- entire county;
- (7) Duplin -- entire county;
- (8) Franklin -- entire county;
- (9) Gates -- entire county;
- (10) Greene -- entire county;
- (11) Hertford -- entire county;
- (12) Hoke -- entire county;
- (13) Hyde -- entire county, except that part of the county described in Paragraph (c) of this Rule;
- (14) Jones -- entire county;
- (15) Lenoir -- entire county;
- (16) Martin -- entire county;
- (17) Nash -- entire county;
- (18) Pamlico -- entire county;
- (19) Pasquotank -- entire county;
- (20) Pender -- entire county;
- (21) Perquimans -- entire county;
- (22) Pitt -- entire county;
- (23) Richmond -- entire county;
- (24) Sampson -- entire county;
- (25) Tyrrell -- entire county;
- (26) Vance -- entire county;
- (27) Wake -- entire county;
- (28) Warren -- entire county;
- (29) Washington -- entire county;
- (30) Wayne -- entire county.

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Alamance -- entire county;
- (2) Alexander -- entire county;
- (3) Alleghany -- entire county;
- (4) Anson -- entire county;
- (5) Ashe -- entire county;
- (6) Avery -- that portion south and east of Highway 221;
- (7) Buncombe County -- entire county;
- (8) ~~(7)~~ Burke -- entire county;
- (9) ~~(8)~~ Cabarrus -- entire county;
- (10) ~~(9)~~ Caswell -- entire county;
- (11) ~~(10)~~ Catawba -- entire county;
- (12) ~~(11)~~ Chatham -- entire county;
- (13) ~~(12)~~ Clay -- entire county;
- (14) ~~(13)~~ Cleveland -- entire county;
- (15) ~~(14)~~ Cumberland -- entire county;
- (16) ~~(15)~~ Davidson -- entire county;
- (17) ~~(16)~~ Davie -- entire county;
- (18) ~~(17)~~ Durham -- entire county;
- (19) ~~(18)~~ Edgecombe -- entire county;
- (20) ~~(19)~~ Forsyth County -- entire county;
- (21) ~~(20)~~ Gaston -- entire county;
- (22) ~~(21)~~ Granville -- entire county;
- (23) ~~(22)~~ Guilford -- entire county;
- (24) ~~(23)~~ Halifax -- entire county;
- (25) ~~(24)~~ Harnett -- entire county;
- (26) ~~(25)~~ Henderson -- entire county;
- (27) ~~(26)~~ Hyde -- that part bounded on the north by a line running parallel with and 1000 yards in a northward direction from that part of SR 1304 that leads from Hodges' Fork to Rose Bay, on the east by the Mattamuskeet National Wildlife Refuge boundary, on the southeast by US 264, and on the west and southwest by a line running parallel with and 1000 yards in a west or southwest direction from the centerline of SR 1304;
- (28) ~~(27)~~ Iredell -- entire county;
- (29) ~~(28)~~ Johnston -- entire county;
- (30) ~~(29)~~ Lee -- entire county;
- (31) ~~(30)~~ Lincoln -- entire county;
- (32) ~~(31)~~ Macon -- entire county;
- (33) ~~(32)~~ McDowell -- entire county;
- (34) ~~(33)~~ Mecklenburg -- entire county;
- (35) ~~(34)~~ Mitchell -- entire county;
- (36) ~~(35)~~ Montgomery -- entire county;
- (37) ~~(36)~~ Northampton -- entire county;
- (38) ~~(37)~~ Orange County -- entire county;
- (39) ~~(38)~~ Person -- entire county;
- (40) ~~(39)~~ Polk -- entire county;
- (41) ~~(40)~~ Randolph -- entire county;
- (42) ~~(41)~~ Robeson County -- entire county;
- (43) ~~(42)~~ Rockingham -- entire county;

- (44) ~~(43)~~ Rowan -- entire county;
- (45) ~~(44)~~ Rutherford -- entire county;
- (46) ~~(45)~~ Stanly -- entire county;
- (47) ~~(46)~~ Stokes -- entire county;
- (48) ~~(47)~~ Surry -- entire county;
- (49) ~~(48)~~ Transylvania -- entire county;
- (50) ~~(49)~~ Union -- entire county;
- (51) ~~(50)~~ Watauga -- entire county;
- (52) ~~(51)~~ Yancey -- entire county.

(d) Paragraphs (b) and (c) of this Rule shall not be construed to prevent:

- (1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;
- (2) the necessary shining of lights by landholders on their own lands;
- (3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or
- (4) the use of lights by campers and others who are legitimately in such areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights.

Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, Ch. 410; S.L. 1981 (Second Session 1982), Ch. 1180.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10C .0407.

The proposed effective date of this action is June 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 4, 1994 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To close the season on blackfish (bowfin) in certain rivers of the State.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing

will be open for receipt of written comments from December 15, 1993 to January 14, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Editor's Note: This Rule was filed as a temporary amendment effective December 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0400 - NONGAME FISH

.0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (1) Alamance:
 - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
 - (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the lower end of Goat Island;
 - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designat-

- ed public mountain trout waters;
- (6) Beaufort:
 - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters; with drift gill nets in Tar River upstream from the Norfolk and Southern Railroad bridge at Washington to the Pitt County line; and with gill nets in all other inland public waters, except Blounts Creek, Chocowinity Bay, Durham Creek, Mixon Creek and Nevil Creek and their tributaries.
- (7) Bertie:
 - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters;
- (8) Bladen:
 - (a) December 1 to March 1 with gill nets in all inland public waters, except Jones, Salters, White, Singletary and Baytree (Black) Lakes;
 - (b) December 1 to May 1 with gill nets in Black River;
 - (c) December 1 to June 5 with dip and bow nets in Black River;
- (9) Brunswick:
 - (a) December 1 to March 1 with gill nets in all inland public waters, except Waccamaw River and its tributaries;
 - (b) December 1 to May 1 with dip, bow, and gill nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
- (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (11) Burke:
 - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (12) Cabarrus:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (14) Camden:
 - (a) July 1 to June 30 with traps in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters;
- (15) Carteret: December 1 to June 5 with dip, bow, and gill nets in all inland public waters except South River and the tributaries of the White Oak River;
- (16) Caswell:
 - (a) July 1 to June 30 with gigs in all public waters;
 - (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
 - (c) July 1 to June 30 with traps in Hyco Reservoir;
- (17) Catawba:
 - (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
 - (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- (18) Chatham:
 - (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
 - (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
 - (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- (19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (20) Chowan:
 - (a) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters, except Bennetts Mill Pond and Dillard Pond;

- (b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (22) Cleveland:
 - (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (23) Columbus:
 - (a) December 1 to March 1 with gill nets ~~and gigs~~ in all inland public waters, except Lake Waccamaw and its ~~inlets~~ tributaries and Waccamaw River and its tributaries;
 - (b) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
 - (c**b**) December 1 to June 5 with dip, bow, and gill nets in Livingston Creek;
- (24) Craven:
 - (a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
 - (b) December 1 to June 5 with dip, bow, and gill nets in all inland public waters, except Pitch Kettle, Grindle, Slocum, Spring and Hancock Creeks and their tributaries; with dip and bow nets in Slocum Creek above the US 70 bridge; and with seines in the Neuse River;
- (25) Cumberland: December 1 to March 1 with gill nets in all inland public waters;
- (26) Currituck:
 - (a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in Northwest River and Tulls Creek;
- (27) Dare:
 - (a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in Martin Point Creek;
- (28) Davidson:
 - (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;
- (29) Davie:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- (30) Duplin:
 - (a) December 1 to March 1 with gill nets in Baysden Pond and in the Northeast Cape Fear River, including old channels from a point one mile above SR 1700 (Serecta) Bridge downstream to the county line;
 - (b) December 1 to June 5 with dip, bow, and gill nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;
- (31) Durham:
 - (a) July 1 to August 31 with seines in Neuse River,
 - (b) July 1 to June 30 with gigs in all public waters;
- (32) Edgecombe:
 - (a) December 1 to March 15 with gill nets in Noble Mill Pond and Wiggins Lake;
 - (b) December 1 to June 5 with dip and bow nets in all public waters; and with drift gill nets in Tar River below the bridge at Old Sparta to the Pitt County line;
- (33) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;
- (34) Franklin:
 - (a) December 1 to March 1 with gill nets in Clifton Pond, Parrish Pond, Jackson Pond and Lake Royale;
 - (b) July 1 to August 31 with seines in Tar River;
 - (c) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;

- (35) Gaston:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (36) Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters, except Williams (Merchants Mill) Pond;
- (37) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (38) Granville:
- (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
 - (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
 - (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
 - (d) July 1 to June 30 with cast nets in all public waters;
- (39) Greene: December 1 to June 5 with dip, bow, and gill nets and reels in Contentnea Creek;
- (40) Guilford:
- (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
 - (b) July 1 to June 30 with gigs in all public waters;
- (41) Halifax:
- (a) December 1 to March 1 with gill nets in White's Mill Pond;
 - (b) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;
 - (c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (42) Harnett:
- (a) December 1 to March 1 with gill nets in all inland public waters;
 - (b) January 1 to May 31 with gigs in Cape Fear River and tributaries;
 - (c) December 1 to June 5 with dip and bow nets in Cape Fear River;
- (43) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;
- (44) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (45) Hertford:
- (a) July 1 to June 30 with traps in Wiccacon Creek;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters, except mill ponds;
- (46) Hoke: December 1 to March 1 with gill nets in all inland public waters;
- (47) Hyde:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in Pungo River and tributaries upstream from US 264 bridge, Scranton Creek, and Long Shoal River and tributaries;
- (48) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;
- (49) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (50) Johnston:
- (a) December 1 to March 1 with gill nets in Cattails Lake, Holts Lake, Holts Pond, and Wendell Lake;
 - (b) December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River, and Swift Creek;
- (51) Jones:
- (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;
 - (b) December 1 to June 5 with dip, bow, and gill nets in all inland public waters, except the White Oak River and its tributaries;
 - (c) December 1 to June 5 with dip and bow nets in the main run of the White Oak River;
 - (d) March 1 to April 30 with gill nets in

- the main run of the White Oak River;
- (52) Lee:
- (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond;
 - (b) July 1 to August 31 with seines in Cape Fear River;
 - (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;
- (53) Lenoir:
- (a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;
 - (b) December 1 to June 5 with dip, bow, and gill nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;
- (54) Lincoln:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;
- (55) McDowell:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (56) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (57) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (58) Martin: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters;
- (59) Mecklenburg:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;
- (60) Montgomery:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (61) Moore:
- (a) December 1 to April 15 with gill nets in Deep River and all tributaries;
 - (b) July 1 to August 31 with seines in all running public waters except in Deep River;
 - (c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;
- (62) Nash:
- (a) December 1 to March 1 with gill nets in Boddies Pond and Camp Charles Lake;
 - (b) July 1 to June 30 with gigs in all public waters, except Tar River;
 - (c) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;
- (63) New Hanover: December 1 to June 5 with dip, bow, and gill nets in all inland public waters, except Sutton (Catfish) Lake;
- (64) Northampton:
- (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;
 - (b) December 1 to June 5 with dip and bow nets in Oconeechee Creek, Old River Landing Gut; and with dip, bow and gill nets in Vaughans Creek below Watsons Mill;
 - (c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (65) Onslow:
- (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
 - (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
 - (c) December 1 to March 1 with gill nets in Catherine Lake and Baysden Pond;
 - (d) December 1 to June 5 with dip, bow, and gill nets in the main run of New River; and with dip and bow nets in the main run of the White Oak River;
 - (e) March 1 to April 30 with gill nets in the main run of the White Oak River; and with dip, bow and gill nets in

- Grant's Creek;
- (66) Orange:
- (a) July 1 to August 31 with seines in Haw River,
 - (b) July 1 to June 30 with gigs in all public waters;
- (67) Pamlico: December 1 to June 5 with dip, bow and gill nets in all inland public waters;
- (68) Pasquotank:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters;
- (69) Pender:
- (a) December 1 to June 5 with dip, bow, and gill nets in the Northeast Cape Fear River and Long Creek; with dip and bow nets in Black River; and with seines in the main run of Northeast Cape Fear River;
 - (b) December 1 to May 1 with gill nets in Black River; and with dip, bow, and gill nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;
- (70) Perquimans:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with gill nets in all inland public waters;
- (71) Person:
- (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
 - (b) July 1 to June 30 with gigs in all public waters.
- (72) Pitt:
- (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
 - (b) December 1 to June 5 with dip, bow and drift gill nets and with seines in Tar River; and with dip, bow and gill nets in all other inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
- (73) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (74) Randolph:
- (a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;
 - (b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
 - (c) July 1 to June 30 with gigs in all public waters;
- (75) Richmond:
- (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
 - (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
 - (c) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the mouth of Cartledge Creek;
- (76) Robeson: December 1 to March 1 with gill nets and gigs in all inland public waters;
- (77) Rockingham:
- (a) July 1 to August 31 with seines in Dan River and Haw River;
 - (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;
- (78) Rowan:
- (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (79) Rutherford:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (80) Sampson:
- (a) December 1 to March 1 with gill nets in all inland public waters;
 - (b) December 1 to May 1 with gill nets in Big Coharie Creek, Black River, and Six Runs Creek;
 - (c) May 2 to June 5 with gill nets of no less than five and one-half inch stretch

- measure in Big Coharie Creek, Black River, and Six Runs Creek;
- (d) December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River, and Six Runs Creek;
- (81) Scotland: December 1 to March 1 with gill nets in all inland public waters, except lakes located on the Sandhills Game Land;
- (82) Stanly:
 - (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (83) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;
- (84) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;
- (85) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (86) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (87) Tyrrell:
 - (a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps except Bee Tree Canal within 50 yards of the Lake Phelps fish ladder;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, Bee Tree Canal within 50 yards of the Lake Phelps fish ladder, public lakes, ponds and other impounded waters; and with gill nets in Alligator Creek;
- (88) Union:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (89) Vance:
 - (a) December 1 to March 1 with gill nets in Southerlands Pond and Ellis Pond;
 - (b) July 1 to August 31 with seines in the Tar River;
- (c) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;
- (d) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- (e) July 1 to June 30 with cast nets in all public waters;
- (90) Wake:
 - (a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;
 - (b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;
- (91) Warren:
 - (a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;
 - (b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;
 - (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;
 - (d) July 1 to June 30 with cast nets in all public waters;
- (92) Washington:
 - (a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments; and with gill nets in Conaby Creek;
- (93) Wayne:
 - (a) December 1 to March 1 with gill nets in Sasser's Mill Pond and Sleepy Creek Lake;
 - (b) December 1 to June 5 with dip and bow nets in Little River, Mill Creek, and Neuse River, except from Quaker Neck Dam downstream to SR 1008 (Tolar) bridge;
- (94) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;
- (95) Wilson:
 - (a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn

- Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;
- (b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;
- (c) January 1 to March 1 with gill nets in Silver Lake;

(96) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

Statutory Authority G.S. 113-134; 113-276; 113-292.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 13A .0016.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 7:00 p.m - 9:00 p.m. on January 11, 1994 at the Greensboro Public Library, 201 N. Greene Street, Greensboro, NC 27401.

Reason for Proposed Action: To adjust the scoring for inspection frequency and duration of commercial hazardous waste treatment facilities in North Carolina based upon two years of experience in inspecting these facilities. This change will be more equitable for commercial facilities as it will better represent inspection needs.

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 to Patricia Arms, NC Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, P.O. Box 27687, Raleigh, NC 27611-7687. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact Patricia Arms at (919) 733-4996. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0016 SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITY

(a) The Department shall evaluate all commercial hazardous waste facilities to determine a score for each facility in accordance with Paragraph (c) of this Rule.

(b) A commercial hazardous waste facility (other than an incinerator or a land disposal facility) with a volume of waste of 20,000 tons or less per year of hazardous waste and having a total score pursuant to

PROPOSED RULES

Paragraph (c) of this Rule of less than ~~30~~ 33 is designated as a special purpose commercial hazardous waste facility. These facilities shall be classified as follows:

<u>Total Score</u>	<u>Category</u>
1 - 11 <u>13</u>	1
12 <u>14</u> - 20 <u>22</u>	2
21 <u>23</u> - 29 <u>32</u>	3

(c) A score for each facility shall be determined by adding the total score for Subparagraphs (c)(1) - (c)(7) of this Rule and subtracting the score for Subparagraph (c)(8) of this Rule.

- (1) A score shall be assigned for smallness of the facility by adding the applicable score for storage and the applicable score for treatment using Table 1.

TABLE 1

<u>Smallness of Facility</u>	<u>Constructed Capacity</u>	<u>Score</u>
Storage:	< 10,000	1
(gallons)	10,000-100,000	2
	> 100,000	3
Treatment:	< 10,000	1
(gallons/	10,000-100,000	2
per day)	> 100,000	3

- (2) A score shall be assigned for type of treatment permitted by adding the score for each type of treatment being performed by the facility using Table 2.

TABLE 2

<u>Type of Treatment Being Performed</u>	<u>Score</u>
Storage Only	1
Solvent Recovery	2
Metal Recovery	2
Energy Recovery	2
Fuel Blending	2
Aqueous Treatment	3
Stabilization	2
Incineration	5
Residuals Management	5
Other Treatment	2

- (3) A score shall be assigned for the nature of hazardous waste by adding the score for acute waste, if acute waste totals more than 1,000 pounds, and the score for each other type of hazardous waste that constitutes ten percent or more of the total hazardous waste handled by the facility, using Table 3. However, if the facility is permitted for storage only and no treatment is performed, the score for nature of hazardous waste shall be reduced by one-half for each hazardous waste stream stored only.

