

The **NORTH CAROLINA REGISTER**

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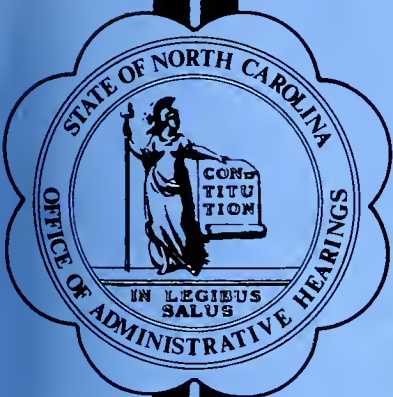
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ISSUE DATE: May 2, 1994

Volume 9 • Issue 3 • Pages 123 - 226



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

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
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
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
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9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and 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 NO. 41
EXTENDING THE GOVERNOR'S
COMMISSION ON REDUCTION
OF INFANT MORTALITY**

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

The Governor's Commission on Reduction of Infant Mortality, as established in Martin Administration Executive Order Number 99 and extended by Number 185, is hereby extended until June 30, 1995.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 12th day of April, 1994.

**EXECUTIVE ORDER NO. 42
RESCISSION OF EXECUTIVE ORDERS**

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

Section 1.

Executive Order 78 of the Martin Administration (Governor's Task Force on Injury Prevention), as extended by Executive Order 185, is hereby rescinded.

Section 2.

Executive Order 136 of the Martin Administration (North Carolina Advisory Council on Telecommunications in Education), as extended by Executive Order 185, is hereby rescinded.

Section 3.

Executive Order 153 of the Martin Administration (North Carolina 2000 Steering Committee), as extended by Executive Order 185, is hereby rescinded.

Section 4.

Executive Orders 110 and 161 of the Martin Administration (Advisory Council on International Trade) is hereby rescinded.

Section 5.

Executive Order 36 of the Martin Administration (Governor's Advisory Committee on Agricultural Parks) is hereby rescinded.

Section 6.

Executive Order 156 of the Martin Administration (North Carolina Committee on Literacy and Basic Skills), as amended by Executive Order 185, is hereby rescinded.

Section 7.

Executive Order 143 of the Martin Administration (North Carolina Advisory Council on Vocational and Applied Technology Education), as extended by Executive Order 185, is hereby rescinded.

Section 8.

Memorandum of Agreement concerning the establishment of the De Soto Trail Commission, dated April 13, 1988, is hereby rescinded.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 12th day of April, 1994.

**EXECUTIVE ORDER NO. 43
NORTH CAROLINA STATE HEALTH
COORDINATING COUNCIL**

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

Section 1. Establishment.

The North Carolina State Health Coordinating Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- (a) Serve as a forum for hearing regional concerns and recommendations relating to health planning.
- (b) Compile a list of state health needs and advise the Department of Human Resources.
- (c) Advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional and statewide needs.
- (d) Review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor.
- (e) Advise the Department of Human Re-

sources on cost effective mechanisms for achieving health needs.

- (f) Prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership.

The Council shall consist of 27 members who shall be appointed by the Governor as follows:

- (a) One member from the academic medical centers.
- (b) One member from the area health education centers.
- (c) Two members from business and industry (at least one individual representing small business and one representing large business).
- (d) One member from the health insurance industry.
- (e) One member from the North Carolina Association of County Commissioners.
- (f) One member from the North Carolina Health Care Facilities Association.
- (g) One member from the North Carolina Hospital Association.
- (h) One member from the North Carolina Association for Home Care.
- (i) One member from the North Carolina Association of Long Term Care Facilities.
- (j) One member from the North Carolina Association of Local Health Directors.
- (k) One member from the North Carolina Medical Society.
- (l) One member from the North Carolina House of Representatives.
- (m) One member from the North Carolina Senate.
- (n) One member from the United States Department of Veterans Affairs (non-voting).
- (o) Twelve at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years, and nine to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years. Terms shall expire on December 31 and

new terms shall begin on January 1.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

Section 7. Chairman.

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10) of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.

Section 10.

Executive Order Number 13, as amended by Executive Orders 51, 93 and 185, of the Martin Administration is hereby rescinded.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 15th day of April, 1994.

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.

North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391

Charles R. Fullwood, Executive Director

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §113-292(cl) and authority duly delegated by the Wildlife Resources Commission, hereby declares that effective at 12:01 a.m. on April 21, 1994, the season for harvesting striped bass by hook-and-line is closed in all inland and joint waters of the Roanoke River Striped Bass Management Area.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River, extending from its mouth to Roanoke Rapids Dam and all tributaries of the Roanoke River, including but not limited to, the Cashie, Middle, and Eastmost Rivers and their tributaries.

This proclamation shall remain in effect until a new proclamation reopening the described waters or portions thereof for striped bass fishing is issued.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) The striped bass harvest quota for the hook and line sport fishery of the Roanoke River Striped Bass Management Area has been met, and the area is closed for striped bass fishing until reopened as prescribed herein.
- c) All striped bass regardless of condition taken subsequent to the effective date and time of this Proclamation shall be immediately returned to the waters where taken and no striped bass may be possessed.
- d) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

by _____

Charles R. Fullwood
Executive Director

April 18, 1994

Date

North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391

Charles R. Fullwood, Executive Director

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §§113-292(c1) and authority duly delegated by the Wildlife Resources Commission, hereby declares that the season for harvesting striped bass by hook-and-line shall close in all waters of the Roanoke River Striped Bass Management Area downstream of the Edwards Ferry Boating Access Area at US 258 bridge on the Roanoke River in Halifax County at 12:01 a.m. 2 April 1994.

In the Roanoke River and its tributaries upstream of the Edwards Ferry Boating Access Area at US 258 bridge striped bass may be harvested from 12:01 a.m. on Saturdays through 12:00 midnight on Sundays, and from 12:01 a.m. through 12:00 midnight on Wednesdays. On all other days all striped bass caught, regardless of condition, shall be immediately returned to the waters where taken and no striped bass may be possessed.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River and its tributaries, extending from its mouth to Roanoke Rapids Dam, including the Cashie, Middle, and Eastmost rivers and their tributaries.

This Proclamation shall be effective at 12:01 a.m. 2 April 1994 and shall remain in effect until a new proclamation closing described waters or portions thereof for striped bass fishing is issued.

This proclamation supersedes and replaces all prior proclamations.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) All striped bass regardless of condition caught during the closed season shall be immediately returned to the waters where taken and no striped bass may be possessed.
- c) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

by _____
Charles R. Fullwood
Executive Director

March 29, 1994

Date

**TITLE 2 - DEPARTMENT OF
AGRICULTURE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Agriculture intends to amend rule cited as 2 NCAC 48C .0008.

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

The public hearing will be conducted at 10:00 a.m. on June 14, 1994 at the Agriculture Building, Room 306, 2 W. Edenton St., Raleigh, NC 27601.

Reason for Proposed Action: To allow sale of seed peanuts with no less than 60% germination.

Comment Procedures: Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

Editor's Note: This Rule was filed as a temporary rule effective April 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48C - SEEDS

**.0008 LESS THAN 70 PERCENT HARD
SEED AND GERMINATION**

The sale of any agricultural seed having a total percentage of germination and hard seed of less than 70 percent is prohibited, with the following exceptions:

- (1) field corn shall germinate not less than 90 percent; ~~and~~
- (2) cotton seed and Kentucky Bluegrass shall germinate not less than 60 percent; ~~and~~
- (3) from April 1, 1994 to July 30, 1994, seed peanuts which germinate from 60 percent to 69 percent may be sold if the actual germination percent is shown on the analysis label and the words "Sub-standard Germination," in one-fourth inch or larger type, are shown on a separate tag of a different color than the

analysis label.

Statutory Authority G.S. 106-277.9; 106-277.15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Genetic Engineering Review Board intends to amend rule cited as 2 NCAC 48E .0302.

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

The public hearing will be conducted at 1:00 p.m. on June 10, 1994 at the Rollins Animal Disease Diagnostic Laboratory, 2101 Blue Ridge Blvd., Conference Room - Room #154, Raleigh, NC 27607.

Reason for Proposed Action: To expand the list of activities permitted without the issuance of an individual permit.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Scott Shore, Biotechnologist, Plant Industry Division, N.C. Department of Agriculture, P.O. Box 27647, Raleigh, NC 27611. Further information on the proposed rule may be obtained by contacting Mr. Shore at the above address or calling (919) 733-6930.

CHAPTER 48 - PLANT INDUSTRY

**SUBCHAPTER 48E - GENETICALLY
ENGINEERED ORGANISMS**

**SECTION .0300 - TYPES OF
PERMITS: PERMIT APPLICATIONS:
PUBLIC NOTICE: PUBLIC HEARING:
ISSUANCE OF PERMITS: MODIFICATION,
SUSPENSION, REVOCATION OF PERMITS**

.0302 GENERAL PERMITS

(a) The following classes of activities are hereby permitted by general permits and no permit application shall be required:

- (1) Releases of genetically engineered organisms between July 1, 1990 and December 31, 1990, which are other-

wise in compliance with state and federal law;

- (2) Releases resulting wholly from activities performed inside contained facilities;
- (3) Releases of genetically engineered organisms from fermentation processes and associated recovery and purification processes where the processes or products of those processes are regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or Virus-Serum-Toxin Act, 21 U.S.C. 151 et seq.;
- (4) Releases or commercial uses of drugs or devices containing genetically engineered organisms and intended for prophylactic, therapeutic or diagnostic use in humans where such releases or uses are regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., or the Public Health Service Act, 42 U.S.C. 262, 263-;
- (5) Releases or commercial uses of genetically engineered plants where the plants have been determined to be of non-regulated status under provisions of 7 CFR Part 340 (§340.6) by the Director, Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; United States Department of Agriculture;
- (6) Releases of genetically engineered plants where the environmental release of the plants has been acknowledged to be appropriate under the notification procedure of 7 CFR Part 340 (§340.3) by the Director, Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; United States Department of Agriculture.

(b) In accordance with the Administrative Procedure Act, the Commissioner may suspend any activities being conducted under a general permit for failure to comply with the Genetically Engineered Organisms Act or any rules of this Subchapter, or if the Commissioner deems it necessary to protect agriculture, public health or the environment from potential adverse effects of a release or commercial use. Any such suspension shall be reviewed by the Board within 30 days. The Commissioner shall state in writing the reasons for such action.

(c) Public notice of any proposed rule regarding the establishment of general permits shall be given in accordance with G.S. 150B-21.2 and by:

- (1) mailing a copy of the proposed general permit to any person who has filed a written request to be so notified;
- (2) publishing notice of the proposed general permit at least once in newspapers having general circulation throughout the State.

Statutory Authority G.S. 106-770.

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 3D .0913, .1001; 3M .0202 - .0203, .0205 and .0207.

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

The public hearing will be conducted at 9:30 a.m. on June 10, 1994 at the Jane S. McKimmon Center, Gorman Street, Raleigh, NC.

Reason for Proposed Action: To make rules in this Chapter consistent with those in 21 NCAC 32H which were adopted last year.

Comment Procedures: Written comments should be submitted to Mr. Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, N.C. 27626-0530 no later than June 10, 1994. Comments received after the public hearing will not be considered. Oral comments may be made at the hearing. The hearing room information will be available in the lobby or from the receptionist.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3D - RULES AND REGULATIONS GOVERNING AMBULANCE SERVICES

SECTION .0900 - VEHICLES

.0913 PERMIT

- (a) The ambulance permit must include the

following information:

- (1) vehicle identification number;
 - (2) permit number;
 - (3) ambulance provider identification number;
 - (4) identification of inspector; and
 - (5) expiration date.
- (b) No person shall display or cause to be displayed or permit to be displayed or to knowingly possess, transfer, remove, imitate, or reproduce an ambulance permit, except by direction of the Office of Emergency Medical Services.
- (c) An ambulance shall be permitted in only one category.

(d) Any vehicle permitted as a Category I Ambulance must contain all equipment required in 10 NCAC 3D .1001(a), .1002, .1003(a), and .1103.

(e) Any vehicle permitted as a Category I Ambulance which is in service and operating as a Mobile Intensive Care Unit as defined in 10 NCAC 3M .0102, .0105, or .0107 must contain all equipment required in 10 NCAC 3M .0202, .0203, .0205, or .0207.

(f) Each EMS provider must ensure that, at a minimum, 80% of the vehicles permitted as Category I Ambulances and which operate at a Mobile Intensive Care Level must contain all appropriate equipment and supplies specified in 10 NCAC 3M .0202-.0207.

Statutory Authority G.S. 131E-157(a).