TABLE 3

<u>Nature of Hazardous Waste</u> <u>(from Annual Report)</u>	<u>Score</u>
Corrosive	1

Ignitable	2
Reactive	2
Toxicity Characteristic	2
Listed Toxic	2
Acute	3

- (4) A score shall be assigned for volume of hazardous waste by using the applicable score in Table 4.

TABLE 4

<u>Volume of Waste (Tons from Annual Report)</u>	<u>Score</u>
< 2,000	1
2,000-10,000	2
10,000-20,000	3

- (5) A score shall be assigned for uniformity, similarity and lack of diversity of waste streams by using the applicable score in Table 5.

TABLE 5

<u>Uniformity, Similarity, Lack of Diversity of Waste Streams (EPA Waste Numbers) From Annual Report</u>	<u>Score</u>
< 5	1
5-75	2
> 75	3

- (6) A score shall be assigned for predictability and treatability of site specific waste streams by using the applicable score in Table 6.

TABLE 6

<u>Predictability and Treatability of Waste Streams</u>	<u>Score</u>
Simple Waste Streams and Treatment	1
Complex Waste Streams and Treatment (Incompatibles, highly toxic, or multicoded waste streams)	2

- (7) A score shall be assigned for compliance history for the past two years by using the highest applicable score in Table 7.

TABLE 7

<u>Compliance History for Past Two Years</u>	<u>Score</u>
Class II Violations	1
Class I Violations	2
Penalties	3
Injunctions	5

- (8) A score shall be assigned for reclamation by using the applicable score in Table 8.

TABLE 8

<u>Reclamation (Credit Given)</u>	<u>Score</u>
Pretreatment for Off-site Reclamation	1
On-site Reclamation	2

(d) The information referred to in Paragraph (c) of this Rule shall be determined based on the facility's permit, the previous year's annual report, and compliance history. If no annual report was submitted, quarterly projections of waste volume shall be submitted to the Department by the facility. Each facility may be re-evaluated at any time new information is received by the Department concerning the factors in Paragraph (c) of this Rule.

(e) The frequency of inspections at special purpose commercial hazardous waste facilities shall be determined by the facility's classification as follows:

<u>Category</u>	<u>Minimum Inspections</u>
1	2 per month
2	4 per month
3	6 per month

Statutory Authority G.S. 130A-295.02(j).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 16A .0306.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 5, 1994 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: To eliminate Medicare co-payment rules from the Kidney Program Rules. At present the Kidney Program reimburses dialysis centers the approximately 15% that Medicare does not reimburse for home dialysis. It is felt that this 50-60 thousand a year could be more appropriately used in other areas of ESRD care.

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 to John P. Barkley, Department of Justice, P.O. Box 629,

Raleigh, NC 27602-0629. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact John P. Barkley at (919)733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC
DISEASE

SECTION .0300 - CHRONIC RENAL
DISEASE CONTROL PROGRAM

.0306 COVERED SERVICES

The kidney program shall provide financial assistance to eligible patients for the following covered services:

- (1) Center Dialysis.
 - (a) Chronic maintenance dialysis.
 - (i) For patients who have no other coverage for this service, reimbursement is limited to one hundred dollars (\$100.00), or the Medicaid rate, whichever is lower, per treatment, not to exceed 149 treatments per year.
 - (ii) For patients who have other coverage for this service, no reimbursement will be provided.
 - (b) Home training dialysis.
 - (i) For patients who have no other coverage for this service, reimbursement is limited to one hundred twenty dollars (\$120.00), or the Medicaid rate, whichever is lower, per treatment, not to exceed 5 training treatment sessions.
 - (ii) For eligible patients with no other third party coverage beyond Medicare, the program will reimburse the facilities fifteen percent of their Medicare home training rate, not to exceed 5 training treatment sessions.
 - (iii) For eligible patients who are not covered by Medicare and do have other coverage for this service, reimbursement is limited to the extent that full payment (including all third-party payments) does not exceed one hundred twenty dollars (\$120.00), or the Medicaid rate, whichever is lower, per treatment, not to exceed 5 training sessions.
- (2) Home Dialysis:
 - (a) Medicare Method I home dialysis: is for
 - (i) ~~For~~ patients who have no other coverage for this service, reimbursement is limited to one hundred dollars (\$100.00), or the Medicaid rate, whichever is lower, per treatment, not to exceed 149 treatments per year.
 - (ii) ~~For patients with no other party cov-~~

~~erage beyond Medicare, the program will reimburse the facilities fifteen percent of their Medicare rate per treatment, not to exceed 149 treatments per year.~~

- (iii) ~~For eligible patients who are not covered by Medicare and do have other coverage for this service, reimbursement is limited to the extent that full payment (including all third-party payments) does not exceed one hundred dollars (\$100.00), or the Medicaid rate, whichever is lower, per treatment, not to exceed 149 treatments per year.~~

- (b) ~~Medicare Method II home dialysis.~~
 - (i) ~~Reimbursement to vendors for supplies and equipment shall be fifteen percent of the Medicare approved claims not to exceed two thousand seven hundred and fifty dollars (\$2,750) during the fiscal year.~~
 - (ii) ~~Reimbursement to vendors is limited to payment for services provided to Medicare eligible patients. Non-Medicare patients must be treated by their respective dialysis facilities as though under Method I, or they will be responsible for their own financial arrangements.~~

- (3) Inpatient Hospital Dialysis.
 - (a) For patients who have no other coverage for this service, reimbursement is limited to one hundred dollars (\$100.00), or the Medicaid rate, whichever is lower, per treatment for those patients hospitalized due to medical complications, pre- or post-transplant dialysis, or any other medical reason.
 - (b) For patients who have other coverage for this service, no reimbursement will be provided.
- (4) Pharmaceuticals and Incidental Supplies.
 - (a) Payments shall be made to patient selected pharmacies for legend or non-legend drugs and incidental supplies related to the ESRD diagnosis purchased by eligible patients upon receipt by the kidney program of claims submitted on DEHNR Form 3058, Pharmacy Claim. Reimbursement for legend drugs shall not exceed the Medicaid rate for those drugs.
 - (b) Payments made to participating

pharmacies for pharmaceuticals and incidental supplies shall not exceed three hundred dollars (\$300.00) per eligible patient per fiscal year.

Statutory Authority G.S. 130A-220.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to adopt rules cited as 15A NCAC 16A .1301 - .1305.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 5, 1994 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: These rules will enable the AIDS Care Branch to administer a Medicaid-reimbursed HIV Case Management Program.

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact John P. Barkley at (919)733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .1300 - HIV CASE MANAGEMENT PROGRAM

.1301 PROGRAM ADMINISTRATION

The HIV Case Management Program is administered by the AIDS Care Branch, Health Care Section, Division of Adult Health Promotion, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Statutory Authority G.S. 130A-223.

.1302 QUALIFIED CASE MANAGERS

(a) Case managers providing HIV case management under this Program must meet one of the following qualifications:

- (1) Master level degree in a human service area such as Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology, or Nursing;
- (2) Bachelor level degree in a human service area that includes the aforementioned disciplines and two years experience working in human services; or
- (3) Licensed Registered Nurse, Nurse Practitioner, Physician Assistant, or Certified Substance Abuse Counselor and two years experience working in human services.

(b) Persons who meet the following requirements may also serve as case managers in this program:

- (1) Have a high school diploma;
- (2) Have two years experience providing case management services to clients with HIV disease;
- (3) Education and experience providing

case management services have been verified by the AIDS Care Branch; and

- (4) All their charts are reviewed and signed by a qualified supervisor.

(c) A person qualified as a case manager under Paragraph (b) of this Rule may serve as a case manager for five years from the date of employment as a case manager in an agency certified to provide HIV case management or, if the agency is not certified to provide HIV case management at the time the person is employed as a case manager, from the date of the agency's certification. A person must meet the requirements of case managers as set forth in Paragraph (a) of this Rule to continue providing HIV case management services after this five year period.

(d) Case managers in the HIV Case Management Program shall attend, at least annually, training approved by the AIDS Care Branch. Training must be in relevant areas such as case management, needs assessment, community resource development, and substance abuse issues.

Statutory Authority G.S. 130A-223.

.1303 QUALIFIED SUPERVISORS OF HIV CASE MANAGEMENT SERVICES

A qualified supervisor of HIV case management services under this program must meet one of the following qualifications:

- (1) Has a Master level degree in a human service area such as Social Work, Sociology, Child Development, Maternal and Child Health, Counseling, Psychology, or Nursing and one year experience in case management; or
- (2) Has a Bachelor level degree in a human service area that includes the aforementioned disciplines and two years experience in case management.

Statutory Authority G.S. 130A-223.

.1304 CERTIFICATION OF PROVIDERS

(a) The AIDS Care Branch will approve or deny applications for certification as a provider of HIV case management.

(b) The Division of Medical Assistance will enroll certified providers for reimbursement for HIV case management services provided to clients who meet Medicaid eligibility criteria set forth in 10 NCAC 26B .0124.

(c) An agency interested in certification must submit an application to the AIDS Care Branch

that includes provider's specific plans for at least the following:

- (1) Comprehensive assessment of health care, psychosocial, environmental and financial needs;
- (2) Development of individual care plans which include goals, services to be provided, and progress notes;
- (3) Assuring that appropriate health care, social work, and other consultations, as dictated by client needs, are obtained in developing the care plan;
- (4) Coordination of client services with other agencies in the community which provide services to persons with HIV disease; and
- (5) Quality assurance, including the monitoring and evaluating of case management records.

(d) Applications for certification may be obtained by writing to the AIDS Care Branch, Division of Adult Health Promotion, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

(e) To be certified, a provider must:

- (1) Ensure the provision of case management services by qualified case managers as set out in Rule .1302 of this Section;
- (2) Ensure clinical supervision of HIV case management services by a qualified supervisor as set out in Rule .1303 of this Section; and
- (3) Be approved by the AIDS Care Branch as having met all requirements listed in Paragraph (c) of this Rule.

Statutory Authority G.S. 130A-223.

.1305 MONITORING AND EVALUATION

A provider agency's financial and statistical records, patient records, and any other pertinent information may be reviewed by the AIDS Care Branch as part of the overall monitoring and evaluation effort.

Statutory Authority G.S. 130A-223.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 18A .1205.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 5, 1994 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: To reduce and/or eliminate duplication of sampling of Grade A pasteurized milk products.

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact John P. Barkley at (919)733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1200 - GRADE A MILK SANITATION

.1205 PROCEDURE FOR ISSUANCE OF PERMIT: SAMPLING: EMBARGO

(a) Milk plants shall be issued a North Carolina permit by the ~~local health department in the county in which the plant is located~~ Division. This permit shall cover the milk plant and plant-owned distributors. The ~~local health department~~ Division ~~that issued the permit~~ shall assure that a minimum of four samples of raw milk for pasteurization shall be taken and recorded from each milk plant after receipt of the milk by the plant and prior to pasteurization every consecutive six months, and shall sample Grade "A" pasteurized milk and milk products a minimum of four times every consecutive six months. Samples shall be collected from the milk plant or plant-owned distributors.

(b) Independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall be issued a North Carolina permit by the ~~local health department in the county in which the distributor is located~~. The ~~local health department that issued the permit~~ shall sample Grade "A" pasteurized milk and milk products from a distributor a minimum of four times every consecutive six months Division.

(c) A local health department without a milk plant or independent milk distributor located in its jurisdiction is authorized, but is not required to sample Grade "A" pasteurized milk or milk products. The local health department shall maintain a record of temperature and cleanliness in retail stores, grocery stores, milk delivery trucks, and similar establishments to determine compliance with Sections 2, 4, 9, and 10 of the Milk Ordinance.

(d) ~~Out-of-state milk plants and milk distributors are issued a North Carolina permit by the local health department designated by the Division. A local health department is designated only after the out-of-state milk plant or milk distributor furnishes the Division with information concerning where milk is sold (cities, distributors, outlets, retail stores, or other points of sale), frequency, approximate time of deliveries, and approximate volume to be distributed in each county of this state. The local health department that issued the permit shall sample Grade "A" milk and milk products from out-of-state milk plants and milk distributors a minimum of four times every consecutive six months.~~

(d)(e) Dairy farms are issued a North Carolina

permit by the agency, either the Division or a local health department, which has responsibility for maintaining records for the milk plant or specified bulk tank unit to which the dairy farm has been assigned. Permits issued to new dairy farms are issued by the agency, either the Division or a local health department, which is responsible for inspecting the dairy farm. Dairy farms transferring from one milk plant or bulk tank unit to another are not issued a new permit, but the dairy farm records are transferred to the agency, either the appropriate Division representative or a local health department, which is responsible for maintaining the records for the new milk plant or bulk tank unit. The agency, either the Division or a local health department, responsible for maintaining records for the milk plant or specified bulk tank unit to which a dairy farm has been assigned shall assure that a minimum of four samples of raw milk for pasteurization are recorded every consecutive six months.

(f) ~~Milk haulers are issued a North Carolina permit by the agency, either the Division or a local health department, to which the bulk tank unit is assigned. If there is no bulk tank unit involved, the permit is issued by the local health department in the county which receives the milk.~~

(g) ~~The local health department shall provide information upon request as to whether the local health department or the Division of Environmental Health issues the permits for a particular facility or location.~~

Statutory Authority G.S. 130A-275.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Commission for Health Services intends to amend rule cited as 15A NCAC 18A .2610.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 5, 1994 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: To comply with Statutory changes.

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact John P. Barkley at (919)733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.2610 STORAGE: HANDLING: AND DISPLAY OF FOOD

(a) All unwrapped or unenclosed food and drink on display shall be protected in such manner that the direct line from the customer's mouth to the food shall be intercepted by glass or similar shields and shall be otherwise protected from public handling or other contamination, except that approved hand openings may be permitted on

counter fronts. This requires standard counter protector installations for all cafeteria counters, salad bars, and similar type service to prevent contamination by customers' coughing and sneezing.

(b) Customer self-service is permitted only under the following conditions:

(1) Buffet-style Service. This style of service is not acceptable unless protective shields, equivalent to cafeteria counter protectors, are provided to intercept contamination; however, protective shields are not required for buffet style service which is provided for a club, organization or private individual as a planned event and from which the public is excluded. When food is served in this manner, the following requirements shall be met:

- (A) Potentially hazardous foods shall be replaced at least hourly;
- (B) Food containers shall be arranged conveniently so customers' clothing does not come in contact with food;
- (C) Long-handled serving spoons, tongs, or other utensils shall be provided and used;
- (D) At the conclusion of the event, food that has not been consumed, shall be discarded.

(2) Family-style Service. In establishments featuring this style of service, patrons elect to participate in the family dining-table type of service. Ordinary serving dishes and utensils are acceptable.

(c) Foods, except raw vegetables which are to be cooked, shall be kept under cover when not in the process of preparation and serving. Meat and other potentially hazardous foods shall not be stored on the floor, or in direct contact with shelves and racks of cold storage boxes, or permitted to come in contact with dirty clothes, newspapers, pasteboard, previously-used paper, or other contaminated surfaces. If open dishes and pans containing food are stacked, food shall be protected with wax paper or foil. Food transported to a restaurant shall not be accepted unless properly wrapped, covered, or otherwise protected. Food and drink shall not be served to the general public in the kitchen. In the case of "drive-in" restaurants, all food shall be covered or wrapped before delivery to patrons' vehicles, to exclude vermin or insects, dust, and other contamination.

(d) Containers for onions, slaw, mustard, and other condiments shall have covers and be kept covered when not in use. Sugar shall be dispensed with either pour-type dispensers or individual packages. Waiters and waitresses shall avoid unnecessary handling of food in the process of serving.

(e) The establishment shall be kept free of flies, rodents, roaches, ants, and other vermin. Animals and fowl shall not be permitted in a restaurant, provided that seeing eye dogs accompanying blind persons and service dogs accompanying handicapped persons shall be exempted. All supplementary means necessary for the elimination of flies, such as the installation of fly-repellant fans, and the routine use of approved insecticides shall be employed.

(f) Dustless methods of floor cleaning shall be used and all except emergency floor cleaning shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.

(g) The offering of unwrapped food samples which were prepared by, or served by, the establishment on its premises, shall be maintained within sight of an employee or agent for the purposes of observing customer use.

Statutory Authority G.S. 130A-248.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 21H .0314.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 1:30 p.m. on January 5, 1994 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: Since 1987, all non-white newborns in North Carolina have been offered screening for sickle cell disease. White infants were not offered this service because of their very low risk for the disease, and because funds were not available at the time to screen all infants.

The National Institutes of Health recently published a consensus conference report recommending universal newborn screening for sickle cell disease as the standard care. The report notes the difficulty in identifying "non-white infants", the medical liability in "missing" an infant when such identification is inaccurate, and the efficiencies achieved (both in hospitals and laboratories) when universal.

Based on the above rationale, and having identified the required funds, the Division of Maternal and Child Health, in collaboration with the N.C. Council on Sickle Cell Syndrome, proposes to amend to require that all newborns be offered screening for sickle cell disease.

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 20, 1994. Persons who wish to speak at the hearing should contact John P. Barkley at (919)733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21H - SICKLE CELL SYNDROME: GENETIC COUNSELING: CHILDREN AND YOUTH SECTION

SECTION .0300 - GENETIC HEALTH CARE

.0314 SUBMISSION OF BLOOD SPECIMENS FOR SCREENING OF NEWBORNS

(a) The attending physician shall have drawn a blood specimen for each infant born in North Carolina and shall submit such specimens to the North Carolina State Laboratory for Public Health for testing for the following metabolic and other hereditary and congenital disorders:

- (1) phenylketonuria (PKU),
- (2) galactosemia,
- (3) congenital primary hypothyroidism,
- (4) congenital adrenal hyperplasia (21-hydroxylase deficiency),
- (5) sickle cell disease (~~non-white infants only~~).

(b) Notwithstanding Paragraph (a) of this Rule, parents or guardians may object to screening in accordance with G.S. 130A-125(b).

Statutory Authority G.S. 130A-125.

TITLE 18 - DEPARTMENT SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of the Secretary of State intends to adopt rules cited as 18 NCAC 8 .1201 - .1213.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 10, 1994 at the Archdale Building, 5th Floor Conference Room, 512 N. Salisbury Street, Raleigh, North Carolina 27611.

Reason for Proposed Action: To implement a certification program for local government property mappers pursuant to G.S. 147-54.4.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing prior to January 18,

1994 by mail addressed to Phil Stanley, Director, Land Records Management Division, N.C. Department of the Secretary of State, P.O. Box 27687, Raleigh, N.C. 27611. For copies of any information related to the hearing, call (919) 733-7006 or write to the aforementioned address.

CHAPTER 8 - LAND RECORDS MANAGEMENT DIVISION

SECTION .1200 - MINIMUM CERTIFICATION REQUIREMENTS FOR LOCAL GOVERNMENT PROPERTY MAPPERS

.1201 INTRODUCTION AND PURPOSE

(a) The Department of the Secretary of State (hereinafter referred to as Department), has developed minimum certification requirements for property mappers in North Carolina. These requirements are set forth in the rules of this Section. The purposes of these requirements are as follows:

- (1) to insure that property mappers employed by local governments have every opportunity to expand their professional knowledge of new and state-of-the-art mapping technologies;
- (2) to insure that property mappers have continual access to recognized courses of instruction in the principles of property mapping, and are cognizant of state laws and established standards pertaining to listing, appraisal, and assessment of real property for taxation purposes; and
- (3) to insure that the State's investments through grant awards are used wisely and expertly by the local government personnel who are responsible for creating and maintaining large scale cadastral maps which may be financed, in part, by these funds.

(b) Copies of the requirements contained in this Section, as well as related laws, may be viewed or obtained by contacting the Land Records Management Division, Department of the Secretary of State, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7006. The cost of copies will be twenty cents (\$.20) per page to cover re-production and postage.

Statutory Authority G.S. 147-37; 147-54.3(f); 147-54.4(e).

.1202 DEFINITIONS

In addition to the terms defined in G.S. 147-54.4(a)(1), the following definitions shall apply to the rules in this Section:

- (1) "AM/FM" means Automated Mapping and Facilities Management.
- (2) "ASPRS" means the American Society for Photogrammetry and Remote Sensing.
- (3) "Division" means the Land Records Management Division of the N.C. Department of the Secretary of State.
- (4) "GIS/LIS" means Geographic Information Systems/Land Information Systems.
- (5) "IAAO" means the International Association of Assessing Officers.
- (6) "IOG" means the N.C. Institute of Government.
- (7) "NCPMA" means the North Carolina Property Mappers Association.
- (8) "URISA" means the Urban and Regional Information Systems Association.

Statutory Authority G.S. 147-54.4(a)(1); 147-54.4(e).

.1203 ELIGIBILITY

Persons who are eligible to apply for certifications are defined in G.S. 147-54.4(a) and (b).

Statutory Authority G.S. 147-54.4(a); 147-54.4(b); 147-54.4(e).

.1204 APPLICATION PROCEDURES FOR CERTIFICATION

Eligible persons shall apply for certification by completing a Certification Application made available by the Department. The applicant shall include all documentation and fees as required in Rules .1206 and .1207 of this Section prior to being considered for certification.

Statutory Authority G.S. 147-54.4(d); 147-54.4(e).

.1205 APPLICATION PROCEDURES FOR RENEWAL

The Division shall mail renewal notifications to each property mapper whose certification is about to expire. The renewal notifications shall be mailed out on approximately October 1 and shall be returned by the property mapper with adequate documentation by December 1 in the year in which the property mapper's certification expires. For the convenience of the property mapper, the Division shall also send a Certification Application along with this notification accompanied by neces-

sary guidelines and instructions.

Statutory Authority G.S. 147-54.4(d); 147-54.4(e).

.1206 REQUIRED DOCUMENTATION

In order to be considered for certification or recertification, the applicant shall supply the Department with appropriate documents that give evidence that the applicant has completed the required courses, credit hours of instruction and examination as described in Rules .1208 and .1209 of this Section. This evidence may come in various forms including receipts, certificates, diplomas, and affidavits. This documentation shall accompany the completed application. If the Department determines that the documentation is inadequate, the application shall be deemed incomplete and shall be returned to the applicant with a request for more information. The applicant shall submit adequate documentation to the Department within 15 calendar days of this request.

Statutory Authority G.S. 147-54.4(b); 147-54.4(e).

.1207 FEES

Applications for certification and renewal shall be accompanied by the proper fees as set out in G.S. 147-54.4(d). Checks or money orders made payable to the "State of North Carolina/General Fund" shall be accepted for payment of fees. Cash shall not be accepted.

Statutory Authority G.S. 147-54.4(d); 147-54.4(e).

.1208 INSTRUCTION AND EXAMINATION FOR INITIAL CERTIFICATION

(a) An applicant shall attend the following courses of instruction to be considered for initial certification:

- (1) IOG Listing & Assessing Class.
- (2) NCPMA Mapping School.

(b) An applicant shall also obtain a passing score on the following examinations prior to receiving initial certification by the Department:

- (1) TOG Listing & Assessing Exam.
- (2) NCPMA's Certified Property Mappers Exam.

Statutory Authority G.S. 147-54.4(b); 147-54.4(e).

.1209 COURSES OF INSTRUCTION FOR RECERTIFICATION

(a) The courses of instruction with corresponding hours that will be credited toward recertification are as follows:

COURSE

HOURS

(1)	<u>AM/FM International</u>	24 hours
(2)	<u>GIS/LIS</u>	24 hours
(3)	<u>IAAO Course #6</u>	24 hours
(4)	<u>IOG Listing & Assessing</u>	16 hours
(5)	<u>National URISA</u>	24 hours
(6)	<u>NC ASPRS</u>	8 hours
(7)	<u>NC GIS Conference</u>	8 hours
(8)	<u>NC Surveyors Conference</u>	16 hours
(9)	<u>NC URISA</u>	4 hours
(10)	<u>NCPMA Fall Conference</u>	16 hours
(11)	<u>NCPMA GIS Conference</u>	8 hours
(12)	<u>NCPMA Mapping School</u>	24 hours
(13)	<u>NCPMA Regional Workshops</u>	8 - 16 hours
(14)	<u>Society of Surveyors Chapter Meetings</u>	4 hours
(15)	<u>Surveyors Institute</u>	24 hours
(16)	<u>URISA Workshop</u>	8 - 16 hours

(b) An applicant shall complete at least 24 hours of the courses listed in Paragraph (a) of this Rule every two years to be considered for recertification. The credit hours may include a combination of courses equalling 24 hours or one course equalling 24 hours.

(c) All accrued credit hours shall terminate with the certification renewal.

Statutory Authority G.S. 147-54.4(b); 147-54.4(c); 147-54.4(e).

.1210 CERTIFICATION SCHEDULE

(a) Local government property mapper initial certifications are effective upon approval by the Department and shall expire on December 31 of the second calendar year following such approval. Renewals are effective on January 1 and shall expire on December 31 of the second calendar year following such renewal. The fee submitted with the application or renewal shall be the fee pursuant to G.S. 147-54.4(d) and shall not be prorated, regardless of the month in which the application is received for consideration.

(b) If the property mapper allows his certification to lapse beyond 30 days, he will be required to meet the requirements as described in Rule .1208 of this Section.

Statutory Authority G.S. 147-54.4(b); 147-54.4(c); 147-54.4(d); 147-54.4(e).

.1211 APPLICATION REVIEW

The Department, with assistance from the Certification Board of the NCPMA, shall review each application to insure that the applicant is eligible, has completed all the necessary courses, and has succeeded in submitting all the required documents and fees.

Statutory Authority G.S. 147-54.4(b); 147-54.4(e).

.1212 NORTH CAROLINA CERTIFIED PROPERTY MAPPER CERTIFICATE

Upon meeting the criteria set forth in G.S. 147-54.4 and the rules of this Section, the property mapper shall receive his certificate and personal certificate number within 30 days of submitting his application for certification or renewal. If the application has to be returned for any reason, (e.g., incomplete documentation pursuant to Rule .1206 of this Section) the property mapper shall receive his certificate within 30 days of submitting a new application and/or additional documentation.

Statutory Authority G.S. 147-54.4.

.1213 TERMINATION OF LOCAL GOVERNMENT EMPLOYMENT

The termination of employment shall automatically disqualify the property mapper for renewal of certification.

Statutory Authority G.S. 147-54.4(a); 147-54.4(b); 147-54.4(e).

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Local Government Commission intends to amend rules cited as 20 NCAC 7.0101 - .0107, .0201 - .0203, .0301 - .0305, .0401 - .0404, .0501 - .0505, .0602 and .0603.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 a.m. on January 6, 1994 at the Albemarle Building, Room 100, Conference Room, 325 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: 1. To adjust procedures to conform to the requirements laid out in the Federal Deposit Insurance Corporation Statements of Policy dated March 23, 1993, and 2. To make the language more reader-friendly.

Comment Procedures: Written comments regarding these Rules should be mailed or delivered to the APA Coordinator, Department of State Treasurer, 325 N. Salisbury Street, Raleigh, NC 27603-1385. Oral comments at the public hearing must be accompanied by a written copy of the comments.

CHAPTER 7 - COLLATERALIZATION OF DEPOSITS

SECTION .0100 - GENERAL

.0101 GENERAL INFORMATION

(a) This Chapter sets forth the manner in which the official depositories shall provide the collateralization of the uninsured balances on deposit in accordance with provisions in G.S. 18B-702(d), G.S. 115C-443 and 444, G.S. 115D-58.6(b) and 58.7(b), and G.S. 147-69.1 and 79, G.S. 159-30 and 31, and G.S. 116-36.1(h), and G.S. 84-34.1

(b) All correspondence to the State Treasurer under this Chapter shall be addressed to: Division of Investment and Banking, Department of State Treasurer, 325 North Salisbury Street, Raleigh, North Carolina 27611 27603-1385.

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

.0102 DEFINITION OF TERMS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

(1) ~~(2)~~ "Demand Deposits" are all deposits that are not time deposits as defined in

these Rules, i.e. all non-interest bearing deposits.

(2) (3) "Deposit Accounts" include all demand and time deposits as defined in these Rules.

(3) (4) "Deposit Insurance" means the insurance provided by the Federal Deposit Insurance Corporation, ~~and the Federal Savings and Loan Insurance Corporation.~~

(5) ~~"Depositor" means the State Treasurer or any custodian.~~

(4) (6) "Depository" means a financial institution into which the State Treasurer or a ~~local~~ participating unit is empowered to deposit money with or without interest, and which is required by law to secure the deposits with deposit insurance and or collateral securities.

(5) (7) "Governmental Unit" includes any city, town, county, special district, public hospital, public authority, whose deposits are required to be secured.

(6) (8) ~~"Local Participating Unit"~~ means any governmental unit, any city or county school administrative unit, any community college, ~~and any local ABC board, any university depositing moneys pursuant to G.S. 116-36(h), and the State Bar of North Carolina.~~

(7) (4) ~~"Custodian Public Depositor"~~ means the State Treasurer or the person charged with the custody of public deposits of a ~~local~~ participating unit. ~~or an institution of the University of North Carolina depositing moneys pursuant to G.S. 116-36.1(h). The custodian for the In the case of special funds of the individual schools of a city or county school administrative unit, this person is the school finance officer.~~

(8) (9) "Public Deposits" means all deposits made to the account of the State Treasurer and all deposits made by a ~~local~~ participating unit in any depository, including those held by the depository in an escrow capacity.

(9) (10) "State Funds" means deposits to the account of the State Treasurer.

(10) (11) "State Treasurer" means the State Treasurer of North Carolina.

(11) (12) "Time Deposits" means interest-bearing deposits ~~with fixed maturities of five years or less, including certificates of deposit, savings~~

certificates, savings accounts, negotiable order of withdrawal (NOW) accounts, and money market deposit accounts (MMDA), and certificates of deposits and savings certificates, both negotiable and non-negotiable.

- (13) ~~"Time Deposits Long Term" means certificates of deposit and savings certificates with fixed maturities greater than five years from the date of acquisition.~~

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

.0103 NOTIFICATION BY DEPOSITOR

(a) When opening a new deposit account, the ~~State Treasurer or the custodian public depositor~~ shall provide the depository either written or oral notification that the deposits in said deposit account are public deposits subject to the collateralization rules.

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

(c) If the depository has any reason to believe that a deposit account for which it has ~~no~~ not received a notification pursuant to Paragraph (a) of this Rule is in fact a public deposit, it may forward to the ~~eustodian public depositor~~ a written request for verification of the deposit account. The ~~eustodian public depositor~~ shall respond promptly to this request in writing to the depository.

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

.0104 METHODS OF SECURING DEPOSITS

(a) ~~Deposits of State funds. Uninsured State funds except for time deposits long term shall be secured through a pool of collateral subject to the provisions relating to Option 2 except as otherwise provided in this Chapter.~~

(b) ~~Deposits of Local Participating Units. Except for time deposits long term each depository shall have the following options:~~

- (1) ~~Option 1. To secure all uninsured public deposits of each eustodian separately. Each eustodian shall~~

~~maintain a record of the securities pledged for monitoring purposes.~~

- (2) ~~Option 2. To secure all uninsured public deposits of every eustodian through a pool of collateral established by the depository with the State Treasurer for the benefit of the State and the local participating units. The State Treasurer shall maintain a record of the securities pledged for monitoring purposes.~~

(e) ~~Time Deposits Long Term. All time deposits long term shall be secured separately from all other deposits of the state, a governmental unit, a school unit, a mutual fund operated pursuant to G.S. 159-30(e)(6a) or a housing authority established pursuant to G.S. 157. The separate collateralization shall continue for as long as the State Treasurer or custodian holds the investment. Deposit insurance shall not be considered when establishing the required amount of collateral. The rules in Sections .0200, .0300, .0400, and .0600 of this Chapter, not incompatible with this Paragraph, shall apply. Reports required under Section .0500 of this Chapter shall be submitted in the manner required for Option 1.~~

(d) ~~Mutual funds operating pursuant to G.S. 159-30(e)(6a) shall be secured separately from all other deposits of the state, a local participating unit or a housing authority in the same manner as though the chief financial officer of the manager of the mutual fund is a eustodian. Deposit insurance may, but is not required to, be considered when establishing the required amount of collateral. The rules in Sections .0200, .0300, .0400 and .0600 of this Chapter not incompatible with this Paragraph shall apply. Forms required in the rules may but need not be used at the discretion of the eustodian. The eustodian may with the consent of the depository require more stringent conditions but shall not permit any less stringent conditions than the rules in this Chapter. Reports required under Section .0500 of this Chapter shall be submitted in a manner mutually agreed upon by the eustodian and the depository provided that all information required to be reported under Option 1 is contained in the report.~~

(a) Deposits of Public Depositors. Except for public deposits of housing authorities each depository shall have the following options:

- (1) Dedicated Method. To secure all uninsured public deposits of each public depositor separately. The depository shall maintain a record of all securities pledged, with such record being an

official record of the depository and made available to examiners or representatives of all regulatory agencies. Each public depositor shall maintain a record of the securities pledged for monitoring purposes.

- (2) Pooling Method. To secure all uninsured public deposits of every public depositor through a pool of collateral established by the depository with the State Treasurer for the benefit of the State and the participating units. The depository shall maintain a record of all securities pledged, with such record being an official record of the depository and made available to examiners or representatives of all regulatory agencies. The State Treasurer shall maintain a record of the securities pledged for monitoring purposes.

(be) Notwithstanding the definitions in 20 NCAC 7 .0102, housing authorities established pursuant to G.S. 157, Article 1 and operating under the provisions of the United States Housing Act of 1937, as amended, shall not be ~~considered governmental units for the purpose of this Chapter eligible to be included in the Pooling Method.~~ The deposits of such housing authorities shall be collateralized ~~separately with the chief financial officer of the housing authority acting as custodian under the Dedicated Method, and in accordance with any further restrictions required by regulations of the United States Department of Housing and Urban Development. The rules in Sections .0200, .0300, .0400 and .0600 of this Chapter, not incompatible with this Paragraph shall apply. Reports required under Section .0500 of this Chapter shall be submitted in the manner required for Option 1.~~

(c) The State Treasurer shall maintain a listing of depositories which have selected the Pooling Method, and shall periodically make such listing available to all participating units.

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

.0105 EXERCISING THE POOLING METHOD

(a) ~~Until Form INV-92 is filed with the State Treasurer and the custodian, the depository is under Option 1 Unless and until the requirements of this Rule are met, the depository is considered to be under the Dedicated Method.~~

(b) If the depository selects ~~Option 2~~ the Pooling Method, it shall:

- (1) Submit to the State Treasurer a letter of intent, indicating the effective date it intends to elect Option 2 desires to convert to the Pooling Method, which shall not be prior to the date the requirements of ~~Items 2, 3, and 4~~ this ~~Paragraph~~ Rule are met.
- (2) Submit to the State Treasurer an executed Form INV-93A, "Security Agreement with Resolution", required to comply with Rule .0305 of this Chapter.
- (3) ~~(2)~~ Submit to the State Treasurer all executed escrow agreements required to comply with Rule .0303(b) of this Chapter.
- (4) ~~(3)~~ Submit to the State Treasurer Form INV-99, "Selected Financial Data," referred to in Rule .0501(c) of this Chapter.
- (5) ~~(4)~~ Submit to the State Treasurer Form INV-97, "Annual Report on Public Deposits" referred to in Rule .0502(c) of this Chapter; however, the report shall be for the period immediately preceding the date of the election of ~~Option 2~~ the Pooling Method.
- (6) ~~(5)~~ Submit to each ~~eustodian~~ public depositor Form INV-92, "Election of ~~Option 2~~ Pooling Method," notifying them that it has opted to pool the collateral of all public deposits through the State Treasurer; and provide the State Treasurer a duplicate copy of all "Election of ~~Option 2~~ Pooling Method" forms.