SECTION .1001 - AMBULANCE EQUIPMENT

.1001 MEDICAL AND RELATED EQUIPMENT

(a) Except as allowed by .0913(e) and (f) of these Rules, Category I ambulances for which permits are issued shall contain at least the following equipment exclusive of personal equipment carried by emergency medical technicians and ambulance attendants:

- (1) One portable aspirator capable of a minimum vacuum of 300 millimeters of mercury and a minimum air flow rate of 16 liters per minute with rapid draw-down time. A minimum of three, single use, non-opaque, one piece, rigid suction instruments and a suction rinsing water bottle must be supplied with this unit;
- (2) One each portable squeeze bag ventilation unit (bag and mask) in adult and

- child sizes with transparent face mask capable of low temperature operation (32 degrees F or below) and an attachment for oxygen hookup. A minimum of two transparent, flexible, disposable oxygen supply tubes must be supplied with each unit;
- (3) Six nonmetallic, oropharyngeal airways sanitarly stored together in separate sizes ranging from 55 millimeters through 115 millimeters;
- (4) One bite stick either commercially manufactured or made of three tongue blades taped together and padded;
- (5) One portable oxygen unit consisting of the following components: 360 liter (D size) or larger oxygen cylinder; yoke regulator with cylinder contents gauge (2000 pounds per square inch) and gravity or non-gravity dependent flow gauge (0-12 liters per minute minimum); a minimum of three transparent, nasal cannulas in adult and child sizes; and a minimum of three each, adult and child, disposable, transparent, oxygen masks with delivery tubes and headband. A full spare cylinder (D size) of oxygen for this unit shall be furnished and stored on the ambulance vehicle; oxygen tanks must show date of last static test;
- (6) One small, one medium, and one large size adult extrication collar and one pediatric size extrication collar;
- (7) One rigid short backboard. The minimum size must be 14 inches wide by 32 inches long. A stabilization device which is of the design to allow horizontal flexibility and vertical rigidity, equipped with chest and leg straps and accessories for stabilization of the head and neck may be substituted for the rigid short backboard;
- (8) One rigid long backboard a minimum of 16 inches wide by 72 inches long with two straps for patient stabilization and other accessories for stabilization of the head and neck;
- (9) Two sets of rigid padded board splints in the following sizes; 3 inches wide by 15 inches long, 3 inches wide by 3 feet long, and 3 inches wide by 4-1/2 feet long. Other splints, in kit form, of inflatable design or rigid laminated and high density polyurethane foam con-

- struction are acceptable. A kit must contain at least two full leg and two full arm splints;
 - (10) One child and one adult size lower extremity traction splint with appropriate attachments;
 - (11) Two sandbags constructed of a nonporous material for immobilization purposes. Minimum size must be 2 inches by 4 inches by 12 inches. A head immobilizer may be substituted for sandbags;
 - (12) Twelve 4 inch by 4 inch sterile gauze pads individually packaged;
 - (13) Six sterile 5 inch by 9 inch absorbent dressings individually wrapped;
 - (14) Twelve rolls of roller gauze;
 - (15) Four rolls of adhesive tape;
 - (16) Four sterile nonadhering, nonporous dressings for an open chest wound. Minimum size shall be 3 inches by 8 inches;
 - (17) Six triangular bandages;
 - (18) Two pairs of 5-1/2 inches bandage shears;
 - (19) Two sterile burn sheets, minimum size of 40 inches by 72 inches;
 - (20) A total of 2000 cubic centimeters of sterile irrigating solution in plastic containers in addition to the fluids carried for intravenous use;
 - (21) One emesis basin;
 - (22) One obstetrical kit containing gloves, scissors or surgical blades, umbilical cord clamps or tapes, dressings, towels, perinatal pad, a bulb syringe, and a receiving blanket;
 - (23) One poison antidote kit containing syrup of ipecac, activated charcoal and a means of administering the proper dosage;
 - (24) One each small, regular and large size aneroid blood pressure cuff and adult and pediatric stethoscopes. One stethoscope with adult and pediatric attachments is acceptable;
 - (25) One sheet of rubber or heavy plastic, minimum size of 36 inches by 72 inches, or one body bag;
 - (26) One four wheeled, elevating cot with a minimum three inch thick pad with a nonporous cover. The cot must be equipped with restraining straps (chest and thigh area) of at least two inches in width. A crash stable fastener installed per the cot manufacturer's instructions and compatible with the model cot furnished must secure the specified cot to the floor or side wall;
 - (27) One additional stretcher with patient restraining straps and capable of being secured inside the patient compartment;
 - (28) Two sets of clean cot linen constructed of washable or disposable material in addition to a set on the cot (a set equals two sheets and one pillowcase);
 - (29) Two pillows covered with a nonporous material;
 - (30) Two blankets constructed of washable material; and
 - (31) One child restraint device to safely transport pediatric patients in the patient compartment of the ambulance.
- (b) Category II ambulances for which permits are issued shall contain at least the following equipment exclusive of personal equipment carried by personnel:
- (1) One portable aspirator capable of a minimum vacuum of 300 millimeters of mercury and a minimum air flow rate of 16 liters per minute with rapid drawdown time. A minimum of three, single use, non-opaque, one piece, rigid suction instruments and a suction rinsing water bottle must be supplied with this unit;
 - (2) One each portable squeeze bag ventilation unit (bag and mask) in adult and child sizes with transparent face mask capable of low temperature operation (32 degrees F or below) and an attachment for oxygen hookup. A minimum of two transparent, flexible, disposable oxygen supply tubes must be supplied with each unit;
 - (3) Six nonmetallic, oropharyngeal airways sanitarly stored together in separate sizes ranging from 55 millimeters through 115 millimeters;
 - (4) One bite stick either commercially manufactured or made of three tongue blades taped together and padded;
 - (5) One portable oxygen unit consisting of the following components: 360 liter (D size) or larger oxygen cylinder; yoke regulator with cylinder contents gauge (2000 pounds per square inch) and gravity or non-gravity dependent flow gauge (0-12 liters per minute); a

minimum of three transparent, nasal cannulas in adult and child sizes; and a minimum of three each, adult and child, disposable, transparent, oxygen masks with delivery tubes and headband. A full spare cylinder (D size) of oxygen for this unit shall be furnished and stored on the ambulance vehicle; oxygen tanks must show date of last static test;

- (6) Twelve four inch by four inch sterile gauze pads individually packaged;
- (7) Six sterile five inch by nine inch absorbent dressings individually wrapped;
- (8) Six rolls of roller gauze;
- (9) Two rolls of adhesive tape;
- (10) Three triangular bandages;
- (11) Two pairs of five and one-half inches bandage shears;
- (12) One emesis basin;
- (13) One each small, regular and large size aneroid blood pressure cuff and adult and pediatric stethoscopes. One stethoscope with adult and pediatric attachments is acceptable;
- (14) One four wheeled, elevating cot with a minimum three inch thick pad with a nonporous cover. The cot must be equipped with restraining straps (chest and thigh area) of at least two inches in width. A crash stable fastener installed per the cot manufacturer's instructions and compatible with the model cot furnished must secure the specified cot to the floor or side wall;
- (15) Two sets of clean cot linen constructed of washable or disposable material in addition to a set on the cot (a set equals two sheets and one pillowcase);
- (16) Two pillows covered with a nonporous material;
- (17) Two blankets constructed of washable material;
- (18) A firm board of minimum size 14 inches by 32 inches to support the back during manual heart compressions; and
- (19) One child restraint device to safely transport pediatric patients in the patient compartment of the ambulance.

(c) Category III ambulances for which permits are issued must have the following medical equipment immediately available to be placed on the vehicle:

- (1) One portable aspirator capable of a minimum vacuum of 300 millimeters of

mercury and a minimum air flow rate of 16 liters per minute with rapid draw-down time. A minimum of three, single use, non-opaque, one piece, rigid suction instruments and a suction rinsing water bottle must be supplied with this unit;

- (2) One each portable squeeze bag ventilation unit (bag and mask) in adult and child sizes with transparent face mask capable of low temperature operation (32 degrees F or below) and an attachment for oxygen hookup. A minimum of two transparent, flexible, disposable oxygen supply tubes must be supplied with each unit;
- (3) Six nonmetallic, oropharyngeal airways sanitarily stored together in separate sizes ranging from 55 millimeters through 115 millimeters;
- (4) One bite stick either commercially manufactured or made of three tongue blades taped together and padded;
- (5) One portable oxygen unit consisting of the following components: 360 liter (D size) or larger oxygen cylinder; yoke regulator with cylinder contents gauge (2000 pounds per square inch) and gravity or non-gravity dependent flow gauge (0-12 liters per minute); a minimum of three transparent, nasal cannulas in adult and child sizes; and a minimum of three each, adult and child, disposable, transparent, oxygen masks with delivery tubes and headband. A full spare cylinder (D size) of oxygen for this unit shall be furnished and stored on the ambulance vehicle; oxygen tanks must show date of last static test;
- (6) Twelve four inch by four inch sterile gauze pads individually packaged;
- (7) Six sterile five inch by nine inch absorbent dressings individually wrapped;
- (8) Six rolls of roller gauze;
- (9) Two rolls of adhesive tape;
- (10) Three triangular bandages;
- (11) Two pairs of five and one-half inches bandage shears;
- (12) One emesis basin;
- (13) Two sterile burn sheets, minimum size of 40 inches by 72 inches;
- (14) A total of 2000 cubic centimeters of sterile irrigating solution in plastic containers in addition to the fluids

- carried for intravenous use;
 - (15) One obstetrical kit containing gloves, scissors or surgical blades, umbilical cord clamps or tapes, dressings, towels, perinatal pad, a bulb syringe, and a receiving blanket;
 - (16) One poison antidote kit containing syrup of ipecac, activated charcoal and a means of administering the proper dosage;
 - (17) One each small, regular and large size aneroid blood pressure cuff and adult and pediatric stethoscopes. One stethoscope with adult and pediatric attachments is acceptable;
 - (18) One four wheeled, elevating cot with a minimum three inch thick pad with a nonporous cover. The cot must be equipped with restraining straps (chest and thigh area) of at least two inches in width. A crash stable fastener installed per the cot manufacturer's instructions and compatible with the model cot furnished must secure the specified cot to the floor or side wall. A self contained transport incubator with stand and capable of being secured in the ambulance may be substituted;
 - (19) Two sets of clean cot linen constructed of washable or disposable material in addition to a set on the cot (a set equals two sheets and one pillowcase);
 - (20) Two pillows covered with a nonporous material;
 - (21) Two blankets constructed of washable material;
 - (22) A firm board of minimum size 14 inches by 32 inches to support the back during manual heart compressions; and
 - (23) One child restraint device to safely transport pediatric patients in the patient compartment of the ambulance.
- (d) Category IV ambulances for which permits are issued must have the following medical equipment immediately available to be placed on the aircraft:
- (1) One portable aspirator with rapid drawdown time capable of providing a minimum vacuum of 300 millimeters of mercury and a minimum air flow rate of 16 liters per minute up to the maximum operating altitude of the aircraft. A minimum of three, single use, non-opaque, one piece, rigid suction instruments and a suction rinsing water bottle must be supplied with this unit;
 - (2) One each portable squeeze bag ventilation unit (bag and mask) in adult and child sizes with transparent face mask capable of low temperature operation (32 degrees F or below) and an attachment for oxygen hookup. A minimum of two transparent, disposable oxygen supply tubes must be supplied with each unit;
 - (3) Six nonmetallic, oropharyngeal airways sanitarly stored together in separate sizes ranging from 55 millimeters through 115 millimeters;
 - (4) One bite stick either commercially manufactured or made of three tongue blades taped together and padded;
 - (5) Oxygen unit containing a quantity of oxygen sufficient to supply an appropriate flow rate for the period of time it is anticipated oxygen will be needed, but not less than ten liters per minute for 30 minutes. The oxygen shall be carried in two separate containers, one of which must be portable. The portable oxygen unit shall have a yoke regulator with cylinder contents gauge, flow gauge, and DISS outlets;
 - (6) Twelve four inch by four inch sterile gauze pads individually packaged;
 - (7) Six sterile five inch by nine inch absorbent dressings individually wrapped;
 - (8) Twelve rolls of roller gauze;
 - (9) Four rolls of adhesive tape;
 - (10) Four sterile nonadhering, nonporous dressings for an open chest wound. Minimum size shall be 3 inches by 8 inches;
 - (11) Six triangular bandages;
 - (12) Two sterile burn sheets, minimum size of 40 inches by 72 inches;
 - (13) A total of 2000 cubic centimeters of sterile irrigating solution in plastic containers in addition to the fluids carried for intravenous use;
 - (14) One emesis basin;
 - (15) One IV pressure bag;
 - (16) An electronic means of measuring blood pressure while in flight;
 - (17) One stethoscope and manual blood pressure cuff;
 - (18) One ECG monitor/defibrillator;

- (19) One complete kit for endotracheal intubation;
- (20) One litter and attachment for securing the litter to the airframe inside the cabin of the aircraft. The litter must allow for elevation of the patient's head;
- (21) One blanket constructed of washable material;
- (22) Four air sick bags; and
- (23) Four IV hooks.

(e) The medical director shall decide the combination of medical equipment specified in Paragraph (d) of this Rule that is carried on a mission based on what is in the best interest of patient care.

(f) All rotary wing aircraft permitted as a Category IV ambulance must have the following flight equipment operational in the aircraft:

- (1) Two 360 channel VHF aircraft frequency transceivers;
- (2) One VHF omnidirectional ranging (VOR) receiver;
- (3) Attitude indicators;
- (4) One nondirectional beacon (NDB) receiver;
- (5) One glide scope receiver;
- (6) One transponder with 4097 code, Mode C;
- (7) Turn and slip indicator in the absence of three attitude indicators;
- (8) Current FAA approved navigational aids and charts for the area of operations;
- (9) Radar altimeter; and
- (10) Loran navigational system.

(g) Any fixed wing aircraft issued a permit as a Category IV ambulance must have a current "Instrument Flight Rules" certification.