(c) When ~~Option 2~~ Pooling Method is chosen, the depository shall pledge the required amount of collateral with the escrow agent in one of two ways:

- (1) The depository shall request the ~~eustodian~~ public depositor to sign a letter authorizing the escrow agent to release any collateral securities pledged to the ~~local~~ participating unit to be simultaneously repledged to the State Treasurer, with the effective date of the release not being prior to the effective date indicated on the Form INV-92. The recognized effective date shall be the date on which the escrow agent records the pledge of the required collateral securities to the State

Treasurer.

- (2) The depository shall first pledge the required amount of collateral securities with the escrow agent to the account of the State Treasurer, and then request the eustodian public depositor to sign a letter authorizing the escrow agent to release any collateral securities pledged to the ~~local~~ participating unit without substitution. The recognized effective date shall be ~~the date on which the depository files Form INV-92 with the State Treasurer~~ the effective date indicated on the Form INV-92.

(d) The eustodian public depositor shall promptly sign any authorization letter referred to in Paragraph (c) of this Rule.

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

.0106 FORMS

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

- (1) INV-91 Notification of Public Deposit Status Report.
- (2) INV-92 Election of ~~Option 2~~ Pooling Method.
- (3) INV-93A Security Agreement with Resolution (Pooling Method).
- (4) ~~(3)~~ INV-93B Escrow Agent Agreement (Pooling Method).
- (5) INV-94A Security Agreement with Resolution (Dedicated Method).
- (6) ~~(4)~~ INV-94B Standard Escrow Agent Agreement (Dedicated Method).
- (7) ~~(5)~~ INV-95 Request for Collateral Change Pledge and/or Release.
- (8) ~~(6)~~ INV-96 Quarterly Report on Public Deposits.
- (9) ~~(7)~~ INV-97 Annual Report on Public Deposits.
- (10) ~~(8)~~ INV-98 Annual Report on Collateral for Public Deposits.
- (11) ~~(9)~~ INV-99 Selected Financial Data.

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

.0107 DUTY OF DEPOSITORY

By accepting public deposits, the depository assumes the duty and responsibility of maintaining adequate collateral as provided by law and in

accordance with the provisions of this Chapter, for all uninsured deposits in accounts for which the ~~eustodian public depositor~~ has notified the depository pursuant to Rule .0103 of this Chapter.

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

SECTION .0200 - SECURITIES TO BE DEPOSITED

.0201 ELIGIBLE INVESTMENT SECURITIES

The following types of investment securities are eligible for pledging as security provided that the securities are currently eligible for investment by the depository and can be included at full value in the reserves of the depository:

- (1) Obligations of the United States of America;
- (2) Obligations of any agency or instrumentality of the United States of America if the payment of such obligations is fully guaranteed by the United States of America;
- (3) Obligations of the State of North Carolina, the N.C. Medical Care Commission, the N.C. Housing Finance Agency, the N.C. State Education Assistance Authority and the component institutions of the University of North Carolina;
- (4) Bonds or notes of any North Carolina local government or public authority issued with the approval of the Local Government Commission and not currently in default on payment of interest or principal of any of its bonds or notes;
- (5) General obligations bonds of other states whose full faith and credit are pledged to the payment of principal and interest thereof;
- (6) Bonds, notes and other direct obligations of the Federal Financing Bank, the ~~Federal Farm Credit Bank System, the Bank for Cooperatives, the Federal Intermediate Credit Bank,~~ the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the

United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, and the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association;

- (7) Bonds or notes of a housing authority established or to be established pursuant to Article 1, Chapter 157 of the General Statutes of North Carolina or issued by any public housing authority or agency in the United States, when such bonds and notes are secured by a pledge of an annual contribution to be paid by the United States government or any agency thereof, or bonds or notes which may be issued by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to Section 23 of the United States Housing Acts of 1937, as amended;
- (8) Pre-refunded bonds and bonds escrowed to maturity - the issuer shall have applied for and received a re-rating of "AAA" by at least one nationally recognized rating service by reason of U.S. Government securities being escrowed with the trustee;
- (9) Special obligation bonds - if they must be were originally rated "AAA" by reason of U.S. Government securities being escrowed with the trustee;
- (10) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;
- (11) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either:
 - (a) incorporated in the State of North Carolina; or
 - (b) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular

obligations.

In case of questions, it is the responsibility of the depository to demonstrate that the security pledged does fulfill the requirements of this Rule.

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

.0202 AMOUNT OF COLLATERAL REQUIRED TO BE PLEDGED

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

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

- (1) Demand Deposits. 100 percent of the average daily balance for the calendar year to date, or 100 percent of the average daily balance for the immediate preceding three calendar month period, or 100 percent of the average daily balance for the current month to date, or such other balance as shall be given prior approval by the State Treasurer, less the applicable deposit insurance for each public depositor. Calculations for any period other than the "current month to date" method may be based on the period ending the last day of the prior month. At the option of the State Treasurer, the Treasurer may require calculations to be in accordance with the requirements of ~~an Option 1 depository~~ the Dedicated Method, if it is deemed that the averaging method for a particular depository does not accurately reflect the amount of deposits to be secured.

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

(c) The maximum amounts of deposit insurance which may be ~~accepted~~ applied to a public depositor shall be one hundred thousand dollars (\$100,000) on demand deposits and a separate one hundred thousand dollars (\$100,000) on time

deposits. ~~An unused amount of insurance may not be applied to another custodian or to another type of deposit.~~ ; however, the deposits in the name of the an individual school treasurers shall be allowed one hundred thousand dollars (\$100,000) total insurance on both time and demand deposits combined. An unused amount of insurance may not be applied to another public depositor or to another type of deposit.

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

(e) ~~The custodian public depositor in the case of public deposits separately collateralized the Dedicated Method and the State Treasurer in the case of the Pooling Method~~ may require the amount of collateral to be pledged by the depository to be 10 percent greater than the amount required under this Rule, if the market value of pledged securities is below the amount reasonably required to insure public deposits against the risks apparent at the time of the request.

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

.0203 SURETY BONDS

Surety bonds with a corporate surety may be substituted in lieu of part or all of the collateral required under this Chapter under the following conditions:

- (1) The company is licensed by the Commissioner of Insurance to conduct the business of suretyship in North Carolina, and is acceptable to the State Treasurer.
- (2) The company may not provide surety bonds to collateralize public deposits within North Carolina in amounts exceeding the underwriting limitations established by the U.S. Department of the Treasury as provided in Sections 3904 to 3908 of Title 31 of the United States Code or successor provisions.
- (3) The bond must not permit reduction in the penal amount except with the express written permission of the State Treasurer in the case of the Pooling Method, or custodian in the case of ~~public deposits other than state funds separately collateralized the Dedicated Method~~.
- (4) The company must agree to provide the State Treasurer a quarterly report listing all surety bonds issued to collateralize public deposits in North Carolina. The

report shall list ~~as~~ at a minimum the person to whom issued, the depository for whom issued, the penal sum at the end of the quarter, the highest penal sum during the quarter and the date(s) to which the highest penal sum applied, and the underwriting limitation as defined in Paragraph (2) of this Rule currently in effect.

(5) The surety bond must include the rules in 20 NCAC 7 by reference and provide that said rules and the definitions therein shall prevail in all questions of conflict with other provisions of the bond.

(6) The bond shall be payable in federal funds no later than the tenth calendar day after final adjudication. Final adjudication means the issuance of a ruling by the State Treasurer that a default exists, which ruling has not been stayed by an appeal of the ruling as provided by law.

The words "collateral" and "collateralize" shall include surety bonds and the use of surety bonds when used in any rule of this Chapter not incompatible with this Rule.

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

SECTION .0300 - ESCROW OF SECURITIES

.0301 ELIGIBLE ESCROW AGENTS

All securities pledged to secure public deposits shall be deposited either:

- (1) with a Federal Reserve Bank or a Federal Home Loan Bank or a branch thereof pursuant to Rule .0302 of this Section; or
- (2) with ~~a~~ an unaffiliated, national or state-chartered bank with authority to conduct a trust business pursuant to Rule .0303 of this Section.

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

.0302 ESCROW WITH FEDERAL RESERVE BANK OR FEDERAL HOME LOAN BANK

(a) Securities pledged with a Federal Reserve Bank or a branch thereof shall be deposited under Circular 16 of the Federal Reserve Banks in the name of the State Treasurer in the case of ~~Option 2~~ the Pooling Method or the custodian public

depositor in the case of ~~Option 1~~ the Dedicated Method. The appropriate signature card must be executed.

(b) Securities pledged with a Federal Home Loan Bank or a branch thereof shall be deposited ~~as provided in Regulation 545.24-2 and 545.24-3 of the Federal Home Loan Bank in the name of pursuant to Rule .0303(b) of this Section, and pursuant to the terms of the Federal Home Loan Bank's "Pledge Agreement Custody Receipt" which may be in effect from time to time. The pledgee shall be the State Treasurer in the case of Option 2 the Pooling Method or the eustodian public depositor in the case of Option 1 the Dedicated Method.~~

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

.0303 ESCROW WITH A NATIONAL OR STATE-CHARTERED BANK

(a) Any unaffiliated bank or trust company which is authorized to conduct a trust business and is chartered by the United States government or any of its fifty states is eligible to act as an escrow agent.

(b) All escrow accounts shall be established with the appropriate Escrow Agent Agreement. All Escrow accounts for the State Treasurer under the Pooling Method shall be established by Form INV-93B. "Escrow Agreement". All Escrow accounts for a eustodian public depositor under the Dedicated Method shall be established by Form INV-94B "Standard Escrow Agreement". The escrow agent agreements shall contain the necessary language to establish the required trust as provided in this Chapter.

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

.0304 PLEDGING: RELEASING AND SUBSTITUTING COLLATERAL

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

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

- (3) Prior approval of all ~~reductions in the total amount~~ releases and substitutions of collateral by the State Treasurer or eustodian public depositor, as applicable;
- (4) That all transactions be reported to the State Treasurer or eustodian public depositor as applicable; and
- (5) Certification by an authorized official of the depository that after the transaction(s) are completed, the collateral pledged meets the requirements of Rule .0202 of this Chapter.

(b) ~~Forms INV-93 and INV-94 shall provide for the substitution of eligible collateral for collateral already pledged on a par for par basis. Nothing in this Rule shall have the effect of reducing the obligations of the depository to secure public deposits or the required amount of collateral to be pledged. The State Treasurer may, at his sole discretion, rescind permanently or for a period of time the depository's right of substitution by a letter of instruction mailed to the escrow agent at his place of business as shown in the escrow agreement certified mail, return receipt requested.~~

(c) The depository may substitute its own format for Form INV-95 provided the format is substantially the same in content and order of presentation.

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

.0305 SECURITY AGREEMENTS

~~Separate collateralization of deposits pursuant to 20 NCAC 7.0104 and 20 NCAC 7.0401(b) shall require escrow agreements, escrow accounts and reports separate and apart from the escrow agreements, escrow accounts, and reports used in the process of collateralizing the regular deposits of the depositor.~~

(a) Under the Dedicated Method, each depository which is required to pledge collateral to secure the deposits of a public depositor, shall execute with the public depositor Form INV-94A, "Security Agreement with Resolution". Form INV-94A shall consist of both a "Depository Resolution" and a "Security Agreement".

(b) Each depository that elects the Pooling Method is required to execute with the State Treasurer Form INV-93A, "Security Agreement with Resolution". Form INV-93A shall consist of both a "Depository Resolution" and a "Security Agreement".

(c) Forms INV-93A and INV-94A shall contain the necessary language required to establish the provisions for the perfected delivery of collateral securities pursuant to the requirements of the Federal Deposit Insurance Corporation's Policy Statement dated March 23, 1993, and the North Carolina Uniform Commercial Code.

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

SECTION .0400 - DELIVERY AND SALE OF PLEDGED SECURITIES IN THE EVENT OF DEFAULT

.0401 REQUEST FOR DELIVERY OF PLEDGED SECURITIES

(a) The State Treasurer shall, upon default of the depository, request delivery of such part of the pledged collateral as may be needed to hold the State Treasurer and or any ~~other political subdivision participating unit~~ harmless from losses incurred by the default. The State Treasurer shall have full discretion as to the amounts and securities to be delivered but shall attempt to choose those securities which he believes to be the most saleable in the circumstances.

(b) A default is defined as the failure of the depository to fulfill its statutory duties to honor timely requests for withdrawals. A legitimate dispute regarding the liability of the depository for specific items of deposit or withdrawal shall not be considered a default during the period of adjudicating the dispute so long as the disputed amounts are 100 percent separately collateralized by the depository at market value in accordance with this Chapter.

(c) The State Treasurer shall provide at least 24 hours notice to the depository and may provide up to 7 calendar days notice of his order to the escrow agent to deliver part or all of the pledged securities to the State Treasurer and notice of the amount of the default. During the notice period the depository shall have the right to pay off the amount in default in full by the sale of any of the securities pledged which the depository chooses to sell, provided that the escrow agent or the depository shall transfer the entire amount of the default in federal funds to the State Treasurer prior to the due date for delivery of the pledged securities. This notice may be provided solely by telephone communication.

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

159-31(b).

.0402 SAFEKEEPING OF DELIVERED SECURITIES

(a) The State Treasurer may, at his sole discretion, require delivery either to the Investment and Banking Division, Department of State Treasurer, 325 North Salisbury Street, Raleigh, North Carolina 27611-1385 or to any duly licensed State chartered or national bank designated by the State Treasurer.

(b) The State Treasurer shall use the same care with respect to the custody of the delivered securities as he exercises with respect to the State investments in his custody but he will not insure the delivered securities against any risks.

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

.0403 CERTIFICATION OF DEFAULT BY PUBLIC DEPOSITORS

(a) The ~~eustodian~~ public depositor shall provide to the State Treasurer a statement of all circumstances which he feels gives rise to a default. Each ~~eustodian~~ public depositor is requested to discuss with the State Treasurer the need for a ruling on the existence of a default prior to the sending of the statement. The statement shall be notarized and mailed to the State Treasurer certified mail, return receipt requested. In addition, each ~~eustodian~~ public depositor shall provide the State Treasurer with certified copies of the security agreement with resolution, the escrow agent agreements, or other agreement and ~~the last~~ a current list of securities pledged to secure the applicable deposit ~~account~~ accounts.

(b) The State Treasurer shall make a determination no later than the close of the business day, next following receipt of the request with regard to the default. The State Treasurer may, in his sole discretion, rule that:

- (1) a default has occurred,
- (2) a default has not occurred, or
- (3) that additional information is necessary before a ruling can be made.

If additional information is necessary, the ~~eustodian~~ public depositor may provide the information required. If it is provided, the ~~eustodian~~ public depositor shall submit the information, notarized, by certified mail, return receipt requested. Receipt of the new information shall be considered to be a new request for determination. Appeal of a ruling of the State Treasurer shall be considered a contested case.

(c) Upon ruling that there is a default as regards a public depositor other than the State Treasurer, the State Treasurer shall proceed under Rule .0401 of this Section.

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

.0404 SALE OF THE DELIVERED SECURITIES

(a) The State Treasurer shall canvass its normal buyers for the type of securities which are to be sold and all potential buyers furnished to him by the depository from among licensed dealers who either make a market in the security or are currently offering to buy the security.

(b) The State Treasurer shall sell as much of the securities as are needed to provide cash to cover the amount of the default. The State Treasurer may sell, at his sole discretion, all or part of any specific issue of security to be sold.

(c) The State Treasurer shall deposit the amount of any default on ~~State deposits~~ deposit accounts of State funds in the applicable fund of the State and shall return all unsold securities and excess cash to the depository. The State Treasurer shall provide to the depository a release for the amount of default paid and such other documentation as may be appropriate to enable the depository to pursue a claim against a third party for the amount of the default.

(d) If the default is on ~~deposits~~ deposit accounts of another custodian a public depositor of a participating unit, the State Treasurer shall retain the amount of the default and shall return all unsold securities and excess cash to the depository. The State Treasurer shall determine the amount distributable to each public depositor, not to exceed the uninsured amount in default. The State Treasurer shall pay the amount ~~in default~~ to the ~~other custodian public depositor~~ after receiving from the other ~~custodian public depositor~~ a release, in duplicate, for the amount in default paid and such other documentation as may be appropriate to enable the depository to pursue a claim against a third party for the amount of the default.

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

SECTION .0500 - REPORTING

.0501 QUARTERLY REPORTING

(a) In the case of ~~Option 1~~ the Dedicated

Method, ~~each~~ the depository shall report to the ~~each custodian public depositor~~ the total par value and market value of securities pledged on the last day of the calendar quarter with the escrow agent(s) to secure public deposits of the public depositor. The ~~report reports~~ shall be submitted no later than the last day of the following month.

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

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

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

.0502 ANNUAL REPORTING

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

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

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

(d) Form INV-98 "Annual Report on Collateral for Public Deposits" shall be dated June 30, shall list and describe all collateral pledged (including CUSIP number, par and market value), with each

escrow agent for the eustodian public depositor or State Treasurer, and shall be certified by an authorized officer of the depository that the statements are correct.

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

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

.0503 SPECIAL CALL REPORT

Not more often than once in each annual period, the State Treasurer may require each depository to furnish a report in the same detail as the annual report as of any business day not more than 10 calendar days before the date at which the special request for the report is mailed. In addition, the State Treasurer may require a detailed report listing the account numbers of each public depositor.

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

.0504 SPECIAL REPORTING RULE FOR DEDICATED METHOD DEPOSITORIES

A depository which has State funds and which has ~~not elected Option 2~~ the Dedicated Method shall file ~~the reports required in Paragraphs .0501(a), .0501(e), and .0502(a), in addition to all forms required under the Dedicated Method, Form INV-99 "Selected Financial Data," referred to in Rule .0501, Paragraph (c) of this Section.~~

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

.0505 ADDITIONAL MONTHLY REPORTING REQUIREMENTS

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

- (1) A required report is repeatedly not filed timely.
- (2) A required report is filed with a material error.
- (3) A Quarterly Report required by Rule .0501(b) is filed indicating that "excess"

collateral pledged is less than 10 percent of the amount required by Rule .0202.

- (4) The depository has been notified that the State Treasurer has invoked Rule .0202(e), requiring additional collateral ~~calculations.~~

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

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

SECTION .0600 - ENFORCEMENT

.0602 REVOCATION

The State Treasurer may at any time and at his own discretion revoke the right of a depository to use ~~the collateral pool~~ the Pooling Method pursuant to 20 NCAC 7. An appeal of such an order shall be considered a contested case. During the processing of the contested case the order shall remain in effect.

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

.0603 ACCELERATION OF MATURITIES

(a) Whenever any depository shall fail to correct a deficiency in collateral pursuant to this Chapter, including but not limited to Rule 20 NCAC 7 .0202(e), the State Treasurer or the eustodian public depositor of a participating unit, as the case may be, shall cause to be made an oral demand to the depository to correct the deficiency.

(b) The eustodian public depositor, in the case of ~~public deposits separately collateralized~~ the Dedicated Method, shall report any failure of a depository to correct a deficiency in the collateral pursuant to this Chapter to the State Treasurer no less than one full work day after the oral request to correct the deficiency. This report shall include a full statement of the circumstances surrounding the deficiency. The report shall be oral but shall be immediately followed by a written report.

(c) The State Treasurer, after receiving the oral report from a eustodian public depositor pursuant to Paragraph (b) or no less than one full work day after the oral request was made in his name to a depository which fails to correct the deficiency in the collateral required by this Chapter, shall issue a written request to the depository to correct a deficiency in the collateral required by this

Chapter. The depository may request a hearing within seven days of the receipt of the request. The appeal of the ruling by the State Treasurer resulting from the hearing shall be a contested case heard pursuant to Subchapter 1F of this Title.

(d) Any depository which after receiving the written request to correct a deficiency in the collateral does not correct the deficiency shall be subject to the provision of automatic acceleration of any time deposits of public depositors having fixed maturities ~~on all investments in the depository subject to this Chapter~~. On or after seven days from the receipt of the written request sent pursuant to Paragraph (c) of this Rule or three days from the receipt of the written decision of the State Treasurer arising from the ~~contested case~~ hearing, the State Treasurer may cause all time deposits having fixed maturities to be accelerated and become due and payable on demand without any loss in interest through the date actually paid by the depository.

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

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Chiropractic Examiners intends to adopt rule cited as 21 NCAC 10 .0303 and amend .0103.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 9:00 a.m. on January 8, 1994 at the Sheraton Airport Hotel, 3315 South I-85 at Billy Graham Parkway, Charlotte, NC.

Reason for Proposed Action:

21 NCAC 10 .0103 is being amended to separate the offices of Secretary and Treasurer of the Board.

21 NCAC 10 .0303 is being adopted to interpret G.S. 90-400, which prohibits the use of paid runners to solicit patients.

Comment Procedures: Written comments may be sent to the Board for 30 days after publication. The Board's mailing address is P.O. Box 312,

Concord, NC 28025. Oral comments will be received at the public hearing.

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

SECTION .0100 - ORGANIZATION OF BOARD

.0103 STRUCTURE OF BOARD

(a) Creation and Membership of Board of Examiners. The creation and membership of the Board of Chiropractic Examiners are governed by G.S. 90-139, which statute is herewith incorporated by reference in accordance with G.S. 150B-14(c).

(b) Selection of Chiropractic Members of Board of Examiners. The selection of chiropractic members of the Board of Examiners is governed by G.S. 90-140, which statute is herewith incorporated by reference in accordance with G.S. 150B-14(c).

(c) Election of Candidates for Appointment to the Board. Annually, the Board shall select a time, date and place for the election of chiropractic candidates for appointment to the Board. At least three candidates shall be elected for each vacancy. The candidate receiving the most votes in each election shall be given a special recommendation.

(1) The election shall be conducted by the Board of Chiropractic Examiners. Any member of the Board who is nominated to succeed himself shall be disqualified from conducting the vote in which he is a nominee.

(2) Nomination shall be made from the floor and shall require two seconds. Any prospective nominee may withdraw his name from consideration by an oral statement to that effect.

(d) Officers of the Board. Annually, and as soon as practicable after appointments have been made, the members of the Board shall elect a president, a vice-president, ~~and a secretary-treasurer~~ a secretary, and a treasurer.

Statutory Authority 90-139; 90-140; 150B-14.

SECTION .0300 - RULES OF UNETHICAL CONDUCT

.0303 SOLICITATION OF AUTO ACCIDENT VICTIMS

(a) In-Person and Telephone Solicitation Limited. In order to protect the public from

misrepresentation, coercion or undue influence, it shall be unlawful for a doctor of chiropractic, or any party acting in his behalf, to initiate direct personal contact or telephone contact with any person who has been injured in a motor vehicle collision, or with any person residing in the injured person's household, for a period of 90 days following the collision, if the purpose of initiating contact is, in whole or part, to solicit the injured person to become a patient of the doctor.

(b) Solicitation By Mail Permitted. A doctor of chiropractic may solicit persons injured in motor vehicle collisions at any time through the use of posted communications such as letters, brochures, information packages and sound or video recordings. The words "This is an advertisement for chiropractic services" must appear on the communication's envelope or mailing container in print large enough to be easily read.

Statutory Authority 90-142; 90-154; 90-400.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to adopt rules cited as 21 NCAC 54 .1609 and .2007.

The proposed effective date of this action is April 1, 1994.

The public hearing will be conducted at 3:00 p.m. on January 26, 1994 at the Sheraton Crabtree Hotel, Board Room, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 54 .1609 - set time period for termination of practice.

21 NCAC 54 .2007 - set supervision requirements for non-licensees.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to February 3, 1994 to Martha Storie, Executive Director, N.C. Psychology Board, University Hall, Appalachian State University, Boone, N.C. 28608.

Editor's Note: These Rules were filed as temporary adoptions effective December 1, 1993

for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

SECTION .1600 - GENERAL PROVISIONS

.1609 TERMINATION OF PRACTICE

A licensee whose license is suspended or revoked, an applicant who is notified that he or she has failed an examination for the second time, an applicant who is notified that licensure is denied, or an applicant who discontinues the application process at any point, including failure to complete the process within the stipulated time period, must terminate the practice of psychology within a two week period and confirm such termination in writing to the Board.

Statutory Authority G.S. 90-270.4(h); 90-270.9.

SECTION .2000 - SUPERVISION

.2007 APPLICANTS AND OTHER NONLICENSED INDIVIDUALS

(a) Applicants and individuals who have yet to apply shall not practice or offer to practice psychology without supervision. All activities comprising the practice of psychology are subject to review by a supervisor. A minimum of one hour per week of regularly scheduled face-to-face individual supervision is required. Supervision must be provided by an individual who may be recognized as an appropriate supervisor of licensees as defined in Rule .2001 of this Section.

(b) An applicant or a nonlicensed individual who is not practicing or offering to practice psychology in North Carolina is not required to receive supervision.

(c) An applicant must keep a written, notarized supervision contract form on file in the Board's office at all times. A supervision contract form documents that either supervision is required and being received, or that supervision is not required.

(d) An initial supervision contract form must be filed along with the application form. A new supervision contract form is required to be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board.

(e) Supervision reports must be submitted at any time when the supervisor has concerns regarding

the supervisee's performance, upon termination of supervision, and when there is a change in the conditions specified in the supervision contract form on file with the Board. Additional monitoring and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggest possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(f) Contract and report forms are provided by the Board.

Statutory Authority G.S. 90-270.5(c); 90-270.9.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Certification Board for Social Work intends to amend rule cited as 21 NCAC 63 .0501; adopt rules cited as 21 NCAC 63 .0503 - .0509, .0801 - .0809, .0820; and repeal rule cited as 21 NCAC 63 .0502.

The proposed effective date of this action is March 1, 1994.

The public hearing will be conducted at 10:00 - 11:00 a.m. on January 14, 1994 at the Keyes Management, Inc., 130 South Church St., Asheboro, NC 27203.

Reason for Proposed Action:

21 NCAC 63 .0501 - To establish disciplinary procedures for dealing with ethical violations.

21 NCAC 63 .0502 - To repeal practice and conduct guidelines due to duplication in Rule .0501.

21 NCAC 63 .0503 - .0509 - To establish a code of ethics governing ethical conduct for social work practice.

21 NCAC 63 .0801 - .0809 - To establish disciplinary procedures for dealing with ethical violations.

21 NCAC 63 .0820 - To establish disciplinary actions in dealing with disciplinary procedures pursuant to ethical violations.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to five minutes. The address of the Board is P.O. Box 1043, Asheboro, NC 27204. Written comments or arguments must be received by the Board not later than January 14, 1994.

CHAPTER 63 - CERTIFICATION BOARD FOR SOCIAL WORK

SECTION .0500 - CODE OF ETHICS

.0501 PURPOSE AND SCOPE

~~A certified social worker shall promote professional policies and practices which enhance the delivery of social work services.~~

(a) Ethical principles affecting the practice of social work are rooted in the basic values of society and the social work profession. The principal objective of the profession of social work is to enhance the dignity and well-being of each individual who seeks its services. It does so through the use of social work theory and intervention methods including psychotherapy.

(b) The primary goal of this code is to set forth principles to guide social workers' conduct in their profession. Violation of these standards may be considered gross unprofessional conduct and may constitute dishonest practice or incompetence in the practice of social work. Such violations may result in disciplinary action by the Board.

(c) The following ethical principles serve as a standard for social workers in their various professional roles, relationships and responsibilities. Social workers shall consider all the principles in the code that bear upon any situation on which ethical judgment is to be exercised, and to select a course of action consistent with the spirit as well as the letter of this code.

(d) Upon approval of certification, each applicant shall review the Code of Ethics and return a signed statement to the Board agreeing to abide by these standards.

Statutory Authority G.S. 90B-2.

.0502 PRACTICE AND CONDUCT

~~(a) The social worker's primary responsibility is the welfare of the client.~~

~~(b) A social worker shall not discriminate on the~~

basis of age, sex, race, color, religion, national origin, socio-economic status or sexual preference.

(c) ~~The social worker shall carry out his/her professional practice in a responsible manner and hold him/herself responsible for the quality of service he/she provides.~~

(d) ~~The social worker must recognize the boundaries of his/her competence and the limits of his/her methods and techniques. The social worker does not offer services nor use techniques without having appropriate professional education and training.~~

(e) ~~A social worker acts with integrity in regard to colleagues in social work and in other professions.~~

(f) ~~A social worker does not lend his/her professional expertise for unprofessional purposes. The social worker does not place him/herself under obligation to persons, groups, or organizations in ways not commensurate with professional values.~~

(g) ~~Certified social workers in the delivery of private social work services shall not be required to disclose any information which they may have obtained in rendering professional social work services, and which information was necessary to enable them to render said services, except as required by law.~~

Statutory Authority G.S. 8-53.7; 90B-2.

.0503 GENERAL PROFESSIONAL RESPONSIBILITIES

(a) Social workers shall practice only within their sphere of competence. They shall accurately represent their abilities, education, training, and experience. They shall engage in continuing professional education to maintain and enhance their competence.

(b) As employees of institutions or agencies, social workers are responsible for remaining alert to and attempting to moderate institutional pressures or policies that conflict with the standards of their profession. If such conflict arises, social workers' responsibility shall be to uphold the ethical standards of their profession.

(c) Social workers shall not, in any of their capacities, practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, sex, sexual orientation, age, religion, socioeconomic status, or national origin.

(d) Social workers shall practice their profession in compliance with legal standards.

(e) Social workers shall not engage in settlement agreements that preclude reporting of ethical

misconduct to the Board.

Statutory Authority G.S. 90B-2.

.0504 RESPONSIBILITIES IN PROFESSIONAL RELATIONSHIPS

(a) Social workers shall not misuse their professional relationships sexually, financially or for any other personal advantage. They shall maintain this standard of conduct toward all who are professionally associated with them such as clients, colleagues, supervisees, employees, students and research participants.

(b) Social workers shall inform clients of the extent and nature of services available to them as well as the limits, right, opportunities and obligations associated with service which might affect the client's decision to enter into or continue the relationship.

(c) Social workers shall obtain consent (agreement to participate in social work intervention) from all clients or their legally authorized representative except when laws require intervention to insure client's and community's safety and protection.

(d) Social workers shall not terminate services except under extraordinary circumstances, giving careful consideration to factors affecting the situation and taking care to minimize possible adverse effects. The social worker who anticipates the interruption or termination of services to clients shall give reasonable notification and provide appropriate referral for continued service.

(e) Social workers shall respect the integrity, protect the welfare, and maximize self-determination of clients they serve. They shall avoid entering treatment relationships in which their professional judgment will be compromised by prior association with or knowledge of a client. Examples include treatment of one's family members; close friends; associates; employees; or others whose welfare could be jeopardized by such a dual relationship.

(f) Social workers shall not initiate, and shall avoid when possible, personal relationships or dual roles with current clients, or with any former clients whose feelings toward them may still be derived from or influenced by the former professional relationship.

(g) Social workers shall not engage in sexual activities with clients.

Statutory Authority G.S. 90B-2.

.0505 RELATIONSHIPS WITH

COLLEAGUES

Social workers shall act with integrity in their relationships with colleagues and other professionals. They shall know the areas of competence of other professionals and shall cooperate with them in serving clients.

- (1) The social worker shall treat with respect and represent accurately the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.
- (2) In referring clients, social workers shall refer to professionals who are recognized members of their own disciplines and are competent to carry out the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. It requires the social worker to proceed with great caution, carefully considering both the existing professional relationship and the therapeutic issues involved.
- (4) Social workers shall accept their responsibility to provide competent professional guidance to colleagues, employees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. They shall evaluate fairly the performance of those under their supervision, and share evaluations with supervisees. They shall not abuse the power inherent in their position.
- (5) Social workers shall take appropriate measures to discourage, prevent, expose and correct unethical or incompetent behavior by colleagues, but shall take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.

Statutory Authority G.S. 90B-2.

.0506 REMUNERATION

(a) Financial arrangements shall be explicitly established and agreed upon by the social worker and the client in the initial stage of intervention.

(b) Social workers shall not give or receive any fee or other consideration to or from a third party for referrals.

(c) Social workers employed by an agency or clinic and also engaged in private practice shall conform to agency regulations regarding their dual role.

(d) Legal measures to collect fees may be taken if a client does not pay for services as agreed, provided reasonable notice of such action is given beforehand.

Statutory Authority G.S. 90B-2.

.0507 CONFIDENTIALITY AND RECORD KEEPING

Social workers shall have a primary obligation to protect the client's right to confidentiality as established by law and professional standards of practice.

- (1) Social workers reveal confidential information to others only with the informed consent of the client, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others unless specifically contraindicated by such situations, clients shall be informed and written consent shall be obtained from the client before confidential information is revealed.
- (2) When confidential information is used for the purpose of professional education, research, consultation, etc., the identity of the client shall be concealed. Presentations shall be limited to material necessary for the professional purpose.
- (3) Social workers shall maintain records adequate to provide proper diagnosis and treatment and to fulfill other professional responsibilities.

Statutory Authority G.S. 90B-2.

.0508 PURSUIT OF RESEARCH AND SCHOLARLY ACTIVITIES

In planning, conducting and reporting a study, the investigator has the responsibility to make a careful evaluation of its ethical acceptability, taking into account the following additional principles for research with human subjects. To the extent that this appraisal, weighing scientific and humane values, suggests a compromise of ethical principles, the investigator shall seek advice to protect the right of the research participants.

- (1) Social workers shall obtain appropriate authority to carry out the research and proper credit shall be given for the

- research conducted.
- (2) An agreement shall be established between the investigator and the research participant clarifying their roles and responsibilities.
 - (3) The rights of an individual to decline to participate in or withdraw from the research shall be respected and the participant shall not be penalized for such action.
 - (4) The investigator shall inform the participant of all the features of the research that would affect his/her participation in the study.
 - (5) Information obtained about the participant during the course of the study shall be confidential unless informed consent for release of information is obtained in advance.
 - (6) Research finding shall be presented accurately. Social workers shall not distort or misrepresent research.

Statutory Authority G.S. 90B-2.

.0509 PUBLIC STATEMENTS

Public statements, announcements of services and promotional activities of social workers serve the purpose of providing sufficient information to aid consumers in making informed judgments and choices. Social workers shall state accurately, objectively and without misrepresentation their professional qualifications, affiliations and functions as well as those of the institutions or organizations with which they or their statement may be associated. They shall correct the misrepresentations of others with respect to these matters.

- (1) In announcing availability for professional services, a social worker shall use his or her name, type and level of certification and licensure; and may use highest relevant academic degree from an accredited institution; specialized post-graduate training; address and telephone number; office hours; type of services provided; appropriate fee information; foreign languages spoken; and policy with regard to third-party payments.
- (2) Social workers shall not offer to perform any services beyond the scope permitted by law or beyond the scope of their competence. They shall not engage in any form of advertising which is false,

fraudulent, deceptive, or misleading. They shall neither solicit nor use recommendations or testimonials from clients.