(h) Category V ambulances for which permits are issued shall contain at least the following equipment exclusive of personal equipment carried by personnel:

- (1) One portable aspirator capable of a minimum vacuum of 300 millimeters of mercury and a minimum air flow rate of 16 liters per minute with rapid drawdown time. A minimum of three, single use, non-opaque, one piece, rigid suction instruments and a suction rinsing water bottle must be supplied with this unit;
- (2) One each portable squeeze bag ventilation unit (bag and mask) in adult and child sizes with transparent face

mask capable of low temperature operation (32 degrees F or below) and an attachment for oxygen hookup. A minimum of two transparent, flexible, disposable oxygen supply tubes must be supplied with each unit;

- (3) Six nonmetallic, oropharyngeal airways sanitarly stored together in separate sizes ranging from 55 millimeters through 115 millimeters;
- (4) One bite stick either commercially manufactured or made of three tongue blades taped together and padded;
- (5) One portable oxygen unit consisting of the following components: 360 liter (D size) or larger oxygen cylinder; yoke regulator with cylinder contents gauge (2000 pounds per square inch) and gravity or non-gravity dependent flow gauge (0-12 liters per minute); a minimum of three transparent, nasal cannulas in adult and child sizes; and a minimum of three each, adult and child, disposable, transparent, oxygen masks with delivery tubes and headband. A full spare cylinder (D size) of oxygen for this unit shall be furnished and stored on the ambulance vehicle; oxygen tanks must show date of last static test;
- (6) One small, one medium, and one large size adult extrication collar and one pediatric size extrication collar;
- (7) One rigid short backboard. The minimum size must be 14 inches wide by 32 inches long. A stabilization device which is of the design to allow horizontal flexibility and vertical rigidity, equipped with chest and leg straps and accessories for stabilization of the head and neck may be substituted for the rigid short backboard;
- (8) One floatable rigid long backboard a minimum of 16 inches wide by 72 inches long with two straps for patient stabilization and other accessories for stabilization of the head and neck;
- (9) Two sets of rigid padded board splints in the following sizes; three inches wide by 15 inches long, three inches wide by three feet long, and three inches wide by four and one-half feet long. Other splints, in kit form, of inflatable design or rigid laminated and high density polyurethane foam construction are

acceptable. A kit must contain at least two full leg and two full arm splints;

- (10) One child and one adult size lower extremity traction splint with appropriate attachments;
- (11) Two sandbags constructed of a nonporous material for immobilization purposes. Minimum size must be two inches by four inches by 12 inches. A head immobilizer may be substituted for sandbags;
- (12) Twelve four inch by four inch sterile gauze pads individually packaged;
- (13) Six sterile five inch by nine inch absorbent dressings individually wrapped;
- (14) Twelve rolls of roller gauze;
- (15) Four rolls of adhesive tape;
- (16) Four sterile nonadhering, nonporous dressings for an open chest wound. Minimum size shall be three inches by eight inches;
- (17) Six triangular bandages;
- (18) Two pairs of five and one-half inches bandage shears;
- (19) Two sterile burn sheets, minimum size of 40 inches by 72 inches;
- (20) A total of 2000 cubic centimeters of sterile irrigating solution in plastic containers in addition to the fluids carried for intravenous use;
- (21) One emesis basin;
- (22) One obstetrical kit containing gloves, scissors or surgical blades, umbilical cord clamps or tapes, dressings, towels, perinatal pad, a bulb syringe, and a receiving blanket;
- (23) One poison antidote kit containing syrup of ipecac, activated charcoal and a means of administering the proper dosage;
- (24) One each small, regular and large size aneroid blood pressure cuff and adult and pediatric stethoscopes. One stethoscope with adult and pediatric attachments is acceptable;
- (25) One sheet of rubber or heavy plastic, minimum size of 36 inches by 72 inches, or one body bag;
- (26) One additional floatable litter with patient restraining straps and capable of being secured to the watercraft; and
- (27) Two blankets constructed of washable material.

Statutory Authority G.S. 131E-157(a).

SUBCHAPTER 3M - MINIMUM STANDARDS FOR MOBILE INTENSIVE CARE UNIT

SECTION .0200 - EQUIPMENT

.0202 MOBILE INTENSIVE CARE UNIT (MICU) I

In addition to equipment required in Rule .0201 of this Section, an ambulance identified as a Mobile Intensive Care Unit I shall carry the following equipment and medical supplies, in amounts approved by the medical director; ~~concurrent with the medical protocols in effect for the Advanced Life Support program with which the ambulance provider is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program:~~

- (1) two-way radio capable of continuous voice communications with the sponsor hospital;
- (2) ~~dextrose 5 percent in water (D5W);~~
- (3) ~~normal saline solution;~~
- (4) ~~lactated ringers solution;~~
- (2) (5) angiocath needles;
- (3) (6) vacutainers;
- (4) (7) I.V. administration sets appropriate to solution containers and needles;
- (5) (8) ~~esophageal obturator airway or esophageal gastric tube airway;~~ blind insertion airway device;
- (6) (9) antishock trousers.
- (10) ~~epinephrine 1:1000 to treat systemic allergic reactions.~~

A MICU I may also, upon approval of the medical director, carry the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0403. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU I is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

.0203 MOBILE INTENSIVE CARE UNIT III

An ambulance identified as a Mobile Intensive

Care Unit III shall carry the equipment and supplies required in Rule .0201 of this Section and the following equipment list and medical supplies in amounts approved by the medical director; ~~as well as the drugs contained on the EMT-paramedic Minimum Drug List approved by the North Carolina Board of Medical Examiners for use by EMT-paramedics in amounts and concentrations concurrent with the medical protocols in effect for the Advanced Life Support program with which the ambulance provider is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program:~~

- (1) two-way radio capable of continuous voice communications with the sponsor hospital;
- (2) angiocath needles;
- (3) vacutainers;
- (4) I.V. administration sets appropriate to solution containers and needles;
- (5) ~~esophageal obturator airway or esophageal gastric tube airway;~~ blind insertion airway devices;
- (6) antishock trousers;
- (7) sterile syringes;
- (8) endotracheal tubes;
- (9) laryngoscope (handle and blade);
- (10) cardiac monitor and accessories;
- (11) defibrillator.

A vehicle identified as a Mobile Intensive Care Unit III may also ~~as an option, upon approval of the program medical director carry additional drugs contained on the EMT-paramedic Drug Formulary approved by the North Carolina Board of Medical Examiners as addressed in the medical protocols in effect for the Advanced Life Support program with which the ambulance provider is affiliated.~~ the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0402. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU III is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

~~Copies of the EMT-paramedic Minimum Drug List and the EMT-paramedic Drug Formulary may be obtained from the Office of Emergency Medical Services, 701 Barbour Drive, Raleigh, North~~

~~Carolina 27603.~~

Statutory Authority G.S. 131E-157(a).

.0205 MOBILE INTENSIVE CARE UNIT II

An ambulance identified as a Mobile Intensive Care Unit II shall carry the equipment and supplies required in Rule .0201 of this Section and the following equipment list and medical supplies in amounts approved by the medical director; ~~as well as the drugs contained on the EMT-advanced intermediate Minimum Drug List approved by the North Carolina Board of Medical Examiners for use by EMT-advanced intermediates in amounts and concentrations concurrent with the medical protocols in effect for the Advanced Life Support program with which the ambulance provider is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program:~~

- (1) two-way radio capable of continuous voice communications with the sponsor hospital;
- (2) angiocath needles;
- (3) vacutainers;
- (4) I.V. administration sets appropriate to solution containers and needles;
- (5) ~~esophageal obturator airway or esophageal gastric tube airway;~~ blind insertion airway devices;
- (6) antishock trousers;
- (7) sterile syringes;
- (8) endotracheal tubes;
- (9) laryngoscope (handle and blade);
- (10) cardiac monitor and accessories;
- (11) defibrillator.

A vehicle identified as a Mobile Intensive Care Unit II may also ~~as an option, upon the approval of the program medical director carry additional drugs contained on the EMT-advanced intermediate Drug Formulary approved by the North Carolina Board of Medical Examiners as addressed in the medical protocols in effect for the Advanced Life Support program with which the ambulance provider is affiliated.~~

~~Copies of the EMT-advanced intermediate Minimum Drug List and the EMT-advanced intermediate Drug Formulary may be obtained from the Office of Emergency Medical Services, 701 Barbour Drive, Raleigh, North Carolina 27603.~~ the intravenous solution(s) and medications(s) authorized by 21 NCAC 32H .0406. The amounts and concentrations shall be concurrent with the medical protocols approved by

the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU II is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Copies of the EMT-paramedic Minimum Drug List and the EMT-paramedic Drug Formulary may be obtained from the Office of Emergency Medical Services, 701 Barbour Drive, Raleigh, North Carolina 27603.

Statutory Authority G.S. 131E-157(a).

.0207 MOBILE INTENSIVE CARE UNIT IV

An ambulance identified as a Mobile Intensive Care Unit IV shall carry, in addition to the equipment referenced in Rule .0201 of this Section, an automatic external or semi-automatic defibrillator (AED). A MICU IV may also, upon approval of the medical director, carry the medications(s) authorized by 21 NCAC 32H .0407. The amounts and concentrations shall be concurrent with the medical protocols approved by the Office of Emergency Medical Services in effect for the Advanced Life Support program with which the MICU IV is affiliated. A copy of the current medical protocols may be obtained from the sponsor hospital of the advanced life support program. One copy of 21 NCAC 32H may be obtained at no cost from the Office of Emergency Medical Services, 701 Barbour Drive, P.O. Box 29530, Raleigh, NC 27626-0530.

Statutory Authority G.S. 131E-157(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 411 .0101, .0103, .0304 - .0306, .0308, .0312, .0401, .0406, .0410; repeal rules cited as 10 NCAC 411 .0402 - .0405, .0407 - .0409, .0411; and adopt rules cited as 10 NCAC 43L .0206 - .0209.

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

The public hearing will be conducted at 10:00 a.m. on June 1, 1994 at the Albemarle Building, Room 943-2, 325 North Salisbury Street, Raleigh, North Carolina 27603.

Reason for Proposed Action:

10 NCAC 411 .0101, .0305, .0308, .0401, .0410 - The proposed amendments to these Rules are the result of changes in legislation. In addition, there are some minor changes in punctuation and sentence structure designed to improve clarity.

10 NCAC 411 .0103, .0312 - The proposed amendment of these Rules is the result of a request by the Children's Services Policy Review Committee.

10 NCAC 411 .0304 - The proposed amendment of 10 NCAC 411 .0304 is partially the result of the need for clarification of procedures in investigating abuse, neglect, or dependency in an institutional setting. The proposed amendment clarifies the fact that, in addition to the procedures required for all investigations, the institutional administrator should also be notified of the investigation. This notification should occur before the child is seen unless doing so compromises the safety of the child. Other proposed amendment is a result of legislative action.

10 NCAC 411 .0306 - The proposed amendment of 10 NCAC 411 .0306 is partially the result of an inaccuracy which had been incorporated into rule. The proposed amendment clarifies the appropriate use of the risk assessment tool for substantiated dependency cases. The proposed amendment in Subparagraph (a)(3) requires timely written notification of the case decision to the perpetrator, parent/caretaker, and custodial agencies. The time frame is the same for the written notification to the reporter (5 working days from the date of the case decision). The other proposed amendment to this Rule, contained in (e), incorporates reporting requirements now contained in legislation.

10 NCAC 411 .0402 - .0405, .0407 - .0409, .0411 - The proposed repeal of these Rules is the result of changes in legislation.

10 NCAC 411 .0406 - The proposed amendment of 10 NCAC 411 .0406 is needed because of the deletion of 411 .0404 which contained the specific training requirements for both the chair and the members of the Community Child Protection Team.

10 NCAC 43L .0206 - .0209 - Rules establishing mandated and optional services need to be adopted so that it is clear what services county DSSs are required to provide with SSBG funds and which ones they have an option to provide. Rules were

inadvertently repealed in 1990.

Statutory Authority G.S. 143B-153.

Comment Procedures: Comments may be presented in writing at any time 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 these Rules by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, tel: (919) 733-3055.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41I - PROTECTIVE SERVICES

SECTION .0100 - GENERAL

.0101 PURPOSE

Rules in this Subchapter govern the provision of protective services for children with funds administered by the Division of Social Services. Included are requirements for the management of the central registry of neglect, and abuse, and dependency cases, and requirements which must be met by county departments of social services in carrying out their responsibilities for the protection of children under Chapter 7A of the General Statutes.

Statutory Authority G.S. 7A-517; 7A-543 through 7A-548; 7A-552; 143B-153.

.0103 REPORTS OF NEGLECT, ABUSE OR DEPENDENCY

~~Reports of neglect, abuse, or dependency allegedly caused by staff of one county department of social services shall be referred to another department of social services for investigation. shall be referred to another county department of social services for investigation when the alleged perpetrator is an employee of the county department of social services, a foster parent supervised by that county department of social services, a member of the Board of Social Services for that county, or a caretaker in a sole-source contract group home or agency-operated day care facility.~~

When in the professional judgement of the county director the agency would be perceived as having a conflict of interest in the conduct of other child protective service investigations, the director shall have discretionary authority to request that another county conduct the investigations.

SECTION .0300 - CHILD PROTECTIVE SERVICES: GENERAL

.0304 RECEIVING INFORMATION: INITIATING PROMPT INVESTIGATIONS OF REPORTS

(a) The county director shall receive and initiate an investigation on all reports of suspected child abuse, neglect, or dependency, including anonymous reports:

(b) The county director shall make a diligent effort to obtain the following information from the person making the report:

- ~~(1) the name and address of the parent, guardian or caretaker and the name of the alleged perpetrator;~~
- ~~(2) the name and actual or approximate age of the child or children;~~
- ~~(3) the nature and extent of the alleged neglect, abuse or dependency;~~
- ~~(4) the present whereabouts of the child or children if not at the home address;~~
- ~~(5) other information that the reporter has which might be helpful in establishing the need for protective services, including the name, address and phone number of other individuals who may have information about the condition of the child or children;~~
- ~~(6) the name and address of the individual making the report.~~
- (1) The name, address, and actual or approximate age of the juvenile(s);
- (2) The names and ages of other juveniles residing in the home;
- (3) The name and address of the juvenile's parent, guardian, or caretaker;
- (4) The name and address of the alleged perpetrator;
- (5) The present whereabouts of the juvenile(s) if not at the home address;
- (6) The nature and extent of any injury or condition resulting from abuse, neglect, or dependency;
- (7) Other information that the reporter has which might be helpful in establishing the need for protective services, including the names, addresses, and telephone numbers of other individuals who may have information about the condition of the juvenile(s);
- (8) The name, address, and telephone number of the person making the re-

port.

(c) When a county director receives a report of suspected abuse or of criminal maltreatment of a juvenile by a person other than the juvenile's parent, guardian, custodian, or caretaker, and decides that a the director shall notify the appropriate law enforcement agency should be notified, in accordance with G.S. 7A-548. ~~The~~ the county director shall provide the law enforcement agency with ~~the any~~ information obtained from the person making the report as outlined in Subparagraphs (b)(1) through ~~(b)(5)~~ (b)(7) of this Rule. The name, ~~and address~~ address, and telephone number of the individual making the report, included as Subparagraph ~~(b)(6)~~ (b)(8) of this Rule, may be shared with law enforcement when this information is necessary for law enforcement to perform their duties as related to the report.