- (3) Social workers shall respect the right and reputations of professional organizations with which they are affiliated. They shall not falsely imply sponsorship or certification by such an organization. When making public statements, the social worker shall make clear which are personal opinions and which are authorized statements on behalf of the organization.

Statutory Authority G.S. 90B-2.

SECTION .0800 - DISCIPLINARY PROCEDURES

.0801 REPORTING COMPLAINTS

(a) All complainants shall be sent (if name and address are available) a copy of the state's code of ethics and disciplinary procedures, informing them of their options for reporting an ethical violation.

(b) There shall be two procedures for reporting violations:

(1) Informal Reporting Procedure:

- (A) Anyone may anonymously or otherwise communicate a suspected violation on an informal "report only" basis. This report shall be submitted in writing.
- (B) After receiving an informal written complaint, the Board shall contact the social worker involved, note the reporting of a violation and outline the specific ethical standard brought to question.
- (C) Record of the complaint and all subsequent actions shall be retained in a separate administrative file and shall not be considered disciplinary actions, and shall not be a part of the licensee's file.
- (D) Depending on the number of prior complaints within a three-year period, specific follow-up interventions shall be initiated. Complaints do not have to involve the same ethical standard.

- (i) First Complaint. The social worker shall be directly contacted by phone by a member of the Board, with a follow-up letter. The specific ethical violations

raised by complainant shall be detailed. The social worker shall be encouraged to explore issues that may have led to the complaint, professional practices, and social work ethical standards, and to initiate corrective action if necessary.

(ii) Second Complaint. The procedure in Subpart (b)(1)(D)(i) of this Rule shall be followed, and the social worker shall be encouraged to voluntarily develop an "intervention team" of two certified social work colleagues. This team shall work with the social worker to informally address complaint implications, potential professional liabilities, client impact, and possible corrective actions. A plan of action and follow-up reports shall be submitted to the Board.

(iii) Third Complaint. The procedures in Subparts (b)(1)(D)(i) and (ii) of this Rule are followed, and the social worker will receive strong recommendation to establish supervision or therapeutic intervention or both for possible impairment.

(iv) Fourth Complaint. The Board shall call for whatever investigation is necessary and may call for either an informal conference or hearing.

(2) Formal Reporting Procedure:

(A) The complainant shall submit a formal written complaint on the Board's form outlining the specific violation and identifying the social worker involved.

(B) The Board shall acknowledge receipt of the complaint and initiate an investigation.

(C) The Board shall contact the social worker involved, note the reporting of a violation and outline the specific ethical standard brought to question.

(D) Based on the investigation, if there is credible evidence supporting the charges, a hearing shall be scheduled. If evidence is not credible the Board may at its discretion pursue informal procedures.

(E) The disciplinary action hearing will follow the administrative procedures in Rule .0602 of this Chapter and G.S. 150B.

(F) The complainant and social worker shall be informed of the Board's final filing on the complaint and subsequent disciplinary actions.

Statutory Authority G.S. 90B-6; 90B-11.

.0802 CONFIDENTIALITY

Every communication, oral or written, made by or on behalf of any person or entity to the North Carolina Certification Board for Social Work or to any person designated by the Board to investigate matters relating to disciplinary issues, whether by way of report, complaint, or statement, shall be treated in a confidential manner, within the provision of the Public Records Act NCCS 132.

Statutory Authority G.S. 90B-6; 90B-11.

.0803 INVESTIGATION

(a) Upon receipt of a formal complaint, or upon the Board's own initiative, the North Carolina Certification Board for Social Work, its staff, or designee(s) may investigate whether a certified social worker has violated the Social Work Certification Act or the Administrative Code of the Board.

(b) Any board member engaged in the investigation of a specific case shall not participate in the Board's adjudication of that case.

Statutory Authority G.S. 90B-6; 90B-11.

.0804 NOTICE OF HEARING AND CHARGES

If an investigation produces any credible evidence to support the charge, a notice outlining the charges, date of proposed hearing, location of hearing, and other information (per G.S. 150B-38) shall be sent to the social worker. The social worker shall have the right to file a written response (per G.S. 150B-38).

Statutory Authority G.S. 90B-6; 90B-11.

.0805 INFORMAL CONFERENCE

The Board may meet in informal closed session with a social worker who seeks or agrees to such a conference in lieu of a formal disciplinary hearing. Disciplinary action taken against a licensee as a result of an informal closed session

conference and agreed to by the Board and the social worker shall be binding and a matter of public record.

Statutory Authority G.S. 90B-6; 90B-11.

.0806 HEARINGS

General hearings shall be conducted by a majority of the Board. The Chairperson shall serve as presiding officer unless he/she is absent or disqualified, in which case the Vice-Chairperson, or designee, shall preside.

Statutory Authority G.S. 90B-6; 90B-11.

.0807 DECISION OF THE BOARD

The Board shall notify all parties of its final decision in the manner prescribed by G.S. 150B-42.

Statutory Authority G.S. 90B-6; 90B-11.

.0808 SUMMARY SUSPENSION

Regardless of the status of the complaint, the Board may summarily suspend a social worker's certification according to the provisions of G.S. 150B-3. If the Board Chairperson believes such prompt action is required, the Board may summarily suspend a license by means of a vote conducted by telephone, formal meeting, or correspondence. Proceedings for a formal hearing shall be instituted simultaneously with summary suspension, with a hearing date not to exceed 30 days from the date of suspension.

Statutory Authority G.S. 90B-6; 90B-11.

.0809 THE PUBLIC RECORD

The Board shall report all disciplinary actions through the Disciplinary Action Reporting System (DARS), the Federal Data Bank, and may report them to any requesting public or private entity. Disciplinary actions do not include complaints.

Statutory Authority G.S. 90B-6; 90B-11.

.0810 RESERVED FOR FUTURE CODIFICATION

.0811 RESERVED FOR FUTURE CODIFICATION

.0812 RESERVED FOR FUTURE CODIFICATION

.0813 RESERVED FOR FUTURE CODIFICATION

.0814 RESERVED FOR FUTURE

CODIFICATION

.0815 RESERVED FOR FUTURE CODIFICATION

.0816 RESERVED FOR FUTURE CODIFICATION

.0817 RESERVED FOR FUTURE CODIFICATION

.0818 RESERVED FOR FUTURE CODIFICATION

.0819 RESERVED FOR FUTURE CODIFICATION

.0820 DISCIPLINARY ACTIONS

Board disciplinary actions may include the following:

- (1) Letters of Concern. The Board may issue a letter of concern to a certified social worker stating that the Board has noted misconduct by the social worker.
- (2) Examination. The Board may require a social worker to be examined orally or in writing regarding his/her social work skills and knowledge.
- (3) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
- (4) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
- (5) Probation. Probation is a stay of revocation or suspension allowing limited practice within preconditions established by the Board. Violations of these conditions can result in revocation.
- (6) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.
- (7) Revocation. Revocation is the withdrawal of privilege to practice as certified social worker in the State of North Carolina.

Statutory Authority G.S. 90B-6; 90B-11.

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).

ADMINISTRATION

State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>

AGRICULTURE

North Carolina State Fair

<i>2 NCAC 20B .0106 - General</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

COMMERCE

Banking Commission

<i>4 NCAC 31 .0305 - Issuance of Certificate of Registration</i>	<i>RRC Objection 10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/21/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .2002 - Approval Procedures</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>15A NCAC 7H .2004 - General Conditions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>

Environmental Management

<i>15A NCAC 2D .0518 - Msc Volatile Organic Compound Emissions</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>
<i>15A NCAC 2D .0948 - VOC Emissions from Transfer Operations</i>	<i>RRC Objection 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 11/18/93</i>
<i>15A NCAC 2L .0103 - Policy</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 09/17/93</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd 10/21/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 11/04/93</i>

HUMAN RESOURCES

Aging

10 NCAC 22G .0505 - Staffing	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
10 NCAC 22G .0506 - Congregate Site Requirements	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
10 NCAC 22G .0509 - Home-Delivered Meals Standards	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
10 NCAC 22G .0510 - Congregate Food Requirements	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
10 NCAC 22G .0514 - Administration Requirements	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
10 NCAC 22S .0102 - Withdrawal of Area on Aging Designation	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93

Children's Services

10 NCAC 41R .0002 - Administration and Organization	RRC Objection	07/15/93
Agency Responded	Obj. Cont'd	08/20/93
Rule Returned to Agency	Obj. Cont'd	09/17/93
Agency Filed Rule for Codification Over RRC Objection	Eff.	10/01/93

Facility Services

10 NCAC 3H .0108 - Definitions	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93

Mental Health: General

10 NCAC 14A .1603 recodified as 14U .0303 - Registered Nurse	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
10 NCAC 14A .1903 recodified as 14U .0603 - Space Requirements	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
10 NCAC 14A .2204 recodified as 14U .0904 - Treatment or Habilitation Plan	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
10 NCAC 14A .2208 recodified as 14U .0908 - Rel Planning/Res/Inpatient Svcs	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
10 NCAC 14A .2304 recodified as 14U .1004 - Testing Services	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
10 NCAC 14A .2404 recodified as 14U .1104 - Invol Admin/Psychotropic Med	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

INSURANCE

Financial Evaluation Division

11 NCAC 11H .0011 - Insolvency or Hazardous Financial Condition	RRC Objection	11/18/93
Agency Revised Rule	Obj. Cont'd	11/18/93

Special Services Division

11 NCAC 13 .0318 - Request for Cancellation Notice	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9A .0107 - Rule-Making and Administrative Hearing Procedures	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
12 NCAC 9B .0101 - Minimum Standards for Criminal Justice Officers	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93

Private Protective Services

12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions	RRC Objection	11/18/93
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Sheriffs' Education and Training Standards Commission

12 NCAC 10B .1003 - Basic Law Enforcement Certificate	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

LICENSING BOARDS AND COMMISSIONS**Electrolysis Examiners**

21 NCAC 19 .0604 - Program Directors	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
21 NCAC 19 .0611 - Identification of Students	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93
21 NCAC 19 .0613 - Student/Teacher Ratio and Equipment	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93

Foresters

21 NCAC 20 .0020 - Certification of Consulting Foresters	RRC Objection	09/17/93
Agency Revised Rule	Obj. Removed	10/21/93
21 NCAC 20 .0021 - Rejection of Consultant Affidavit	RRC Objection	09/17/93
Agency Revised Rule	Obj. Removed	10/21/93
21 NCAC 20 .0022 - Handling of Complaints	RRC Objection	09/17/93
Agency Revised Rule	Obj. Removed	10/21/93

Plumbing, Heating and Fire Sprinkler Contractors

21 NCAC 50 .0506 - Minor Repairs and Alterations	RRC Objection	10/21/93
Agency Revised Rule	Obj. Removed	10/21/93

Practicing Psychologists

21 NCAC 54 .1605 - Fees	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

Refrigeration Examiners

21 NCAC 60 .0101 - Structure of Board	RRC Objection	11/18/93
Agency Repealed Rule	Obj. Removed	11/18/93
21 NCAC 60 .0207 - Requirements for Examination Applicants	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93

REVENUE**Corporate Income and Franchise Tax**

17 NCAC 5C .0904 - *The Term Employee*
Agency Repealed Rule

RRC Objection 10/21/93
 Obj. Removed 10/21/93

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .0308 - *Salary Increases*
Agency Revised Rule
 25 NCAC 1E .0301 - *Sick Leave Credits*
Agency Revised Rule
 25 NCAC 1E .1102 - *Maximum Amount*
Agency Revised Rule
 25 NCAC 1E .1105 - *Retention of Benefits*
Agency Revised Rule

RRC Objection 11/18/93
 Obj. Removed 11/18/93
 RRC Objection 11/18/93
 Obj. Removed 11/18/93
 RRC Objection 11/18/93
 Obj. Removed 11/18/93
 RRC Objection 11/18/93
 Obj. Removed 11/18/93

TRANSPORTATION

Departmental Rules

19A NCAC 1B .0202 - *Contents of Petition*
Agency Revised Rule
 19A NCAC 1B .0302 - *Record of Hearing*
Agency Revised Rule

RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 10/21/93
 Obj. Removed 10/21/93

Deputy Secretary - Transit, Rail, and Aviation

19A NCAC 6C .0112 - *Allowable Project Costs*
Agency Revised Rule
 19A NCAC 6C .0128 - *State Aid to Airports Program Guidance Handbook*
Agency Repealed Rule

RRC Objection 11/18/93
 Obj. Removed 11/18/93
 RRC Objection 11/18/93
 Obj. Removed 11/18/93

Director of Administration

19A NCAC 5B .0101 - *Fiscal Section Operations*
Agency Revised Rule

RRC Objection 11/18/93
 Obj. Removed 11/18/93

Division of Highways

19A NCAC 2D .0403 - *Use of Dust Allaying Materials*
Agency Revised Rule
 19A NCAC 2D .0404 - *Maintenance Within Municipalities*
Agency Revised Rule
 19A NCAC 2D .0405 - *Examples of Construction and Maintenance Activities*
Agency Revised Rule
 19A NCAC 2D .0502 - *Ticket Conditions*
Agency Revised Rule
 19A NCAC 2D .0601 - *Permits-Authority, Application and Enforcement*
Agency Revised Rule
 19A NCAC 2D .0633 - *Denial: Revocation: Refusal/Renew: Appeal: Invalidation*
Agency Revised Rule
 19A NCAC 2D .0801 - *Pre-Qualifying to Bid: Requalification*
No Response from Agency
Agency Revised Rule
 19A NCAC 2D .0802 - *Invitation to Bid*

RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 11/18/93
 Obj. Removed 11/18/93
 RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 10/21/93
 Obj. Removed 10/21/93
 RRC Objection 09/17/93
 Obj. Cont'd 10/21/93
 Obj. Removed 11/18/93
 RRC Objection 09/17/93

RRC OBJECTIONS

<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 2D .0803 - Advertisement and Invitations for Bids</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 2D .0821 - Return of Bid Bond or Bid Deposit</i>	<i>RRC Objection</i>	<i>09/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 2E .0404 - Highway Obstructions Interfering/Traffic/Maintenance</i>	<i>RRC Objection</i>	<i>10/21/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>10/21/93</i>
<i>19A NCAC 2E .0606 - Exceptions to the Policy</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>

Division of Motor Vehicles

<i>19A NCAC 3B .0616 - Approval: Com School: Community College Instructors</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert.</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>19A NCAC 3C .0223 - Registration: Motor Homes: Etc.</i>		
<i>Rule Returned to Agency for Failure to Comply with APA</i>		<i>11/18/93</i>
<i>19A NCAC 3C .0436 - Highway Use Tax</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>19A NCAC 3C .0521 - Taxicab</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>19A NCAC 3G .0205 - Issuing of Original Certificate</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>19A NCAC 3I .0505 - Confidentiality</i>	<i>RRC Objection</i>	<i>11/18/93</i>

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).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Britthaven, Inc. d/b/a Britthaven of Morganton, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdese Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

15A NCAC 30 .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 30 .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

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.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
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Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
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Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
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RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
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Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
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Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
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Sheila Carter v. Crime Control and Public Safety	93 CPS 0249	Morgan	08/25/93	
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* Consolidated cases.

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John G. Williams v. Human Resources	92 CSE 1632	Mann	08/10/93	
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Patrick Floyd v. Human Resources	92 CSE 1663	Reilly	05/20/93	
James Eric Frost v. Human Resources	92 CSE 1669	Mann	11/18/93	
Dennis W. Nolan v. Human Resources	92 CSE 1670	Morrison	06/25/93	
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Elvis Bernard Telfair v. Human Resources	92 CSE 1704	Reilly	09/15/93	
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Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Antonio M. Townsend v. Human Resources	92 CSE 1721	Chess	08/30/93	
Kevin J. Close v. Human Resources	92 CSE 1727	Chess	08/30/93	
Norman Gatewood v. Human Resources	92 CSE 1728	Chess	10/22/93	
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Ronald Norman v. Human Resources	92 CSE 1746	Chess	10/14/93	
Joseph Eric Lewis v. Human Resources	92 CSE 1748	Becton	08/02/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
Tamera S. Hatfield v. Human Resources	92 CSE 1772	Chess	08/30/93	
Michael Wayne Bryant v. Human Resources	92 CSE 1773	Chess	10/22/93	
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Nelson Fowler Jr. v. Human Resources	93 CSE 0050	Chess	10/18/93	
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Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
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Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
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Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
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Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
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Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
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Hannah E. Tonkel v. Human Resources	93 DHR 0378	Nesnow	09/10/93	
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Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	
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Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees// St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp. Comp. Major Medical Plan	92 INS 1791	Reilly	08/19/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
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Donald Willard Johnson v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 0420	West	11/05/93	8:17 NCR 1705
Jennings Michael Bostie v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	

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George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*9	Morgan	07/09/93	
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Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds Comm	93 DOJ 0377	Reilly	08/31/93	
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Pastor Larry C. Taylor Warsaw Church of God v. Labor	93 DOL 0961	West	11/16/93	
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Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066*4	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067*4	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068*4	Mann	05/04/93	
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Donald Allen Rutschman v. UNC Greensboro, Office of Human Res.	91 OSP 0305	Chess	10/19/93	
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Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
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Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344*5	Chess	05/20/93	
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Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
Jannie C. Sykes v. Employment Security Commission	92 OSP 1738	Gray	10/25/93	
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STATE TREASURER				
Juanita M. Braxton v. Bd. of Trustees/Teachers' & St Emp Ret Sys	91 DST 0017	West	09/07/93	
Herman D. Brooks v. Bd of Trustees/Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	
Frances Billingsley v. Bd/Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 0996	West	09/20/93	
Dennis Willoughby v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1439	West	09/20/93	8:14 NCR 1356
Mary Alyce Carmichael v. Bd/Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
Shirley M. Smith v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1776	Reilly	11/18/93	8:18 NCR 1829
W. Rex Perry v. Bd/Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
Rory Dale Swiggett v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. Sys.	93 DST 0198	West	09/28/93	8:14 NCR 1360
Catherine D. Whitley v. Bd./Trustees/Teachers & St. Emp. Ret. Sys.	93 DST 0727	Reilly	11/18/93	
TRANSPORTATION				
Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
UNIVERSITY OF NORTH CAROLINA HOSPITALS				
Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DST 1776

SHIRLEY M. SMITH,
Petitioner,

v.