(d) The county director shall promptly initiate an investigation of suspected abuse, neglect or dependency, and in all cases shall initiate an investigation of suspected abuse, within 24 hours after receiving a report and shall initiate an investigation of suspected neglect or dependency within 72 hours after receiving a report. Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children. If there is not such face-to-face contact within the prescribed time period, the case record shall contain documentation to explain why such contact was not made and what other steps were taken to assess the risk of harm to the child or children.

(e) When the director is unable to initiate the investigation within the prescribed time period, as indicated in Paragraph (d) of this Rule, because the alleged victim child or children cannot be located, the director shall make diligent efforts to locate the alleged victim child or children until such efforts are successful or until the director concludes that the child or children cannot be located. Diligent efforts shall include, but not be limited to, visits to the child's or children's address at different times of the day and on different days. All efforts to locate the child or children shall be documented in the case record.

(f) When abuse, neglect, or dependency is alleged to have occurred in an institution, in addition to ~~obtaining information as described in (b) of this Rule~~ the procedures described in Paragraphs (a) through (e) of this Rule, the county director shall ~~initiate the investigation by contacting~~ notify the individual who is administratively responsible for on-site operation of the institution ~~and in order to~~ solicit the cooperation of the administration of the institution. Notification shall

occur within the time frames required in Paragraph (d) of this Rule, and prior to contact with the alleged victim juvenile(s) if the director determines that such notice would not place the alleged victim(s) at risk of further harm.

(g) The county director must have an internal two-level review, including at a minimum the worker and the worker's supervisor, prior to making a decision that information received does not constitute a report of abuse, neglect, or dependency.

(h) The county director must establish a process by which the person providing this information may obtain a review of the agency's decision not to accept the information as a report of abuse, neglect, or dependency. The process shall include:

- (1) informing the person providing the information that the agency will not conduct an investigation, the basis for that decision, and their right to and the procedures for obtaining such a review; and
- (2) designating the persons by whom and the manner in which such reviews will be conducted.

Statutory Authority G.S. 7A-543; 7A-544; 7A-547; 7A-548; 143B-153.

.0305 CONDUCTING A THOROUGH INVESTIGATION

(a) The county director shall make a thorough investigation to assess:

- (1) whether the specific environment in which the child or children is found meets the child's or children's need for care and protection; and
- (2) facts regarding the existence of abuse, neglect, or dependency; and
- (3) the nature and extent of any injury or condition resulting from abuse, and neglect, neglect, or dependency; and
- (4) the risk of harm to and need for protection of the child or children.

(b) When the county director receives a report of suspected abuse, neglect, or dependency, the county director shall check the county agency's records and the North Carolina Central Registry of ~~Child Abuse and Neglect Reports~~ child abuse, neglect, and dependency reports to ascertain if any previous reports of abuse or neglect have been made concerning the alleged victim child or children.

(c) Face-to-face contact with other children residing in the home shall be made as soon as

possible, but no later than seven working days after the initiation of the investigation, unless there is documentation in the case record to explain why such contact was not made.

(d) There shall be a face-to-face interview with any parent or caretaker with whom the victim child or children reside, unless there is documentation in the case record to explain why such an interview was not conducted. The parent or caretaker shall be interviewed on the same day as the victim child or children unless there is documentation in the case record to explain why such interviews were not conducted.

(e) The investigation shall include a visit to the place where the child or children reside.

(f) There shall be a face-to-face interview with the alleged perpetrator or perpetrators unless there is documentation to explain why such an interview was not conducted.

(g) Any persons identified at the time the report was accepted for investigation as having information concerning the condition of the child or children shall be interviewed in order to obtain any information relevant to the investigation unless there is documentation in the case record to explain why such interviews were not conducted.

(h) When additional information is necessary to complete a thorough investigation, information from the following sources shall be obtained and utilized:

- (1) Professionals or staff at an out-of-home care setting having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (2) Other persons living in the household or attending or residing in the out-of-home care setting;
- (3) Any other source having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (4) Records; i.e., school, medical, mental health, or incident reports in an out-of-home care setting.

(i) The county director shall exercise discretion in the selection of collateral sources in order to protect the family's or out-of-home care setting's right to privacy and the confidentiality of the report.

(j) Conducting a thorough investigation as outlined in Paragraph (a) of this Rule when the alleged abuse, neglect, or dependency occurred in an institution shall include the following:

- (1) A discussion of the allegation with the individual who has on-site administrative responsibility for the

institution;

- (2) A discussion of the procedure to be followed during the investigation;
- (3) The utilization of resources within and without the institution as needed and appropriate;
- (4) A discussion of the findings with the Administrator of the institution which shall be confirmed in writing by the county director and shall be held confidential by all parties as outlined in 10 NCAC 411 .0313, of this Subchapter.

Statutory Authority G.S. 7A-543; 7A-544; 143B-153.

.0306 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) When a thorough investigation reveals the presence of abuse, neglect, or dependency, the county director shall notify the following persons or agencies of the case finding:

- (1) any parent or caretaker who was alleged to have abused or neglected the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
- (3) any agency with whom the court has vested legal custody.

Notification shall be in writing, and within five working days of the case decision. If the county director is unable to contact a parent, caretaker, and/or perpetrator, documentation of reasonable efforts to locate that person must be included in the case record.

(b) When abuse, ~~neglect or dependency~~ or ~~neglect~~ is found, the county director shall determine whether the case is one for which a structured risk assessment is required. The director shall base this determination on the instructions to the risk assessment tool provided by the Department of Human Resources, Division of Social Services. For all cases that require the completion of a structured risk assessment, the director shall complete such an assessment using the risk assessment tool provided by the Department of Human Resources, Division of Social Services. This risk assessment shall be completed within seven working days following a case finding of abuse, ~~neglect or dependency~~; or ~~neglect~~ and the findings of the risk assessment shall be used in evaluating the need for services

and in developing an intervention plan. The director shall evaluate the appropriateness of using the formal risk assessment process in individual substantiated dependency cases. Examples of substantiated dependency cases that are appropriate for formal risk assessment are cases involving both neglect and dependency, and cases involving dependent children who are being considered for reunification with their family.

(c) In all cases in which abuse, neglect, or dependency is found, the county director shall develop, implement, and oversee an intervention plan to ensure that there is adequate care for the victim child or children. The intervention plan shall:

- (1) be based on the findings of the structured risk assessment when such a risk assessment was determined to be required according to the instructions provided by the Department of Human Resources, Division of Social Services; and
- (2) contain goals representing the desired outcome toward which all case activities shall be directed; and
- (3) contain objectives that:
 - (A) describe specific desired outcomes,
 - (B) are measurable,
 - (C) identify necessary behavior changes,
 - (D) are based on an assessment of the specific needs of the child or children and family,
 - (E) are time-limited, and
 - (F) are mutually accepted by the county director and the client;
- (4) specify all the activities needed to achieve each stated objective;
- (5) have clearly stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

(d) The risk assessment tool referred to in Paragraph (b) of this Rule is to be used in those cases in which abuse, ~~neglect or dependency~~ or neglect is found and which meet the criteria presented in the instructions to the risk assessment tool provided by the Department of Human Resources, Division of Social Services. For those

cases that require the completion of a structured risk assessment, the risk assessment tool shall be completed at the following points in the case:

- (1) within seven working days following a case finding of abuse, neglect, or dependency, and prior to the development of the intervention plan and prior to the provision of treatment or supportive services; and
- (2) as part of the six-month review and the annual review, if the case remains open for services; and
- (3) when the county director is considering taking court action in relation to the case; and
- (4) when the county director is considering closing the case for services; and if the director decides to close the case, the case must be closed within 30 days following completion of the risk assessment; and
- (5) at other times, at the county director's discretion, when conducting a structured risk assessment would help the director in making decisions concerning an open child protective services case.

(e) When an investigation leads a county director to find evidence that a child ~~has~~ may have been abused, ~~the county director shall immediately, but in all cases within three working days of finding the evidence, make a written report to the prosecutor.~~ or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the county director shall follow all procedures outlined in G.S. 7A-548 in making reports to the prosecutor and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator when this person is different from the parents or caretaker;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what evidence of abuse was found;
- (6) what plan to protect the child has been developed and what is being done to

implement it.

(f) When a thorough investigation reveals the presence of abuse, neglect, or dependency in an institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

Statutory Authority G.S. 7A-544; 7A-548; 143B-153.

.0308 NOTIFICATION OF REPORTER; REVIEW BY THE PROSECUTOR

~~(a) If a petition is not filed within five working days of the receipt of a report of abuse, neglect or dependency the county director shall give written notice of his decision not to file a petition to the person making the report, unless the person does not give his name and mailing address, or the person waives his right to the notification, and these circumstances are documented in the protective services case record.~~

~~The written notice must communicate that a petition has not been filed and set forth the following information and rights of the person making the report:~~

- ~~(1) There is no finding of abuse, neglect or dependency; or the county department of social services is taking action to protect the welfare of the child or children and what specific action it is taking; and~~
- ~~(2) The reporter has a right to request a review of the decision not to file a petition; and~~
- ~~(3) The request for review must be made to the prosecutor, whose address shall be included, within five working days after the reporter receives the county director's decision.~~

(a) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless specifically requested not to do so, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency. Within five working days after

completion of the protective services investigation, the director shall give subsequent written notice to any identified person or persons making the report, unless specifically requested not to do so. This second notice shall contain the following information:

- (1) whether or not there is a finding of abuse, neglect, or dependency;
- (2) whether the county department of social services is taking action to protect the juvenile, and if so, what action it is taking;
- (3) whether or not the agency has filed a petition; and
- (4) notification of the reporter's right to request a review by the prosecutor if the reporter is not satisfied with the director's decision not to file a petition. The reporter shall be informed that the request must be made within five working days of the notice and must include the prosecutor's address.

(b) When the county director receives a notice from the prosecutor that a review will be held regarding not filing a petition, he shall send immediately, but in all cases within three working days of the receipt of the notice, a copy of the investigation report to the prosecutor.

(c) Within 20 days after the reporter is notified of the right to a review, the prosecutor shall review the director's decision. Upon completion of the review specified in G.S. 7A-547, the prosecutor may:

- (1) affirm the decision of the director;
- (2) request that the appropriate law enforcement agency investigate the allegations; or
- (3) direct the director to file a petition in the matter.

Statutory Authority G.S. 7A-544; 7A-547; 143B-153.

.0312 CASE RECORDS FOR PROTECTIVE SERVICES

~~(a) The county director shall maintain a separate case record or separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the county department of social services by the court. The case record documentation shall be kept confidential.~~

~~(b) The protective services case record shall document a thorough investigation. In addition, the protective services case record shall include~~

but not be limited to:

- (1) ~~The specific objectives of the service plan when abuse, neglect or dependency is found;~~
- (2) ~~Services provided and the efforts of the caretakers to use the services and of the agency to deliver the services;~~
- (3) ~~Specific and behaviorally oriented summary of interviews with caretakers, other agencies and other individuals when the interview relates to the service plan to protect the child;~~
- (4) ~~An evaluation within every six months of the objectives of the service plan for the child and the ability of the parents to care for the child;~~
- (5) ~~When filing a petition for custody, a summary of the reasons to seek custody of the child;~~
- (6) ~~When the child is placed outside his home, the plans for reuniting the parents and child;~~
- (7) ~~Professional opinions are to be separated from behavior specific documentation and to be clearly labeled as opinions;~~
- (8) ~~County copy of the Child Abuse and Neglect Report, Report to Central Registry/CPS Application;~~
- (9) ~~Copies of reports to the court, court orders, reports to the prosecutor, contacts with law enforcement agencies and other reports related to the provision of protective services.~~

(a) The county director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the county department of social services by the court. The case record documentation shall be kept confidential.

(b) The protective services case record shall document a thorough investigation. In addition, when applicable, the protective services case record shall include, but not be limited to:

- (1) Summary documentation of the results of the check of the Central Registry of abused, neglected, and dependent children whenever a report is accepted for investigation.
- (2) Documentation of any protection plan that was developed to ensure the child's safety during the course of the investigation.
- (3) Documentation of the case decision, the

basis for the case decision, and the names of those participating in the decision.

- (4) Documentation of notifications to parents, caretakers, the alleged perpetrator, or others specified in Rules .0306 and .0308 of this Section regarding the case decision.
- (5) Documentation of contacts with and services provided to the family, current within 10 working days of service delivery. Documentation may be taped for transcription, typed or legibly handwritten, and shall include understandable, significant information about the family's response to and use of services, as well as any change in the assessment of risk to the children.
- (6) Copies of the Family Risk Assessment Factor Worksheet completed in accordance with the time frames specified in Rule .0306 of this Section.
- (7) The intervention plan developed at the beginning of the treatment phase, with any subsequent revisions to the plan. The intervention plan shall incorporate all items specified in Rule .0306 of this Section.
- (8) Documentation of reviews of the intervention plan, current within three months, which reflect an assessment of the plan's effectiveness, the family's use of services, and the need for continued agency involvement.
- (9) Copies of the following:
 - (A) Intake/Screening Form specified in policy, or its equivalent, for all reports concerning the family whether these reports have been received while a case was active or while a case was closed;
 - (B) Notices to the reporter;
 - (C) Requests made of other county departments of social services for information relating to prior contacts by that agency with the family, when applicable;
 - (D) DSS 5104, Application/Report to the Central Registry.
- (10) Copies of the following reports or documents, when applicable:
 - (A) Petitions relating to the legal or physical custody of children while receiving child protective services;
 - (B) Reports to the court;

- (C) Reports or notifications to prosecutors;
 - (D) Reports to law enforcement agencies;
 - (E) Child Medical Evaluations and Child Mental Health Evaluation requests, consents, and reports;
 - (F) Any other medical, psychological, or psychiatric reports;
 - (G) Notifications to licensing agencies; and
 - (H) Any other reports, notifications, or documents related to the provision of child protective services.
- (11) Summaries of the following information, when not otherwise documented in the case record:
- (A) At the time treatment services begin, a summary of the reasons services are being provided;
 - (B) When filing a petition for custody, the reasons custody is being sought; and
 - (C) At the time treatment services are terminated, a summary of the basis for the decision.

Statutory Authority G.S. 7A-544; 7A-547; 7A-675; 143B-153.

SECTION .0400 - COMMUNITY CHILD PROTECTION TEAMS

.0401 NATURE AND PURPOSE OF TEAM

(a) ~~The community child protection team is a group comprised of community representatives meeting together on a regular basis to promote the development of a community wide approach to the problem of child abuse, neglect and dependency. The community child protection team is established by the director of the county department of social services.~~

(a) Community Child Protection Teams are established in every county in the state. Team membership consists of representatives of public and nonpublic agencies in the community that provide services to children and their families and other individuals who represent the community. These community representatives meet together on a regular basis:

- (1) to identify gaps and deficiencies in community resources which have impact on the incidence of abuse, neglect, or dependency;
- (2) to advocate for system improvements and needed resources where gaps and deficiencies exist in the child protection

system;

- (3) to promote collaboration between agencies in the creation or improvement of resources for children as a result of their review of selected cases; and
- (4) to inform the county commissioners about actions needed to prevent or ameliorate child abuse, neglect, or dependency.

(b) The Community Child Protection Team shall not encompass a geographic or governmental area larger than one county. ~~The county director of social services may establish more than one community child protection team when needed due to caseload size or to access the special expertise of existing groups.~~

Statutory Authority G.S. 7A-544; 7A-675; 143-576.1; 143B-153.

.0402 DUTIES AND RESPONSIBILITIES OF THE TEAM

~~The duties and responsibilities of the team shall be as follows:~~

- (1) ~~To review cases of child fatalities as defined in Rule .0409(a) of this Section. The purpose of such review shall be to identify whether gaps and deficiencies exist in the community child protection system and to assist the county director in the protection of surviving siblings;~~
- (2) ~~To review selected active cases as outlined in Rule .0405 of this Section in which abuse, neglect or dependency is suspected or found. The purpose of such review shall be to assist the county director in evaluating allegations of abuse, neglect or dependency and in planning and providing services to prevent further maltreatment; and~~
- (3) ~~To recommend and advocate for system improvements and needed resources where gaps and deficiencies exist.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0403 COMPOSITION OF TEAM

(a) ~~Unless the county board of commissioners appoints a chair within 30 days notice of a vacancy, the county director shall serve.~~

(b) ~~The county director and a member of his staff shall participate as members of the team.~~

(c) ~~The team will also consist of representatives from other human service and law enforcement~~

agencies engaged in the provision of services to children and their families and of individuals representing the community:

(1) ~~Representatives to be invited by the county director to participate shall include but not be limited to the following:~~

- (A) ~~local law enforcement;~~
- (B) ~~the District Attorney's office;~~
- (C) ~~the medical profession;~~
- (D) ~~the local community action agency, as defined by the Division of Economic Opportunity;~~
- (E) ~~school personnel;~~
- (F) ~~a county social services board member; and~~
- (G) ~~a local mental health professional.~~

(2) ~~At their option, the board of county commissioners may designate up to five representatives of agencies or of the community at large to be invited by the county director.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0404 DUTIES AND RESPONSIBILITIES OF THE CHAIR

(a) ~~The chair and county director together shall schedule meetings, including time and place, and prepare the agenda.~~

(b) ~~Within three months prior to, or after, assuming the chairmanship, the chair shall participate in training developed by the Division of Social Services. Such training shall address the role and function of the child protection team; confidentiality requirements, an overview of child protective services law and policy, and team record-keeping.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0405 DUTIES OF THE COUNTY DIRECTOR OF SOCIAL SERVICES

~~Whether selected to serve as chair of the community child protection team, or not, the county director shall perform the following duties:~~

- (1) ~~with the exception of those members designated by the board of county commissioners, appoint community child protection team members and fill vacancies as they occur;~~
- (2) ~~assure the development of written operating procedures for each team to~~

~~include composition of membership; frequency of meetings; confidentiality policies; training of members and duties and responsibilities of members;~~

- (3) ~~distribute copies of the written procedures to the administrator of all agencies represented on the team as well as to each team member;~~
- (4) ~~assure that the team defines the categories of cases that will be subject to review by the team;~~
- (5) ~~determine the cases in these categories on which he will initiate a review and bring for review any case requested by a team member;~~
- (6) ~~report quarterly to the county board of social services, or as required by the Board, on the activities of the team; and~~
- (7) ~~assure that the team meets within 45 days of the effective date of these Rules.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0406 RESPONSIBILITY FOR TRAINING OF TEAM MEMBERS

(a) The Division of Social Services shall develop and make available for the team members on an ongoing basis, training materials described in Rule .0404(b) of this Section: to include:

- (1) The role and function of the Community Child Protection Team;
- (2) Confidentiality requirements;
- (3) An overview of child protective services law and policy; and
- (4) Team record-keeping.

(b) Each Community Child Protection Team shall schedule relevant training as needed by its membership, using appropriate resources from the local department of social services, other community agencies, the Division of Social Services, or other individuals whose expertise can benefit the functioning of the team.

Statutory Authority G.S. 7A-544; 7A-675; 143-576.6; 143B-153.

.0407 FREQUENCY OF MEETINGS

~~Community child protection team meetings shall be scheduled with sufficient frequency to review defined cases selected for review but not less than once per quarter.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0408 RECORDS

~~(a) The county director shall maintain lists of participants for each team meeting and confidentiality statements signed by the team members and any invited participants. Such records will be maintained according to the standard administrative record retention schedule.~~

~~(b) Cases receiving child protective services at the time of review shall have an entry in the child's protective services record to indicate that the case was reviewed by the team. Additional entry in the record shall be at the discretion of the director of social services.~~

Statutory Authority G.S. 7A-544; 7A-675; 132-1; 132-3; 143B-153.

.0409 CASES SUBJECT TO REVIEW BY THE COMMUNITY CHILD PROTECTION TEAM

~~(a) Each team shall review cases in which a child died as a result of suspected abuse, neglect or dependency and a report of abuse, neglect or dependency had been made about the child or his family to the county department of social services within the previous 12 months or the child or his family were recipients of child protective services within the previous 12 months.~~

~~(b) Each team shall review other cases in accordance with Rule .0405(4) and (5) of this Section.~~

Statutory Authority G.S. 7A-544; 7A-675; 143B-153.

.0410 CONFIDENTIALITY

~~(a) The county director is authorized to share with the community child protection team any information available to him that is needed by the team in the execution of their duties as defined by Rule .0402 of this Section.~~

~~(a) Any member of a Community Child Protection Team may share, during an official meeting of that team, any information available to that member that the team needs to carry out its responsibilities. The county director, however, shall not share any information that discloses the identity of individuals who have reported suspected abuse, neglect, or dependency to the county department of social services.~~

~~(b) Each team member of a Community Child Protection Team and invited participant shall sign a statement indicating their understanding of and adherence to confidentiality requirements. Such statement shall include including the possible civil~~

or criminal consequences of any breach of confidentiality: as well as the applicability of these Rules regarding confidentiality shall apply to any personal files that are created or maintained by any team member or invited participant. This does not preclude any agency representative from sharing with his agency, on a need to know basis, information acquired at a community child protection team meeting regarding a current client or referred case.

~~(c) Members of the team who have access to client information and fail~~ A team member or invited participant who fails to comply with the rules in confidentiality requirements of this Section shall be denied access to confidential information and subject to dismissal from the team or to the denial of future participation in team reviews respectively.

~~(d) Any invited participant who is given access to client information during the team review and fails to comply with the rules in this Section shall be denied future participation in team reviews.~~

~~(e) The county director shall not share any information which discloses the identity of individuals who have reported suspected abuse, neglect or dependency to the county department of social services.~~

(d) Information generated by an executive session of a Community Child Protection Team is accessible for administrative purposes to the following:

- (1) the State Team and the Task Force during its existence as necessary to carry out their purposes;
- (2) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of Human Resources who require access in the course of performing duties pertinent to the supervision and evaluation of the Child Protective Services Program;
- (3) the local board of county commissioners when the Community Child Protection Team makes its annual recommendations, if any, for system improvements and needed resources where gaps and deficiencies exist in the delivery of services to children and their families. Such report shall be general in nature not revealing confidential information about children and families; and
- (4) the local board of social services when receiving a report by the director of the county department of social services on

the activities of the Community Child Protection Team.

This does not preclude any agency representative from sharing with his agency, on a need to know basis, information acquired at a Community Child Protection Team meeting regarding a current client or referred case.

(e) An individual may receive approval to conduct a study of the cases reviewed by the Community Child Protection Teams. Such approval must be requested in writing of the Director of the Division of Social Services. The written request will specify and be approved on the basis of:

- (1) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of child abuse, neglect, dependency, or child fatalities;
- (2) a description of how the study will be conducted and how the findings will be used;
- (3) a presentation of the individual's credentials in the area of critical investigation;
- (4) a description of how the individual will safeguard confidential information; and
- (5) an assurance that no report will contain the names of children and families or any other information that makes children and families identifiable.

Access will be denied when, in the judgment of the director, the study will have minimal impact on either knowledge or practice.

Statutory Authority G.S. 7A-544; 7A-675; 108A-80; 143-578; 143B-153.

.0411 MINUTES

~~(a) Every community child protection team shall keep minutes of all official meetings, excluding executive sessions, in compliance with the open meetings law. These minutes shall be permanent public records and shall be maintained according to the standard administrative record retention schedule.~~

~~(b) Information regarding individual clients shall be discussed in executive session. Any minutes generated from any executive session shall be sealed from public inspection.~~

Statutory Authority G.S. 132-1; 132-3; 132-6; 132-9; 143-318.9-12.

CHAPTER 43 - TITLE XX COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN

SUBCHAPTER 43L - SOCIAL SERVICES BLOCK GRANT

SECTION .0200 - SERVICES TO BE PROVIDED

.0206 STANDARDS

All services funded by the Social Services Block Grant will meet applicable standards set by the appropriate federal agency, a national voluntary nonprofit agency, or a state agency having legal responsibility for developing standards in a specific area.

Statutory Authority G.S. 143B-153.

.0207 MANDATED AND OPTIONAL SERVICES

(a) The following services funded with Social Services Block Grant funds are required to be made available in each county. These services are:

- (1) adjustment services for the blind and visually impaired;
- (2) adoption services;
- (3) child day care services to support employment, provided in conjunction with protective services for children or to support training leading to employment;
- (4) in-home aide services for the blind;
- (5) family planning services;
- (6) adult placement services;
- (7) foster care services for adults;
- (8) foster care services for children;
- (9) health support services;
- (10) individual and family adjustment services;
- (11) in-home aide services;
- (12) protective services for adults;
- (13) protective services for children.

(b) With the exception of those mandated services specified in Paragraph (a) of this Rule, all other services are considered optional for purposes of the Social Services Block Grant.

Statutory Authority G.S. 143B-153.

.0208 PURCHASE OF SERVICES

Services funded by the Social Services Block Grant are provided directly by the Department of

Human Resources, its divisions or their local counterparts or services are purchased from public or private providers by contracting in accordance with federal, state and/or local regulations governing such purchases. Limitations on purchase of services are as follows:

- (1) Adult placement services and foster care services for adults will not be purchased but provided only by the county departments of social services.
- (2) Adoption and foster care services for children will be purchased only from agencies listed to place and supervise children in accordance with standards established under G.S. 143B-153(2)c.
- (3) Those functions of protective services for adults and children which are the legally mandated responsibility of local departments of social services will not be purchased.
- (4) The following purchases can be made only through direct payments by county departments of social services:
 - (a) the provision of basic appliances as an element of housing and home improvement services,
 - (b) the payment of fees for membership in community sponsored recreational organizations as an element of individual and family adjustment services,
 - (c) assistance in meeting the usual expenses of attending technical institutes and community colleges as an element of employment and training support services.
- (5) In-Home Aide services for the blind and adjustment services for the blind and visually impaired will be purchased by the Division of Services for the Blind.

Statutory Authority G.S. 143B-153.

.0209 SERVICES POLICIES

Respective divisions or agencies within the Department of Human Resources are responsible for the administration of regulations and policies which affect client eligibility or control provision of services. Information about services policies can be obtained by direct inquiry to the Division or Office of the Department of Human Resources which has responsibility for the particular service.

Statutory Authority G.S. 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt rule cited as 10 NCAC 41J .0501.

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

The public hearing will be conducted at 10:00 a.m. on June 1, 1994 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, N.C.

Reason for Proposed Action: To require that a structured risk assessment be completed on all foster care cases where family reunification is the plan. This Rule will enhance the quality and consistency of foster care services.

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 St., Raleigh, N.C. 27603, (919) 733-3055.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41J - FOSTER CARE SERVICES

SECTION .0500 - RISK ASSESSMENT

.0501 WHEN TO COMPLETE A RISK ASSESSMENT

(a) For foster care services cases, the county director shall complete a structured risk assessment for all cases in which family reunification is being considered as the permanent plan and where abuse or neglect has been substantiated. It also shall be completed in certain dependency cases at the discretion of the Director. If the court has relieved the agency of reunification efforts, then completion of a structured risk assessment is no longer required. If a risk assessment is required, the Director shall document the risk assessment on the risk assessment tool provided by the Department of Human Resources, Division of Social Services. The risk assessment tool shall be com-

pleted according to the instructions for the risk assessment tool provided by the Department of Human Resources, Division of Social Services. The findings of the risk assessment must be used in developing a service plan with the family.

(b) For those cases in which children enter foster care and reunification is the permanent plan, the structured risk assessment must be completed at least once every six months and must support the current case plan.

(c) A structured risk assessment shall be completed within 30 days prior to placement of the child back in the home and must support the decision to return the child home.

(d) A structured risk assessment must be completed within 30 days prior to case closure and must support the decision to close the case.

(e) A structured risk assessment shall be completed at other times, at the county director's discretion, when the risk assessment would assist the agency in making decisions concerning an open foster care case, for example, to support a change in the case plan; or prior to court action in which the agency is asking the court to sanction the agency's plan to: allow unsupervised visits, return the child home, stop reunification efforts, or initiate other significant changes in the case.

Statutory Authority G.S. 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rule cited as 10 NCAC 46C .0106.