THE BOARD OF TRUSTEES OF THE
TEACHERS' AND STATE EMPLOYEES'
RETIREMENT SYSTEM,
Respondent.

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RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on November 10, 1993, in Raleigh.

Mr. Charles T. Hall represented the petitioner. Mr. Alexander McC. Peters represented the respondent. The parties stipulated the facts.

ISSUES

1. Are long-term disability benefits reduced under G.S. 135-106(b) by the gross amount of Social Security disability benefits or by the net amount of those benefits after deduction of attorney fees and costs?
2. Are long-term disability benefits reduced under G.S. 135-106(b) by the receipt of Social Security Widow's Benefits?

STIPULATION OF FACTS

1. The petitioner is a former employee of a North Carolina school system who was forced to retire because of illness.
2. As a result of her employment with a North Carolina school system and her disability, the petitioner applied for long-term disability benefits under the disability income plan administered by the respondent. See G.S. 135-106. This application was approved and the petitioner is receiving long-term disability benefits.
3. Long-term disability benefits under the disability income plan are subject to reduction by the amount of the primary disability benefits that a retiree receives from the Social Security Administration. See G.S. 135-106(b). This reduction shall hereinafter be referred to as the "offset."
4. The petitioner also applied for Disability Insurance Benefits under the Social Security Act, 42 USC 423, and for Social Security Widow's Benefits on the basis of disability on the Social Security account of her late husband, Lester Smith, under 42 USC 402(e).
5. The petitioner's claims for Disability Insurance Benefits and Widow's Benefits on the basis of disability were denied by the Social Security Administration at the initial level. The petitioner requested reconsideration of the denial of her claims, but her claims were again denied. The petitioner then requested an administrative hearing concerning her claims.

6. The petitioner retained Charles T. Hall, Attorney at Law, to represent her at the administrative hearing on her claims. The petitioner and the attorney signed an agreement by which the attorney would receive no fee if the petitioner's claims were denied, but a fee of one-quarter of the back benefits paid the petitioner if the claims were approved. The agreement also provided that the petitioner was to reimburse the attorney for any costs associated with the case.
7. After a hearing, a Social Security administrative law judge approved both of the petitioner's claims.
8. Under the provisions of the Social Security Act, 42 USC 406, one-quarter of the petitioner's back benefits, i.e. \$2,352.00, was withheld by the Social Security Administration for attorney fees and not paid to the petitioner.
9. The petitioner's attorney filed a petition on his own behalf with the Social Security Administration seeking approval of an attorney fee of one quarter of the petitioner's back Disability Insurance Benefits. The attorney's petition was approved and the Social Security Administration paid \$2,352.00 directly to the attorney. In addition, the petitioner reimbursed the attorney \$93.00 for costs that the attorney incurred in representing the petitioner.
10. Upon learning that the Social Security Administration had approved the petitioner's claim for Disability Insurance Benefits, the Retirement Systems Division of the Department of State Treasurer which acts as the respondent's agent and administers the disability income plan on a day to day basis made a computation of the offset, that should be applied because the petitioner had now received disability benefits from the Social Security Administration for the same period of time that she had received long-term disability benefits from the disability income plan. In computing the offset, the Retirement Systems Division used the gross amount of Disability Insurance Benefits for the petitioner plus the gross amount of Widow's Benefits on account of disability, rather than the net amount after attorney fees had been withheld by the Social Security Administration and paid to the petitioner's attorney and after payment by the petitioner of costs associated with presenting her case to the Social Security Administration.

CONCLUSIONS OF LAW

1. Long-term disability benefits may be reduced under G.S. 135-106(b) by the gross amount of past-due Social Security disability benefits received by the petitioner.
2. Long-term disability benefits may not be reduced under G.S. 135-106(b) by the amount of the petitioner's Social Security Widow's Benefits.

RECOMMENDED DECISION

It is recommended that G.S. 135-106(b) benefits may be reduced by the gross amount of past-due Social Security benefits received by the petitioner but may not be reduced by the amount of the petitioner's Social Security Widow's Benefits.

MEMORANDUM

G.S. 135-106(b) provides in part that long-term disability benefits will be "reduced by any primary Social Security disability benefits and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled, but the benefits payable shall be no less than ten dollars (\$10.00) a month." The respondent contends that the case turns on the word "primary" which means "basic." The petitioner contends that the word "primary" was intended to distinguish between benefits for "primary beneficiaries" as opposed to "auxiliary beneficiaries". The undersigned is of the opinion that "primary" means that the Social Security benefits were recognized by the General Assembly to be the foremost source of assistance.

The critical word is "entitled" which refers to the Social Security disability benefits as well as Workers' Compensation payments. 42 USC 406, cited by the parties, provides in part that "the Secretary shall . . . certify for payment out of such past-due benefits . . . to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past due benefits" This language confirms that the petitioner was awarded a certain amount of past-due benefits to which she was entitled and from which the Secretary paid the fees due the attorney. This is consistent with the common understanding that, absent contrary statutory language, a party is responsible for paying his or her own attorney fees. Therefore, the respondent properly reduced the benefits payable under G.S. 135-106(b) by the gross amount of past-due Social Security disability benefits received by the petitioner.

II.

There are three basic types of Social Security benefits: Old Age Benefits (42 USC 402), Survivors Benefits (42 USC 402), and Disability Insurance Benefits (42 USC 423). The first two are paid out of one fund; the third is paid out of a second fund.

Widow's Benefits are paid out of the first fund. These benefits are survivors benefits, not disability benefits, even though disability is a necessary condition if the person is between the age of 50 and 60. Therefore, the petitioner's Social Security Widow's Benefits are not "Social Security disability benefits" as the term is used in G.S. 135-106(b).

ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the respondent. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by G.S. 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 18th day of November, 1993.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF CHEROKEE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 DHR 0343**

V.

**CHILD DAY CARE SECTION, CHEROKEE
COUNTY DEPARTMENT OF SOCIAL SERVICES,
Respondent.**

RECOMMENDED DECISION

APPEARANCES

Respondent: Staci Tolliver Rust, Associate Attorney
General, N. C. Department of Justice, Raleigh, North Carolina.

BURDEN OF PROOF

EXHIBITS

EVIDENTIARY RULING

The letters of support offered by the Petitioner are in the nature of "character" evidence similar to the testimony of witnesses called to testify on the Petitioner's behalf. The Respondent had an opportunity to cross examine witnesses who offered testimony similar to that contained in the letters of support. Therefore Respondent's inability to cross examine the persons writing the letters of support is not an unduly prejudicial

handicap in these circumstances.

Therefore, the Respondent's objection to Petitioner's exhibit three is hereby OVERRULED, and the documents are admitted in evidence.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. The Petitioner holds registration certificate I.D. #20-0-5018 with the Division of Child Development of the North Carolina Department of Human Resources for operation of a day care home.
2. The Petitioner has cared for approximately 60 to 70 children in her home over the years. Up until the time she became a licensed home child care provider in 1989, she treated the children as she did her own and would spank them when she thought such discipline was appropriate.
3. The Petitioner testified that she has not administered any form of corporal punishment to a child in her care since she became licensed as home child care provider.
4. In September, 1992, the Cherokee County Department of Social Services (hereinafter "DSS") received a complaint about a child that the Petitioner cared for in her home.
5. DSS notified the Respondent that it had received a complaint regarding the Petitioner's day care home.
6. Both DSS and the Respondent initiated investigations regarding the allegations against the Petitioner.
7. On September 11, 1992, BeBe Cornwell, a social worker employed by DSS met the mother of the alleged victim child at the day care center the child was now attending in Andrews. Ms. Cornwell took pictures of the child's buttocks.
8. The alleged victim child had small one and a half to two and a half inch bruises on the fleshy part of her buttocks. In addition, there were two red parallel lines about one to one and a half inches apart in the same area.
9. The alleged victim child and her four year old sister had been cared for by the Petitioner in her home on September 10, 1992 from approximately 3:00 p.m. until 8:00 p.m. The bruises had been discovered sometime during the evening of September 10 by the child's step-father when he changed the child's diaper.
10. On September 14, 1992, Ms. Cornwell interviewed the alleged victim child's four year old sister and the Petitioner for the purpose of gathering information regarding the allegations made against the Petitioner.
11. On September 17, 1992, Ms. Cornwell and Becky Porterfield, a Child Care Consultant with the Respondent, visited the Petitioner's home. During the visit, Ms. Cornwell and Ms. Porterfield interviewed the Petitioner and inspected the Petitioner's premises.
12. During the interview, the Petitioner told Ms. Cornwell and Ms. Porterfield that she had not observed anything wrong with the alleged victim child during the time she was in the Petitioner's care.
14. When Ms. Cornwell returned to her office she met with her supervisor to discuss the case. Her supervisor recommended that the alleged victim child's sister be interviewed again.

15. On September 28, 1992, Ms. Cornwell interviewed the alleged victim child's four year old sister again to see if her story remained consistent.
16. On October 1, 1992, Ms. Cornwell spoke with five children whom the Petitioner cared for at her home.
17. On October 13, 1992, while DSS continued its investigation of the complaint against the Petitioner, DSS received another report alleging abuse of a child that the Petitioner cared for in her home. DSS notified the Respondent that it had received a second report of alleged child abuse regarding the Petitioner's child care home.
18. DSS visited the second alleged victim child's home on October 13 to gather information regarding the allegations of abuse and to observe and photograph the child.
19. The alleged victim child had linear, parallel bruising on the buttocks. The bruises were one to one and a half inches long with a space between them about the width of a ruler.
20. The alleged victim child's mother reported that the Petitioner had been caring for the child for two weeks. On the previous day, the child had been taken to the Petitioner's home at approximately 7:15 a.m. and picked up at about 3:30 p.m. The mother changed the child's diaper at approximately 4:00 p.m. and she noticed that there were red marks on the child's buttocks that she thought might be related to the child's diaper rash. When she bathed the child later that evening, the red marks had darkened and looked like bruises. She called the Petitioner at approximately 8:00 p.m. to ask about the bruises. The Petitioner told the mother that she had not noticed any marks on the child's buttocks and she also said that the child had not fallen while at the Petitioner's home.
21. The alleged victim child's mother testified that there were no marks other than a diaper rash on the child's buttocks when she took her to the Petitioner's home that morning, and nothing occurred that would have caused marks of the type she observed on her child between the time she picked her child up from the Petitioner's and noticed the red marks on the child's buttocks.
22. On October 15, 1992, Ms. Cornwell and Ms. Porterfield went to the Petitioner's home to investigate the second allegation of abuse at the day care home. The Petitioner denied striking the second alleged victim child and stated that the child had been fine when she went to the bathroom about 3:00 p.m. the afternoon the alleged abuse was supposed to have occurred. The Petitioner reported that the child's mother had called on the evening of October 12, 1992 to ask about the bruises on her daughter's buttocks.
23. The investigations by DSS and the Respondent did not uncover any instrument in the Petitioner's home which could have caused such distinctive bruising on the buttocks of the two alleged victim children.
24. On October 19, 1992, Ms. Cornwell and her supervisor "staffed" the investigations regarding the allegations of September 11, 1992 and October 13, 1992.
25. Ms. Cornwell and her supervisor "staffed" the investigations again on October 21, 1992 and decided to substantiate both reports received by DSS.
26. The basis for the substantiation by DSS was that both children had suffered bruising that was identical in shape, location, and coloration. Both children were in the "potty" training stages of development and the bruises were discovered by parents after their children were taken home from the Petitioner's day care home. DSS felt that it was more than a mere coincidence that two children whom the Petitioner cared for were found to have such similar bruises.
27. Neither DSS nor the Respondent inspected the homes of the alleged victim children to determine if

some object in the children's homes could have produced the bruises. The parents were asked if they had spanked the children and they denied having done so.

28. The DSS investigation included conversations with several of the parents whose children the Petitioner kept. These parent interviews were conducted after the decision to substantiate neglect was made.
29. DSS notified the Respondent of its decision to substantiate neglect against the Petitioner in a letter dated October 21, 1992.
30. Following the substantiation by DSS, the Respondent concluded its investigation and substantiated neglect against the Petitioner.
31. The Respondent reviewed the investigation and substantiations of neglect against the Petitioner on February 11, 1993 and recommended revocation of the Petitioner's registration certificate.
32. The Respondent notified the Petitioner of its decision to substantiate neglect and revoke the Petitioner's registration certificate by letter dated February 15, 1993.
33. The Respondent proceeded to revoke the Petitioner's registration certificate and sent a Notice of Administrative Action by letter dated March 12, 1993.
34. The Petitioner denies having ever disciplined a child inappropriately and states that she uses "time-out" as a disciplinary action when needed.
35. The Petitioner denies causing any of the bruises found on the alleged victim children. The Petitioner also denies that either of two children had any kind of accident that could have caused the bruises while they were in her care.
36. Both of the alleged victim children were cared for by the Petitioner on the same day the marks and bruising were discovered.
37. Children in the Petitioner's care who were interviewed by DSS deny that she has used corporal punishment on them as a means of discipline.
38. Many of the parents of the children the Petitioner cares for are satisfied with the care the Petitioner has been providing their children.
39. The Petitioner has no history of child abuse or neglect. Neither does she have a history of non-compliance with child day care rules and regulations.
40. DSS apparently believed the information it obtained from the four year old sibling of one of the alleged victim children and used that information to reach its conclusion that the Petitioner had spanked the two alleged victim children. There was no evidence presented as to why this child's statement was more believable than those of the other children who denied any instances of corporal punishment taking place in the Petitioner's home.
41. There is insufficient evidence to make any finding as to the specific cause of the marks and bruises found on the buttocks of the two alleged victim children.
42. There is insufficient evidence to support the Respondent's conclusion, found in its Negative Action Proposal under Probability of Reoccurrence (Respondent's exhibit R"G"), that the Petitioner "used corporal punishment on two children in her care...."
43. North Carolina General Statutes section 110-88(6a) provides that the Child Day Care Commission has the power and duty to make rules for administrative action against a child day care home when

investigations substantiate that child abuse or neglect did occur in the home. The type of sanction is determined by the severity of the incident and the probability of reoccurrence.

44. North Carolina General Statutes section 110-104.2 provides that child abuse and neglect, as defined in section 7A-517 and 14-318.2, -318.4 of the North Carolina General Statutes, which occurs in day care facilities and homes is a violation of the licensure and registration standards and laws.
45. North Carolina General Statutes section 7A-517(21) (Cum. Supp. 1992) defines neglected juvenile, in pertinent part, as:

[a] juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. In order to prevail in this contested case, the Respondent has the burden of proving by the greater weight of the evidence that the Petitioner "neglected" the two children who were later discovered to have bruised buttocks. There is nothing in the law that places the initial burden on the Petitioner to disprove neglect.
2. The root of the Respondent's suspicion that the bruises on the two alleged victim children were caused by the Petitioner's neglect appears to be the Petitioner's failure to offer a plausible explanation for how the bruises came to be. If the evidence is such that it is conclusively proven that the bruises could only have occurred while the children were in the Petitioner's care, then the Petitioner's lack of a plausible explanation for the occurrence of the bruises would probably be an indication of improper supervision on her part and, therefore, an indication of neglect.
3. The evidence, however, does not demonstrate that the bruises for both of the children must have occurred while the Petitioner was caring for them. Unfortunately, the investigators' assumption that the bruises most likely originated with the Petitioner caused them to not fully investigate the circumstances of the two alleged victim children both before and after they were cared for by the Petitioner. Therefore, the existence of the bruises does not, in and of themselves, lead to a conclusion of neglect on the part of the Petitioner.

Although, as the Respondent noted, it seems to be more than a coincidence that two children from different homes suffered such similar bruises, it also seems incredible that the Petitioner, who knew she was being investigated, would do anything that would result in the same type of bruises appearing upon another child in her care.

The evidence does, however, establish that the second alleged victim child did not have bruises when she was taken to the Petitioner's home and that nothing happened to cause bruises between the time she was picked up from the Petitioner's and the time the bruises were discovered. Therefore, with respect to the second alleged victim child, the evidence indicates that the bruises must have occurred while the child was in the Petitioner's care. The fact that the Petitioner does not know how the bruises occurred is an indication of neglect on her part.

4. Based upon the evidence, the undersigned is left to debate how the bruises came to appear on the two alleged victim children's buttocks. Because of the lack of affirmative evidence that the Petitioner caused the bruises and the Respondent's failure to investigate and eliminate other possible causes of the bruises, it is impossible to conclude that the marks on the first alleged victim child could have only been the result of neglect on the part of the Petitioner. Thus, the Respondent has failed to establish by the greater weight of the evidence that the Petitioner neglected alleged victim child in her

care on September 10, 1992.

5. The Petitioner did neglect the child left in her care on October 12, 1992.

RECOMMENDED DECISION

The North Carolina Department of Human Resources will make the Final Decision in this contested case. It is recommended that agency adopt the Findings of Fact and Conclusions of Law set forth above and find that there is sufficient evidence to substantiate neglect on the part of the Petitioner occurred on October 12, 1992. However, since the evidence fails to establish abuse and only supports one instance of neglect, the agency should consider the imposition of some lesser penalty than revocation of the Petitioner's registration certificate.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

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.