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

The public hearing will be conducted at 10:00 a.m. on June 1, 1994 at Albemarle Building, Room 943-2, 325 North Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: The method for establishing payment rates for small day care homes and individual child care arrangements (now known as nonregistered homes) has been changed by legislation; therefore, it is necessary to amend the rule. The definition of "allowable charge" is being amended to provide program

consistency.

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, 919/733-3055.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46C - PURCHASE OF CHILD DAY CARE

SECTION .0100 - BASIC REQUIREMENTS

.0106 PAYMENT RATES

(a) Rates for daily care purchased from a child day care center shall be established according to the procedures described in Rule .0107 of this Section and according to the instructions included in the annual appropriations act.

(b) The payment rate for full-time child care purchased from a child day care home as defined in G.S. 110-86(4) ~~is one hundred fifty dollars (\$150.00) per month.~~ is limited to the county market rate for home-based child care established by the Department in accordance with the annual appropriations act.

(c) The payment rate for full-time child care purchased from ~~an individual child care arrangement~~ is one hundred dollars (\$100.00) per month. a home-based child care arrangement which meets the requirements established by the Social Services Commission for a nonregistered day care home, as codified in 10 NCAC 46G, is limited to the county market rate for home-based child care established by the Department in accordance with the annual appropriations act.

(d) The payment rates for daily transportation purchased from any approved provider, except as provided in Paragraph (a) of Rule .0107, are:

- (1) forty-two dollars (\$42.00) per month for any child younger than three years and any other child whose transportation needs require special accommodations or additional supervision.
- (2) thirty-eight dollars (\$38.00) per month for any child who does not meet the requirements of Subparagraph (d) (1).

(e) Payment rates for part-time care shall be prorated according to the number of hours per day

or days per month the child is scheduled to attend.

(f) Client fees imposed in accordance with the provisions of Section .0300 of Subchapter 46H shall be subtracted from the ~~provider's allowable~~ east county payment rate to determine the state payment rate amount for an individual child.

Statutory Authority G.S. 143B-153(8)a.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rules cited as 12 NCAC 9B .0101, .0203, .0205, .0208 - .0209, .0223, .0231, .0312, .0401, .0410, .0413; 9C .0215, .0307, .0601, .0603 - .0604 and 9E .0103.

The proposed effective date of this action is January 1, 1995.

The public hearing will be conducted at 9:00 a.m. on May 19, 1994 at the Holiday Inn - North, 3050 University Parkway, Winston-Salem, NC 27105.

Reason for Proposed Action:

12 NCAC 9B .0101, .0203, .0205, .0208 - .0209, .0223, .0231, .0312, .0401, .0410, .0413; 9C .0215, .0307, .0601, .0603 - .0604 - The Standards Commission has authorized rule-making authority to amend several of its administrative rules in order to better define the minimum standards that regulate the criminal justice officer profession. Additionally, the Commission is adopting a new psychological screening requirement for all criminal justice officers.

12 NCAC 9E .0103 - The Standards Commission has authorized rule-making authority to amend this administrative rule in order to express the Commission's strong support for annual in-service training for law enforcement officers above the minimum standards delineated in its rules.

Comment Procedures: Any person interested in these Rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. In addition, the record of hearing will be open for receipt of written comments from May 2, 1994 to June 1, 1994.

Written comments not presented at the hearing should be directed to David D. Cashwell, Director, at the address given below. The proposed rules are available for public inspection and copies may be obtained at the following address: Criminal Justice Standards, P.O. Drawer 149, Raleigh, NC 27602. (Room 150, Court of Appeals Bldg., 1 West Morgan St., Raleigh, NC)

CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 9B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

.0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as determined by a thorough background investigation;
- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the

- (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 53 C.F.R. 11970, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6;
- (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Subparagraph (c) of this Rule;

~~Note: Although not presently required by these Rules, the Commission recommends that every candidate for a position as a criminal justice officer be examined by a licensed psychiatrist or clinical psychologist prior to employment, or be administered a psychological evaluation test battery to determine his mental and emotional suitability to perform the duties of an officer.~~

- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) ~~(6)~~ have been interviewed personally by the Department head or his representative or representatives, to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (8) ~~(7)~~ notify the Standards Division of all

criminal offenses which the officer pleads no contest to, pleads guilty to or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident).

The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case was handled and the date of the conviction. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's conviction(s), shall also notify the Standards Division of all criminal convictions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

Statutory Authority G.S. 17C-6; 17C-10.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS

AND CRIMINAL JUSTICE TRAINING
PROGRAMS OR COURSES OF
INSTRUCTION

.0203 ADMISSION OF TRAINEES

(a) The school may not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course without the prior written approval of the Director of the Standards Division.

(b) The school shall give priority admission in accredited criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(c) The school may not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does will not meet the minimum education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within three months of successful completion of the Instructor Training State Comprehensive Examination.

(d) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the "Basic Recruit Training -- Law Enforcement" course. The specific type of test instrument shall be determined by the school director and shall be administered no later than by the end of the first two weeks of a presentation of the "Basic Recruit Training -- Law Enforcement" course. The grade level results on each trainee shall be submitted to the Commission as an attachment to the Post-delivery Report of Training Course Presentation (Form F-10B).

(e) The school shall not admit any individual as a trainee in a presentation of the "Basic Recruit Training -- Law Enforcement" course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form in compliance with 12 NCAC 9B .0104, properly completed by a physician licensed to practice medicine in North Carolina; however, the Director of the Standards Division is authorized to grant an exception to this requirement where the school director can document exceptional or emergency circumstances. The Medical Examination Report Form required by the North Carolina Sheriff's Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

Statutory Authority G.S. 17C-6; 17C-10.

.0205 BASIC TRAINING -- LAW
ENFORCEMENT OFFICERS

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Recruit Training -- Law Enforcement" shall consist of a minimum of 432 hours of instruction and shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Course Orientation	2 Hours
(2)	Constitutional Law	4 Hours
(3)	Laws of Arrest, Search and Seizure	16 Hours
(4)	Mechanics of Arrest; Arrest Procedures	8 Hours
(5)	Law Enforcement Communications and Information Systems	4 Hours
(6)	Elements of Criminal Law	24 Hours
(7)	Defensive Tactics	16 Hours
(8)	Juvenile Laws and Procedures	8 Hours
(9)	First Responder	40 Hours
(10)	Firearms	40 Hours
(11)	Patrol Techniques	16 Hours
(12)	Crime Prevention Techniques	4 Hours
(13)	Field Notetaking and Report Writing	12 Hours
(14)	Mechanics of Arrest; Vehicle Stops	6 Hours
(15)	Mechanics of Arrest; Custody Procedures	2 Hours
(16)	Mechanics of Arrest; Processing Arrestee	4 Hours
(17)	Crisis Management	10 Hours
(18)	Special Populations	12 Hours
(19)	Civil Disorders	8 Hours
(20)	Criminal Investigation	28 Hours
(21)	Interviews: Field and In-Custody	8 Hours
(22)	Controlled Substances	6 Hours
(23)	ABC Laws and Procedures	4 Hours
(24)	Electrical and Hazardous Materials Emergencies	12 Hours
(25)	Motor Vehicle Laws	20 Hours
(26)	Techniques of Traffic Law Enforcement	6 Hours
(27)	Traffic Accident Investigation	20 Hours
(28)	Law Enforcement Driver Training	16 Hours
(29)	Preparing for Court and Testifying in Court	12 Hours
(30)	Dealing with Victims and the Public	8 4 Hours

- (31) Ethics of Professional Law Enforcement 4 Hours
 (34)(32) Testing 13 Hours
 (32)(33) Physical Fitness 43 Hours

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy is hereby adopted incorporated by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(e), incorporated material as provided by G.S. 150B-21.6, to apply as basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 1 West Morgan Street
 Court of Appeals Building
 Post Office Drawer 149

Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy is hereby adopted incorporated by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(e), incorporated material as provided by G.S. 150B-21.6, to be used by certified school directors in planning, implementing and delivering basic training courses. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

Statutory Authority G.S. 17C-6; 17C-10.

.0208 BASIC TRAINING -- PROBATION /PAROLE OFFICERS

(a) The basic training course for Probation/Parole Officers and Intake Officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole or intake officer.

(b) Each basic training course for Probation/Parole Officers ~~or and~~ Intake Officers shall include training in the following identified topical areas; however, the director is authorized to permit modification of the topical areas and

minimum instructional hours, not inconsistent with a minimum of 160 hours of instruction, on an interim basis with such modifications to be submitted to the Standards Committee and the full commission at their next regularly scheduled meeting:

- (1) ~~Probation/Parole Organization and Policies~~ 4 Hours
 - (2) ~~Law for Layman~~ 4 Hours
 - (3) ~~Presentence and Prediagnostic Investigations~~ 8 Hours
 - (4) ~~Probation Law~~ 8 Hours
 - (5) ~~Speeches~~ 2 Hours
 - (6) ~~Probation/Parole Administration~~ 2 Hours
 - (7) ~~Processing New Probation Cases and Transmittals~~ 4 Hours
 - (8) ~~Arrest, Search and Seizure, Violations, and Revocations~~ 4 Hours
 - (9) ~~Photography~~ 2 Hours
 - (10) ~~Restraints, Extradition, and Transporting~~ 2 Hours
 - (11) ~~Case Management~~ 16 Hours
 - (12) ~~Drug Identification~~ 4 Hours
 - (13) ~~Transfers, Retrieval of Violators, Interstate Compact, and Closing Cases~~ 4 Hours
 - (14) ~~Moot Court~~ 2 Hours
 - (15) ~~Parole System and Law~~ 2 Hours
 - (16) ~~Parole Analytical Process and Executive Clemency~~ 2 Hours
 - (17) ~~Processing New Parole Cases~~ 2 Hours
 - (18) ~~Parole Violations and Revocations~~ 4 Hours
 - (19) ~~Probation/Parole Review and Test~~ 4 Hours
 - (20) ~~Understanding Clients~~ 8 Hours
 - (21) ~~Practical Human Relations Skills~~ 8 Hours
 - (22) ~~Probation/Parole Counseling and Interviewing~~ 16 Hours
 - (23) ~~Basic Interpersonal Communication Skills~~ 16 Hours
 - (24) ~~Approaches to Counseling~~ 16 Hours
 - (25) ~~Crisis Intervention and Domestic Disputes~~ 8 Hours
 - (26) ~~Community Resources Management~~ 4 Hours
 - (27) ~~Probation/Parole Counseling and Interviewing Review and Test~~ 4 Hours
 - (1) Orientation to DAPP Organization, Policy, and Procedure 12 Hours
 - (2) Legal Considerations for the Probation/Parole Officer 20 Hours
- to include as a minimum the following

subject areas:

- (A) Introduction to the Legal System
- (B) Legalities of Pre-sentence & Pre-diagnostic Investigations
- (C) Probation Law
- (D) Parole Law
- (3) Officer-Probationer/Parolee Relations 28 Hours
to include as a minimum the following subject areas:
 - (A) Understanding Probationer/Parolee Behavior
 - (B) Counseling Methodologies
 - (C) Crisis Intervention and Domestic Disputes
 - (D) Counseling Substance Abuse Cases
 - (E) Interview Techniques
 - (F) Probationer/Parolee Supervision
- (4) Administrative and Probationer/Parolee Management 32 Hours
to include as a minimum the following subject areas:
 - (A) Case Management
 - (B) Processing New Parole Cases
 - (C) Parole Violations and Revocations
 - (D) Community Resources Management
 - (E) Processing Probation Cases
- (5) Defensive Protection 30 Hours
to include as a minimum the following subject areas:
 - (A) Arrest Procedures
 - (B) Unarmed Self-Defense
 - (C) Personal Protection
- (6) Courtroom Preparation and Demeanor 8 Hours
to include as a minimum the following subject areas:
 - (A) Public Speaking
 - (B) Role of the Probation/Parole Witness
 - (C) Moot Court
- (7) Drug Identification 4 Hours
- (8) Basic Life Support 8 Hours
- (9) Physical Fitness Education 12 Hours
- (10) Administrative Matters, Review, and Testing 6 Hours
- TOTAL** **160 Hours**

Statutory Authority G.S. 17C-6; 17C-10.

**.0209 CRIMINAL JUSTICE
INSTRUCTOR TRAINING**

- (a) The instructor training course required for

general instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation and Pretest 2 1/2 Hours
- (2) Curriculum Development:
 - ISD Model 1 1/2 Hours
- (3) Civil Liability for Law Enforcement Trainers 2 Hours
- (4) Interpersonal Communication in Instruction 4 6 Hours
- (5) Lesson Plan Preparation: Professional Resources 1 1/2 Hours
- (6) Lesson Plan Preparation: Format and Objectives 6 Hours
- (7) Teaching Adults 6 Hours
- (8) Principles of Instruction: Demonstration Methods and Practical Exercise 6 Hours
- (9) Methods and Strategies of Instruction 4 Hours
- (10) The Evaluation Process 4 Hours
- (11) Principles of Instruction: Audio-Visual Aids 8 6 Hours
- (12) Student 10-Minute Talk and Video Critique 6 Hours
- (13) Student Performance:
 - First Thirty-Minute Presentation 7 1/2 Hours
 - Second Thirty-Minute Presentation 7 1/2 Hours
 - Final Eighty-Minute Presentation 12 Hours
- (14) Examination 1 1/2 Hours

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy is hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~, incorporated material as provided by G.S. 150B-21.6, to apply as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building

Post Office Drawer 149
 Raleigh, North Carolina 27602
 and may be purchased at cost from the Academy
 at the following address:
 North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

Statutory Authority G.S. 17C-6.

**.0223 BASIC TRAINING -- PROBATION
 /PAROLE OFFICERS-
 SURVEILLANCE**

In addition to the requirements for Basic Training for Probation/Parole Officers and Intake Officers contained in Rule .0208 of this Section, every Probation/Parole Officer-Surveillance shall complete a supplemental training course which shall include training in the following identified topical areas and minimum instructional hours for each area:

- | | |
|---------------------------------|----------|
| (1) Firearms | 24 Hours |
| (2) Unarmed Self Defense | 18 Hours |
| (3) Drug Identification | 4 Hours |
| (4) Radio Communication | 2 Hours |
| (5) Client Interrogation | 6 Hours |
| (6) Criminal Investigation | 4 Hours |
| (7) Client Surveillance | 8 Hours |
| (8) Breathalyzer Operation | 4 Hours |
| (9) Interpersonal Communication | 12 Hours |

Total 82 Hours

- | | |
|--|----------|
| (1) Orientation to Intensive Operational Procedures | 2 Hours |
| (2) Firearms | 30 Hours |
| (3) Advanced Defensive Protection to include as a minimum the following subject areas: | 22 Hours |
| (a) Defensive Tactics | |
| (b) Defensive Techniques with Flashlight | |
| (c) Disarming and Weapons Retention | |
| (d) Defensive Application of Chemical Aerosols | |
| (4) Officer-Probationer/Parolee Relations to include as a minimum the following subject areas: | 12 Hours |
| (a) Interpersonal Communications | |
| (b) Summary of Drug Use and Abuse | |
| (c) Interview/Investigation/Surveillance | |
| (5) Advanced Arrest, Search and Seizure | 8 Hours |
| (6) DAPP Specialized Equipment Operations | 4 Hours |
| (7) Administrative Matters, Review, and | |

Testing 4 Hours

TOTAL 82 Hours

Statutory Authority G.S. 17C-6.

**.0231 BASIC TRAINING -- PROBATION
 /PAROLE INTENSIVE OFFICER**

In addition to the requirements for Basic Training for Probation/Parole Officers and Intake Officers contained in Rule .0208 of this Section, every Probation/Parole Intensive Officer shall complete a supplemental training course contained in Rule .0223 of this Section, ~~and the 154-hour Probation/Parole advanced training program, and an Advanced Training Program which shall include training in the following identified topical areas and minimum instructional hours for each area:~~

- | | |
|---|----------|
| (I) Working with Special Probationers/Parolees to include as a minimum the following subject areas: | 30 Hours |
| (a) The Criminal Personality | |
| (b) Substance Abuse Offender | |
| (c) Violent/Sexual Offender | |
| (d) High Risk Probationers/Parolees | |
| (2) Advanced Communication Skills to include as a minimum the following subject areas: | 31 Hours |
| (a) Active Listening | |
| (b) Deception | |
| (c) Assertiveness Training | |
| (d) Supervision Styles | |
| (e) Professional Speaking | |
| (3) Personal/Professional Skills Development to include as a minimum the following subject areas: | 32 Hours |
| (a) Professional Ethics | |
| (b) Time Management | |
| (c) Stress Management | |
| (d) Advanced Physical Fitness Education | |
| (4) Community Social Issues to include as a minimum the following subject areas: | 22 Hours |
| (a) Domestic and Family Violence | |
| (b) Satanism/Gangs | |
| (c) Multi-Cultural Sensitivity and Awareness | |
| (5) Personal Protection to include as a minimum the following subject areas: | 20 Hours |
| (a) Search Practicum | |
| (b) Practical Skills in Self-Defense | |

(c)	<u>Weapons Safety</u>	
(6)	<u>Special Resource Programs for Probationers/Parolees</u>	<u>8 Hours</u>
(7)	<u>Practical Skills for Testifying in Violation Hearings</u>	<u>4 Hours</u>
(8)	<u>Administrative Matters, Review, and Testing</u>	<u>7 Hours</u>
	<u>TOTAL</u>	<u>154 Hours</u>

Statutory Authority G.S. 17C-6.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

.0312 INSTRUCTOR CERTIFICATION RENEWAL

Individuals who hold full-general instructor certification or full-specific instructor certification may, for just cause, be granted an extension of the two-year period to successfully teach the ~~four~~ eight hour minimum requirement. The Director may grant such extensions on a one time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

Statutory Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

.0401 TIME REQUIREMENT FOR COMPLETION OF TRAINING

(a) Each criminal justice officer, with the exception of law enforcement officers, holding probationary certification shall satisfactorily complete a commission-accredited basic training course which includes training in the skills and knowledge necessary to perform the duties of his office. The officer shall complete such course within one year from the date of his original appointment as determined by the date of the probationary certification.

(b) Each law enforcement officer, except ~~alcohol law enforcement agents~~ and wildlife enforcement officers, shall have satisfactorily completed in its entirety the accredited basic training course as prescribed in 12 NCAC 9B .0205(b) prior to obtaining probationary certification.

~~(c) Each alcohol law enforcement agent shall have satisfactorily completed the first 11 weeks of~~

~~the Basic Training: Alcohol Law Enforcement Agents' course stipulated in 12 NCAC 9B .0217(b) prior to obtaining probationary certification. The agent shall satisfactorily complete such course in its entirety within one year from the date of his original appointment as determined by the date of the probationary certification.~~

(d) ~~(c)~~ Each wildlife enforcement officer shall have satisfactorily completed in its entirety the Basic Training -- Wildlife Enforcement Officers' course stipulated in 12 NCAC 9B .0228(b) prior to obtaining probationary certification.

(e) ~~(d)~~ If a trainee completes the basic training course prior to being employed as a law enforcement officer, the trainee shall be duly appointed and sworn as a law enforcement officer within one year of the completion of training for that basic training course to be recognized under these Rules. This one year period shall begin with the successful completion of the State Comprehensive Examination.

(f) ~~(e)~~ If local confinement personnel complete basic training prior to being employed by a facility in a position which requires certification, such personnel shall be duly appointed to a local confinement facility position within one year of the completion of training for that basic training course to be recognized under these Rules. This one year period shall begin with the successful completion of the State Comprehensive Examination.

Statutory Authority G.S. 17C-2; 17C-6; 17C-10.

.0410 CRIMINAL JUSTICE INSTRUCTOR TRAINING COURSE

(a) To acquire successful completion of the "Criminal Justice Instructor Training Course" the trainee shall:

- (1) satisfactorily complete all of the required coursework, specifically including each of the trainee presentations with video taping, playback, and critique as specified in the "Basic Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"
- (2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written lesson

plan and final 80-minute presentation;
and

- (3) achieve a score of 75 percent correct answers on the Commission-administered comprehensive written examination.

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final 80-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies: ~~Such makeup work must be completed during the original two-week course and prior to the trainee being administered the comprehensive written examination. by the end of the original two-week course.~~

Statutory Authority G.S. 17C-6; 17C-10.

.0413 COMPREHENSIVE WRITTEN EXAM -- INSTRUCTOR TRAINING

(a) ~~At the conclusion of a school's offering of the "Criminal Justice Instructor Training Course" in its entirety, an~~ An authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed ~~all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.~~ the first twelve units of the "Criminal Justice Instructor Training Course" as described in the "Basic Instructor Training Manual."

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each performance area of the course curriculum, who has scored at least 65 percent but has failed to achieve the minimum passing score of 75 percent on the Commission's comprehensive written examination, may request the Director of the Standards Division to authorize a re-examination of the trainee.

- (1) The trainee's request for re-examination

shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.

- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.
- (3) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.
- (4) The trainee will be assigned in writing by the Standards Division staff a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score on the examination, the trainee may not be given successful course completion and shall enroll and successfully complete a subsequent offering of the instructor course in its entirety before further examination may be permitted.

(f) A trainee who fails to score at least 65 percent on the Commission's comprehensive written examination shall be terminated from the course.

Statutory Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0200 - FORMS

.0215 PROFESSIONAL LECTURER CERTIFICATION

The Application for Professional/~~Guest~~ Lecturer Certification, is used by persons seeking certification as a lecturer in an accredited criminal justice course. It requests information regarding the applicant's credentials and the topic areas of expected instruction.

Statutory Authority G.S. 17C-6.

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

.0307 AGENCY RETENTION OF RECORDS OF CERTIFICATION

Each agency shall place in personnel files the

official notification from the Commission of either probationary or general certification for each criminal justice officer employed or appointed by the agency. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. The personnel files shall also contain:

- (1) the officer's Personal History Statement;
- (2) the officer's Medical History Statement and Medical Examination Report;
- (3) documentation of the officer's drug screening results;
- (4) a written summary of the Background Investigation conducted on the officer;
- (5) a written summary of the officer's Qualifications Appraisal Interview;
- (6) documentation of the officer's educational achievements;
- (7) documentation of all criminal justice training completed by the officer;
- (8) the results of the officer's fingerprint record check; ~~and~~
- (9) a written summary of the officer's psychological examination results; and
- (10) ~~(9)~~ for the law enforcement officer, documentation on a commission-approved form that the officer has completed the minimum in-service training as required.

Statutory Authority G.S. 17C-2; 17C-6.

SECTION .0600 - EQUIPMENT AND PROCEDURES

.0601 APPROVED SPEED-MEASURING INSTRUMENTS

(a) The following speed-measuring instruments are approved for radio microwave (radar) use, provided they are not equipped with dual antennas:

- | | | |
|------|--------------|-------------------|
| (1) | repealed | |
| (2) | repealed | |
| (3) | repealed | |
| (4) | repealed | |
| (5) | repealed | |
| (6) | repealed | |
| (7) | repealed | |
| (8) | repealed | |
| (9) | repealed | |
| (10) | repealed | |
| (11) | repealed | |
| (12) | Kustom HR-8 | Stationary |
| (13) | Kustom HR-12 | Moving/Stationary |
| (14) | repealed | |
| (15) | repealed | |

- | | | |
|------|--|--------------------------|
| (16) | Kustom KR-11 | Moving/Stationary |
| (17) | MPH K-15 | Stationary |
| (18) | MPH K-55 | Moving/Stationary |
| (19) | MPH S-80 | Moving/Stationary |
| (20) | repealed | |
| (21) | repealed | |
| (22) | Decatur Ra-Gun
(RAS & "N" Series) | Stationary |
| (23) | repealed | |
| (24) | Decatur Ra-Gun 1 and 2 (RAS)
(Included in No. 22) | |
| (25) | Kustom KR-10 SP | Moving/Stationary |
| (26) | repealed | |
| (27) | repealed | |
| (28) | Kustom Falcon | Stationary |
| (29) | Kustom Roadrunner | Stationary |
| (30) | Kustom Trooper | Moving/Stationary |
| (31) | Decatur MVR 715 | Moving/Stationary |
| (32) | Decatur MVR 724 | Moving/Stationary |
| (33) | Decatur Hunter | Moving/Stationary |
| (34) | Kustom PRO-1000 | Moving/Stationary |
| (35) | MPH K15 II (86) | Stationary |
| (36) | Applied Concepts
Stalker | Moving/Stationary |
| (37) | <u>Decatur Genesis</u> | <u>Moving/Stationary</u> |

(b) The following speed-measuring instruments are approved for time-distance use provided that the instrument is not capable of accepting double time or double distance into the computer:

- | | | |
|-----|-------------|---------------------------------|
| (1) | repealed | |
| (2) | repealed | |
| (3) | repealed | |
| (4) | repealed | |
| (5) | Vascar Plus | Traffic Safety
Systems, Inc. |

(c) All approved models and types of radio microwave (radar) speed-measuring instruments are made subject to and restricted as follows:

- (1) The automatic operate functions have been disconnected.
- (2) The automatic alarms, audio and visual have been disconnected.
- (3) The automatic locking functions have been disconnected.
- (4) The instrument does not provide an external control that would permit the adjustment or correction of the zero or calibration readings.
- (5) The "High Speed Lock" function has been disconnected.

Note: The automatic functions that shall be disconnected are any and all automatic violation alarm or lock capabilities that occur prior to the speed measuring instrument being manually locked by the

operator.

(d) All speed measuring instruments, as herein defined, purchased on or after July 1, 1982 for speed enforcement shall meet or exceed performance specifications as provided in the "Model Performance Specifications for Police Traffic Radar Devices" as prepared by the Law Enforcement Standards Laboratory of the National Bureau of Standards and published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) incorporated by reference herein and including any later amendments and editions as provided for in G.S. 150B-21.6. Copies of the document in this Rule are available from the agency address at the cost of reproduction.

(e) Prior to inclusion as an approved speed measuring instrument, the manufacturer of said instrument shall certify in writing to the agency that said instrument meets or exceeds the standards of 12 NCAC 9C .0601(d) and provide a copy of a testing report or other document illustrating the method and results used in such certification.

Statutory Authority G.S. 17C-6.

.0603 TESTING: RADIO MICROWAVE (RADAR)

(a) The minimum specific test for radio microwave (radar) shall include:

- (1) Transmission Frequency Test. X-Band, K-Band, and Ka Band instruments, when operated at the standard supply voltage, the transmission frequency shall be within plus-minus .2 percent of the assigned frequency as specified in Subchapter 90.103, paragraph 22 of the F.C.C. rules and regulations.
- (2) The technician testing each radar instrument shall test each instrument against the operator calibration and testing for accuracy procedures required by G.S. 17C-6(a)(13) and G.S. 8-50.2(b)(4) for each approved instrument.

(b) During the radio microwave (radar) accuracy test the technician shall test each instrument to determine that the:

- (1) Automatic operate function is disconnected.
- (2) Automatic alarms, audio and visual is disconnected.
- (3) Automatic locking capability is disconnected.
- (4) Instrument does not provide an external

control that would permit the adjustment or correction of the zero or calibration readings.

- (5) The "High Speed Lock" function is disconnected.
- (6) If the above five functions have not been disconnected the radio microwave (radar) instrument shall not pass the test.

Note: The automatic functions that shall be disconnected are any and all automatic violation alarm or lock capabilities that occur prior to the speed measuring instrument being manually locked by the operator.

(c) Tuning Fork Accuracy Test:

- (1) Every tuning fork K-Band, and X-Band, and Ka Band used to determine radio microwave (radar) accuracy shall be tested by a technician possessing at least a valid second class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission. This test shall be conducted in accordance with the requirements prescribed in G.S. 8-50.2.
- (2) When tested in accordance with (c)(1) of this Rule the frequency of vibration shall read within plus-minus .75 mph of that speed stamped on the tuning fork.
- (3) All tuning forks that are not stamped with a serial number for identification purposes shall be so impressed on the handle or heel, not on the tine portion, by the testing technician. The serial number is to be the same as the serial number on the radar amplifier, radar control cabinet, radar antenna or such other identifying number as assigned by the owning agency.