This the 29th day of November, 1993.

Brenda B. Becton
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 OSP 0438

SHAW BOYD)	
Petitioner,)	
)	
v.)	RECOMMENDED DECISION
)	
THE NORTH CAROLINA DEPARTMENT OF)	
CORRECTION)	
Respondent.)	
)	

The above-captioned matter was heard by Michael Rivers Morgan, Administrative Law Judge on September 7 and 8, 1993 in Charlotte, North Carolina.

APPEARANCES

S. Luke Largess, Ferguson, Stein, Wallas, Adkins, Gresham and Sumter, for the Petitioner.

Neil Dalton, Assistant Attorney General, for the Respondent.

ISSUES

1. Whether the Respondent denied the Petitioner a promotion in his employment because of his race;
2. Whether the Respondent denied the Petitioner a promotion in his employment because of his age.

STIPULATED FACTS

The parties stipulated and agreed to the following undisputed facts in the Prehearing Order filed on September 7, 1993:

- a. Shaw Boyd is a Probation/Parole Officer, pay grade 66; and
- b. If Shaw Boyd had been promoted to the position of Intensive Officer, pay grade 68 as a result of his December, 1992 interview, he would have received a pay increase.

FINDINGS OF FACT

Based upon the evidence admitted at the hearing, the undersigned administrative law judge finds the following facts:

1. The Petitioner is employed as a Probation/Parole Officer II with the Respondent's Division of Adult Probation and Parole, working in Parole Services in Charlotte, North Carolina.
2. The Petitioner has been employed with the Respondent since February 16, 1976.
3. The Petitioner is a black male who is 54 years of age.

4. The job position of Intensive Probation Officer was created within the Respondent by the North Carolina General Assembly in 1983.
5. An Intensive Probation Officer's work duties for the Respondent include primary responsibilities for a caseload of probationers parolees, treatment of probationers/parolees and supervision of the probation officer for each probationer/parolee.
6. An Intensive Probation Officer is part of an intensive probation team--composed of one Intensive Probation Officer, a Surveillance Officer and one Stenographer III--which provide close supervision of people who must do community services, pass employment checks, pass drug tests and be searched who otherwise would be incarcerated.
7. An Intensive Probation Officer is more similar to a probation officer than a parole officer.
8. An Intensive Probation Officer must have at least five personal contacts, three to five curfew checks and one employment check per week with each of the officer's clients.
9. In order for an individual to be eligible to apply to become an Intensive Probation Officer with the Respondent, the individual must have at least three years of experience as a probation/parole officer and a college degree.
10. There is not a promotional examination for Intensive Probation Officer candidates, as the candidates are tested on their knowledge through interview questions which are designed to help the interviewers to evaluate each candidate's preparation and understanding to become an Intensive Probation Officer.
11. An interview committee directs questions to the applicants for Intensive Probation Officer positions.
12. In December 1992 an Intensive Probation/Parole Officer position was available to be staffed in the Respondent's Branch L.
13. The Respondent's Branch L is composed of Mecklenburg, Gaston and Union Counties.
14. When an Intensive Probation Officer position is available in the Respondent's workforce, the Respondent's headquarters in Raleigh posts the vacant position, applications for the position are later screened in order to ascertain that the Intensive Probation Officer applicant has at least three years of experience as a probation/parole officer and a team of interviewers performs interviews on the branch level of the job applicants and makes a recommendation of an applicant to staff the Intensive Probation Officer position.
15. Eight individuals submitted applications for the Intensive Probation/Parole Officer position which was available in December 1992, including the Petitioner and James M. Honeycutt.
16. Six job applicants were interviewed for the Intensive Probation/Parole Officer position which was available in December 1992, including the Petitioner and James M. Honeycutt.
17. George Pettigrew is employed with the Respondent as the Manager of Branch L of the Respondent's Adult Probation and Parole.
18. Don Welch is employed with the Respondent as a Unit Supervisor who supervises Intensive Probation Officers in Mecklenburg County in the Respondent's Division of Adult Probation and Parole.
19. Pettigrew and Welch comprised the interview team which interviewed applicants for the Intensive Probation Officer position which was available in the Respondent in December 1992.

20. Pettigrew has served on a number of job applicant interview teams, including serving as the chair of two interview teams for vacant Intensive Probation Officer positions.
21. Pettigrew has interviewed the Petitioner in job promotional opportunities on several occasions for Intensive Probation Officer positions and on one occasion for a Unit Supervisor position.
22. Welch has served on three or four job applicant interview teams, including Intensive Probation Officer job applicant interview teams.
23. Welch has interviewed the Petitioner on two occasions for Intensive Probation Officer positions.
24. The Petitioner has seventeen years of experience with the Respondent, working in the areas of both probation and parole, and has served as a pretrial release coordinator.
25. Honeycutt, a white male who was born on February 20, 1964 and therefore was 28 years of age at the time of his interview in December 1992 for the job position of Intensive Probation/Parole Officer, has three years of experience with the Respondent, working in the area of parole since October 1, 1989.
26. Pettigrew and Welch recommended Honeycutt as their first choice to fill the vacant Intensive Probation Officer position for which they conducted interviews in December 1992, stating in a memorandum to the Respondent's employee John G. Patseavouras from Pettigrew dated December 21, 1992 that Honeycutt "has exceeded the expectations in his present job responsibilities and possesses the skills and knowledge for this position."
27. In the December 21, 1992 memorandum from Pettigrew to Patseavouras concerning the recommended applicant of Pettigrew and Welch to fill the vacant Intensive Probation Officer position, Pettigrew stated that the Petitioner "adequately performs his duties as a parole officer, but we definitely do not feel he is ready to move to the position of Intensive Officer."
28. The recommendation of Pettigrew and Welch that Honeycutt be awarded the vacant Intensive Probation Officer position for which Pettigrew and Welch conducted interviews for the job vacancy in December 1992 was followed, and Honeycutt was placed in the Intensive Probation Officer position.
29. In their respective evaluations in their Work Planning and Performance Review materials, both the Petitioner and Honeycutt received favorable job performance ratings.
30. In their respective evaluations in their Performance Management System materials, both the Petitioner and Honeycutt received "good" and "very good" job performance ratings in specific areas of evaluation, with each employee of the Respondent receiving an overall job performance rating of "very good."
31. While the Petitioner received a job performance rating of "outstanding" in some specific areas of evaluation in his Performance Management System materials, Honeycutt did not receive a job performance rating of "outstanding" in any specific areas of evaluation in his Performance Management System materials.
32. When Pettigrew has served on job applicant review teams for the Respondent, Pettigrew is aware of an applicant's job performance but does not review it.
33. Pettigrew was not aware that the Petitioner had better job performance evaluations than Honeycutt.
34. Welch did not consider the job performance ratings of any of the applicants for the Intensive Probation Officer position for which interviews were conducted in December 1992.

35. Recordkeeping skills are important in the intensive probation program, because 700 to 800 contacts per month must be made and recorded by an Intensive Probation Officer.
36. Welch considered that the Petitioner would have a problem in keeping up the detailed paperwork caseload of an Intensive Probation Officer and that the Petitioner would be inadequate at processing paperwork as a supervisor.
37. Welch is familiar with the Petitioner's job performance based upon Welch's responsibility for the Respondent's house arrest program, because some of the Petitioner's clients are on house arrest and the Petitioner therefore files reports with Welch.
38. The Petitioner's filed house arrest reports contained numerous errors, which Welch reported to the Petitioner's supervisor.
39. Most of the Respondent's parole officers commit one or two errors on their reports, and Honeycutt did not commit any errors in submitting reports in his eight house arrest cases.
40. Between October 24, 1992 and September 7, 1993, the Petitioner did not commit any errors in his reports.
41. An Intensive Probation Officer does not maintain a caseload of more than twenty-five clients.
42. A Probation/Parole Officer of the Respondent such as the Petitioner typically maintains a caseload of more than one hundred clients.
43. Pettigrew is familiar with the Petitioner's job performance based upon Pettigrew's supervision of the Petitioner when the Petitioner was a probation officer.
44. When the Petitioner worked with the Respondent under Pettigrew's supervision, Pettigrew considered that the Petitioner had difficulty understanding policy regarding client supervision, problems meeting paperwork deadlines, problems regarding paperwork which opened cases and problems with organization skills.
45. The Petitioner informed Pettigrew and Welch at the Petitioner's interview in December 1992 for the vacant Intensive Probation Officer position that the Petitioner had not prepared for the interview, had not talked with any Intensive Probation Officers, had not read the manual concerning the intensive probation program and had applied at the end of the application period.
46. Honeycutt prepared for his job interview in December 1992 for the vacant Intensive Probation Officer position by riding with surveillance officers and talking with Intensive Probation Officers for several hours in their offices.
47. Knowledge and understanding of the Respondent's intensive probation program comes from one's study of the program's manual and discussions with Intensive Probation officers about their job duties.
48. The Petitioner read the Respondent's intensive probation program manual in order to prepare for a job interview for a vacant Intensive Probation Officer position in September 1992 and talked with some Intensive Probation Officers in order to prepare for his job interview for the vacant Intensive Probation Officer position in December 1992.
49. The Petitioner was asked the same questions during his job interview for the vacant Intensive Probation Officer position in September 1992 that he was asked during his job interview for the vacant Intensive Probation Officer position in December 1992.

50. Pettigrew and Welch considered the Petitioner's job interview for the vacant Intensive Probation Officer position in December 1992 to be a poor one, determining that the Petitioner didn't answer questions well due to "rambling" responses, that the Petitioner did not understand Intensive Probation Officer policy, that the Petitioner had to be prodded to give his answers to interview questions whereas other applicants were not and that there were some interview questions which the Petitioner did not answer at all.
51. Honeycutt was recommended for the vacant Intensive Probation Officer position in December 1992, based upon his preparation for the job interview.
52. In not ever having done any work in the area of probation except for a six-month college internship, Honeycutt had not done the type of work which was most relevant to the duties of an Intensive Probation Officer.
53. Pettigrew did not consider the length of work service of any applicant for the vacant Intensive Probation Officer position in December 1992, including the fact that Honeycutt's length of work service was two months beyond the minimum length of service for qualification to become an Intensive Probation Officer.
54. Welch considers that the Petitioner would be a good counselor with an intensive probation caseload.
55. Welch considers that the Petitioner is capable of doing all of the job requirements of an Intensive Probation Officer which distinguish it from the position of Probation/Parole Officer.
56. In making their recommendations of applicants concerning the job vacancy of Intensive Probation Officer in December 1992, Pettigrew and Welch determined that the Probation/Parole Officers Barbara Stroupe and Steve Pate were their second and third choices, respectively, after Honeycutt to be placed in the position.
57. Stroupe is approximately 25 years of age and Pate is approximately 34 years of age.
58. In September 1992 an Intensive Probation/Parole Officer position was available to be staffed in the Respondent's Branch L.
59. Five job applicants were interviewed for the Intensive Probation/Parole Officer position by Pettigrew and Welch which was available in September 1992, including the Petitioner and Dallas Frank McMillan, Jr.
60. McMillan, a white male who was born on July 26, 1965 and therefore was 27 years of age at the time of his interview in September 1992 for the job position of Intensive Probation/Parole Officer, had 4 1/2 years of experience with the Respondent, working in the Respondent's Division of Adult Probation and Parole since May 13, 1988.
61. Pettigrew and Welch recommended McMillan as their first choice to fill the vacant Intensive Probation Officer position for which they conducted interviews in September 1992, stating in a memorandum to the Respondent's employee John G. Patseavouras from Pettigrew dated September 9, 1992 that McMillan "has exceeded expectation in his present job and possesses the skills and knowledge for this position."
62. In the September 9, 1992 memorandum from Pettigrew to Patseavouras concerning the recommended applicant of Pettigrew and Welch to fill the vacant Intensive Probation Officer position, Pettigrew stated that the Petitioner "adequately performs his duties as a parole officer, but we definitely do not feel he is ready to move to the position of Intensive Officer."
63. The recommendation of Pettigrew and Welch that McMillan be awarded the vacant Intensive

Probation Officer position for which Pettigrew and Welch conducted interviews for the job vacancy in September 1992 was followed, and McMillan was placed in the Intensive Probation Officer position.

64. The Petitioner apologized to the job applicant interview team which conducted interviews in September 1992 for the vacant Intensive Probation Officer position after the Petitioner's inadequate preparation and poor performance in his interview.
65. In making their recommendation of applicants concerning the job vacancy of Intensive Probation Officer in September 1992, Pettigrew and Welch determined that Pate was their second choice.

CONCLUSIONS OF LAW

1. North Carolina General Statutes Section 126-16 states, in pertinent part, that all State departments and agencies shall give equal opportunity for employment and compensation, without regard to race and age, to all persons otherwise qualified. This section with respect to age shall be limited to individuals who are at least 40 years of age.
2. The Petitioner, who is 54 years of age and therefore over the age of 40 years, is entitled to the equal opportunity protection afforded by N.C.G.S. §126-16 regarding age.
3. N.C.G.S. §126-36 states, in pertinent part, that any State employee who has reason to believe that promotion was denied him because of his age or race shall have the right to appeal directly to the State Personnel Commission.
4. The United States Supreme Court case of McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 817, 36 L.Ed. 2d 688 (1973) establishes that in a discrimination case, the charging party must establish a prima facie case of discrimination by providing sufficient facts in order to raise an inference of discrimination. The responding party then must rebut this inference by presenting evidence that the basis for its action was a legitimate, nondiscriminatory reason. The charging party then has the opportunity to provide evidence that the responding party's reasons for its actions are pretextual.
5. The Petitioner, as the charging party in this contested case, has established a prima facie case of age discrimination by providing sufficient facts in order to raise an inference of discrimination, showing that the Petitioner is over 40 years of age, that the Petitioner applied for a vacant Intensive Probation/Parole Officer position which was available in December 1992, that a person who was 28 years of age was the successful applicant for the vacant Intensive Probation/Parole Officer position, that unsuccessful job applicants for the vacant Intensive Probation/Parole Officer position in December 1992 other than the Petitioner who are both under the age of 40 years were designated as the second and third choices to fill the vacant position, that the Petitioner had previously applied for a vacant Intensive Probation/Parole Officer position which was available in September 1992, that a person who was 27 years of age was the successful applicant for the vacant Intensive Probation/Parole Officer position and that an unsuccessful job applicant for the vacant Intensive Probation/Parole Officer position in September 1992 other than the Petitioner who was under the age of 40 years was designated as the second choice to fill the vacant position.
6. The Respondent, as the responding party, has rebutted the inference of age discrimination by presenting evidence that the bases for its action regarding the Petitioner's job promotional attempts were legitimate and nondiscriminatory, showing that the successful job applicants for the Intensive Probation/Parole Officer positions who were under the age of 40 years had exceeded expectations in their respective job responsibilities and were qualified for the Intensive Probation Officer position, that the Petitioner has made numerous errors in his filed work reports, that the Petitioner would have problems with a voluminous amount of paperwork as an Intensive Probation Officer and that the Petitioner did not perform well in his interviews for the vacant Intensive Probation/Parole Officer

positions.

7. The Petitioner has provided evidence that the Respondent's reasons for its actions are pretextual, showing that (a) the Petitioner's job performance ratings had also exceeded expectations as illustrated in his evaluations and that the Petitioner's job performance ratings in specific areas of evaluation were higher than the successful applicant for the vacant Intensive Probation/Parole Officer position which was available in September 1992; (b) the Petitioner had not committed any errors in his reports between October 24, 1992 and September 7, 1993; (c) the Petitioner routinely handled the paperwork for a caseload of clients which typically exceeds one hundred in number; and (d) the Respondent placed undue weight on the performance of job applicants in interviews conducted by job applicant interview teams in relation to other relevant criteria such as job performance ratings and longevity of work service, both of which were given little to no weight by the Respondent's job applicant interview team members George Pettigrew and Don Welch.
8. Title 25, Chapter 1D, Rule .0301 of the North Carolina Administrative Code establishes that in job promotional situations, selection should be based upon demonstrated capacity, quality and length of service.
9. 25 NCAC 11 .0703 states, in pertinent part, that decisions relating to promotions should be based on the overall performance and potential of the employee, and evaluation shall be systematic and objective.
10. The Respondent utilized a procedure in staffing its vacant Intensive Probation/Parole Officer position in December 1992 for which the Petitioner applied which did not properly evaluate the Petitioner's demonstrated capacity, quality and length of service amounting to seventeen years with the Respondent with recent high job performance ratings, and improperly gave little or no weight to such systematic and objective criteria in favor of unduly weighting a single job interview to determine the successful applicant for the Intensive Probation Officer position.
11. The Respondent denied the Petitioner a promotion in his employment to the position of Intensive Probation/Parole Officer, which was available in December 1992, because of his age.

RECOMMENDATION

It is recommended that the Petitioner be promoted within the Respondent's workforce to the position of Intensive Probation/Parole Officer, or a position of similar responsibility and salary. It is further recommended that the Petitioner be awarded: (1) the difference between the Petitioner's salary and the Petitioner's salary which he would have received as an Intensive Probation/Parole Officer, authorized as back pay in 25 NCAC 1B .0421 to commence from the time that the Petitioner would have begun his job responsibilities in the Intensive Probation/Parole Officer position which was available in December 1992; (2) the difference between the Petitioner's salary and the Petitioner's salary which he would receive as an Intensive Probation/Parole Officer, authorized as front pay in 25 NCAC 1B .0422; and (3) reasonable attorney's fees, authorized in 25 NCAC 1B .0414(3). In light of the disposition of the age discrimination issue, the undersigned does not reach the racial discrimination issue.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance, with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required 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. G.S. 150B-36(a).

The agency is required by G.S. 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.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 12th day of November, 1993.

Michael Rivers Morgan
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.

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