Statutory Authority G.S. 17C-6.

.0604 TESTING: TIME-DISTANCE

(a) The minimum specific test for time-distance speed-measuring instruments shall include:

- (1) The time-distance device shall not be capable of accepting double time or double distance into the computer.
- (2) Vascar Plus by Traffic Safety Systems, Inc. Turn the power switch off, set all

thumbwheels to zero, turn power on, display shall read all eights (8). If any other numbers are displayed there is a malfunction which shall be corrected before proceeding further with the testing procedures. Then, with power on, dial into thumbwheels the distance to be used to calibrate, either a quarter mile 02500 or one half mile 05000. Enter an exact quarter or one half mile of distance from a pre-measured location on the highway by turning the distance switch on at the beginning of the pre-measured course and off at the end of the pre-measured course. Dial into the thumbwheels the calibration number now displayed in the readout. Turn power switch off then on and again travel through the pre-measured course turning the distance switch on at the beginning of the course and off at the end of the course. Enter 15.0 seconds of time for one quarter mile distance or 30.0 seconds for one half mile distance. Press distance recall button. Display shall read distance you originally dialed into thumbwheels within plus-minus $\frac{1}{4}$ of 1 percent. One quarter mile readout shall be between 02475 02494 and 02525 02506. One half mile readout shall be between 04950 04988 and 05050 05012. If distance readout is correct release the distance recall button. A mph reading of 60.0 mph plus-minus 1 percent is acceptable (.6 mph plus-minus or 59.4 to 60.6).

(b) Stopwatch Accuracy Test:

- (1) Every stopwatch used to enter a known amount of time into the time-distance speed-measuring instrument computer to determine accuracy shall be tested by a technician possessing at least a valid second class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission. This test shall be conducted in accordance with the requirements prescribed in G.S. 8-50.2.
- (2) The stopwatch shall be hand held, with a total time accumulation of at least five minutes. The stopwatch shall be

accurate within plus-minus one second in five minutes.

Statutory Authority G.S. 17C-6.

**SUBCHAPTER 9E - IN-SERVICE
TRAINING PROGRAMS**

**.0103 DEPARTMENT HEAD
RESPONSIBILITIES**

The Department head is responsible for ensuring that the annual in-service firearms training is conducted according to minimum specifications as outlined in Rules 9E .0105 and 9E .0106. In addition, the Department head or designated representative:

- (1) shall review departmental policies regarding the use of force during the agency's annual in-service firearms training program. The Department head or designated representative shall certify that this review has been completed by submitting a commission-approved form to the Criminal Justice Standards Division; and
- (2) shall report to the Criminal Justice Standards Division once each calendar year a roster of all law enforcement officers who fail to successfully complete the annual in-service firearms training and qualification and shall certify that all law enforcement officers in the agency not listed did successfully complete the training. This roster shall reflect the annual in-service firearms training and qualification status of all law enforcement officers employed by the agency as of December 31 of each calendar year and shall be received by the Criminal Justice Standards Division no later than the following January 15th; and
- (3) shall maintain in each officer's file documentation on a commission-approved form that the officer has completed the minimum annual in-service firearms training requirement; and
- (4) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 9E .0106(a) and (b), prohibit access to such weapon(s) until such time as the officer obtains qualification; and
- (5) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 9E .0106(d),

prohibit the possession of such weapon(s) while on duty or when acting in the discharge of that agency's official duties, and shall deny the officer authorization to carry such weapon(s) concealed when off-duty, except when the officer is on his own premises; and

- (6) shall, where the officer has access to any specialized or tactical weapon(s) not specifically covered in 12 NCAC 9E Rule .0106(a) and (b), use normally accepted practices and procedures to ensure that officers authorized to use such weapon(s) are qualified. Where the officer fails to qualify, the agency head or designated representative shall restrict access to such weapon(s).

NOTE: Although not presently required by these Rules, the Commission recommends, supports and encourages the Department heads of law enforcement agencies to provide annual in-service training to all officers above and beyond that required in these Rules.

Statutory Authority G.S. 17C-6; 17C-10.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rules cited as 13 NCAC 07F .0101, .0201, .0301, .0501 and .0502.

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

The public hearing will be conducted at 10:00 a.m. on May 18, 1994 at the Conference Room/OSHA, Seaboard Building, 413 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Federal law requires that the NC Department of Labor, Division of Occupational Safety & Health adopt federal OSHA rules and standards. NCDOL/OSHA is adopting the identical Hazard Communication federal Final Rule with a clarification as to applicability.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written statement of the proposed testimony to the

Division 3 business days prior to the hearing date. Written comment period expires June 1, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 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 incorporated by reference except ~~that~~ as follows:

- (1) ~~within~~ Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 29 CFR 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 for purposes of stopping the release 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."

Editor's Note: (1A) Proposed text is published in Volume 9, Issue 2 of the North Carolina Register.

(2) Proposed text is published in Volume 8, Issue 18 of the North Carolina Register.

- (3) Reserved.
- (4) Subpart Z -- Toxic and Hazardous Substances -- incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 and adopted by the North Carolina Department of Labor on August 1, 1994, except that 1910.1200(b)(6)(ii) is amended to read:

"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments

thereto, except as follows:

- (1) Subpart H -- Hazardous Materials -- technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and adopted by the North Carolina Department of Labor on December 31, 1993;
- (2) Subpart H -- Hazardous Materials -- technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and adopted by the North Carolina Department of Labor on December 31, 1993;
- (3) 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);
- (4) Subpart Z -- Toxic and Hazardous Substances:
 - (A) Revocation 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) Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants, published in 58 FR (July 27, 1993) page 40191 and adopted by the North Carolina Department of Labor on December 31, 1993.
 - (C) 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 .0200 - CONSTRUCTION STANDARDS

.0201 CONSTRUCTION

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926, are incorporated by reference except ~~that~~ as follows:

- (1) Subpart C -- General Safety and Health Provisions -- ~~personal~~ Personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."
- (2) Subpart D -- Occupational Health and Environmental Controls -- incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 and adopted by the North Carolina Department of Labor on August 1, 1994, except that 1926.59(b)(6)(ii) is amended to read:
"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"

(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) Incorporation of existing General Industry Standards (Part 1910) applicable to construction work into the Safety & Health Regulations for Construction (Part 1926). Final rule as published in 58 FR (June 30, 1993) pages 35076-35311 and adopted by the North Carolina Department of Labor on November 1, 1993; correction to Appendix D to §1926.1147 as published in 58 FR (July 28, 1993) page 40468 and adopted by the North Carolina Department of Labor on December 31, 1993.

Subpart C -- General Safety and Health Provisions,

1926.33 Access to employee exposure and medical records.

1926.34 Means of egress.

1926.35 Employee emergency action plans.

Subpart D -- Occupational Health and Environmental Control,

1926.64 Process safety management of highly hazardous chemicals.

1926.65 Hazardous waste operations and emergency response.

1926.66 Criteria for design and construction for spray booths.

Subpart E -- Personal Protective Equipment and Life Saving Equipment,

1926.95 Criteria for personal protective equipment.

1926.96 Occupational foot protection.

1926.97 Protective clothing for fire brigades.

1926.98 Respiratory protection for fire brigades.

Subpart F -- Fire Protection and Prevention,

Fixed Fire Suppression Equipment

1926.156 Fire extinguishing systems, general.

1926.157 Fire extinguishing systems, gaseous agent.

Other Fire Protection Systems

1926.158 Fire detection systems.

1926.159 Employee alarm systems.

Subpart I -- Tools - Hand and Power,

1926.306 Air receivers.

1926.307 Mechanical power-transmission apparatus.

Subpart L -- Scaffolding,

1926.453 Manually propelled mobile ladder stands and scaffolds (towers).

Subpart Y -- Commercial Diving Operations,

General

1926.1071 Scope and application.

1926.1072 Definitions.

Personnel Requirements

1926.1076 Qualifications of dive team.

General Operations Procedures

1926.1080 Safe practices manual.

1926.1081 Pre-dive procedures.

1926.1082 Procedures during dive.

1926.1083 Post-dive procedures

Specific Operations Procedures

1926.1084 SCUBA diving

1926.1085 Surface-supplied air diving

1926.1086 Mixed-gas diving.

1926.1087 Liveboating.

Equipment Procedures and Requirements

1926.1090 Equipment.

Recordkeeping

1926.1091 Recordkeeping requirements.

1926.1092 Effective date.

Appendix A to Subpart Y - Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions.

Appendix B to Subpart Y - Guidelines for Scientific Diving.

Subpart Z -- Toxic and Hazardous Substances

1926.1100-1926.1101 [Reserved].

1926.1102 Coal tar pitch volatiles; interpretation of term.

1926.1103 4-Nitrobiphenyl.

1926.1104 alpha-Naphthylamine.

1926.1105 [Reserved].

1926.1106 Methyl chloromethyl ether.

1926.1107 3,3'-Dichlorobenzidine [and its salts].

1926.1108 bis-Chloromethyl ether.

1926.1109 beta-Naphthylamine.

1926.1110 Benzidine.

1926.1111 4-Aminodiphenyl.

1926.1112 Ethyleneimine.

1926.1113 beta-Propiolactone.

1926.1114 2-Acetylaminofluorene.

1926.1115 4-Dimethylaminoazobenzene.

1926.1116 N-Nitrosodimethylamine.

1926.1117 Vinyl chloride.

1926.1118 Inorganic arsenic.

1926.1128 Benzene.

1926.1129 Coke emissions.

1926.1144 1,2-dibromo-3-chloropropane.

1926.1145 Acrylonitrile.

1926.1147 Ethylene oxide.

1926.1148 Formaldehyde.

Appendix A to Part 1926. Designations for General Industry Standards Incorporated Into Body of Construction Standards;

- (2) Subpart D -- Occupational Health and Environmental Controls, 29 CFR 1926.62, Lead in Construction. Interim final rule and appendices A through D as published in 58 FR (May 4, 1993) pages 26627-26649 and adopted by the North Carolina Department of Labor on September 6, 1993;
- (3) Subpart D -- Occupational Health and Environmental Controls -- typographical and technical corrections at 1926.63, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21780 and

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);

- (4) Subpart Z -- Toxic and Hazardous Substances -- correction to 29 CFR 1926 by adding text and redesignation for *Cadmium* as published in 59 FR (January 3, 1994) page 215 and adopted by the North Carolina Department of Labor on April 15, 1994.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at no cost; each additional copy may be obtained at a cost of eight dollars and forty-eight cents (\$8.48) (inclusive of tax).

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

SECTION .0300 - AGRICULTURE STANDARDS

.0301 AGRICULTURE

(a) The provisions for the Occupational Safety and Health Standards for Agriculture, Title 29 of the Code of Federal Regulations Part 1928, are incorporated by reference except that as follows:

- (1) Subpart B -- Applicability of Standards -- 29 CFR 1928.21(a)(5), incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 and adopted by the North Carolina Department of Labor with amendments at 13 NCAC 07F.0101(a) on August 1, 1994.
- (2) ~~in~~ Subpart I - General environmental controls - 29 CFR 1928.110 [Field Sanitation], the scope shall not be limited to any specific number of employees.

(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: Subpart M -- Occupational Health, 29 CFR 1928.1027, Cadmium. Final rule and appendices A through F as published in 58 FR (April 23, 1993) pages 21778 - 21780 and 21787 - 21838 and adopted by the North Carolina Department of Labor on September 24, 1993.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained at no cost.

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

SECTION .0500 - MARITIME STANDARDS

.0501 SHIPYARD EMPLOYMENT

(a) The provisions for the Occupational Safety and Health Standards for Shipyard Employment, Title 29 of the Code of Federal Regulations Part 1915, are incorporated by reference ~~in accordance with G.S. 150B-21.6, and except that the modified final rule for 29 CFR 1915.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 and adopted by the North Carolina Department of Labor on August 1, 1994, is amended at 1915.1200(b)(6)(ii) to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"~~

(b) The provisions of 29 CFR 1915 shall apply only to public sector employees of local governments or of the State of North Carolina.

~~(b)(c)~~ 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: Incorporation of Subpart Z -- Toxic and Hazardous Substances -- into the Occupational Safety and Health Standards for Shipyard Employment (Part 1915). Final rule with technical amendments and redesignation as published in 58 FR (July 1, 1993) pages 35512 - 35718 and adopted by the North Carolina Department of Labor on December 31, 1993.

~~(e)(d)~~ Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at no cost.

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

.0502 MARINE TERMINALS

(a) The provisions of the Occupational Safety and Health Regulations for Marine Terminals, Title 29 of the Code of Federal Regulations Part 1917, are incorporated by reference ~~in accordance with G.S. 150B-21.6, and except that the modified final rule for 29 CFR 1917.28, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 and adopted by the North Carolina Department of Labor on August 1, 1994, is amended at 1917.28(b)(6)(ii) to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"~~

(b) The provisions of 29 CFR 1917 shall apply only to public sector employees of local governments or of the State of North Carolina.

(b)(c) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto.

(e)(d) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at no cost.

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Division of Water Resources intends to adopt rules cited as 15A NCAC 2K .0501 - .0504.

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

The public hearings will be conducted at:

7:00-9:00 p.m.
May 18, 1994
Council Chamber
City of Hickory
76 N. Center St.
Hickory, NC

3:00-5:00 p.m.

7:00-9:00 p.m.

May 25, 1994

Ground Floor Hearing Room
Archdale Building
Raleigh, NC

Reason for Proposed Action: To comply with House Bill 394, amending the Dam Safety Law, G.S. 143-215.24-.33, which requires the adoption of rules for minimum flows to maintain aquatic habitat downstream of dams subject to the law.

15A NCAC 2K .0501 - Defines aquatic habitat rating terms and procedures.

15A NCAC 2K .0502 - Required minimum flows for dams which are not small hydroelectric projects.

15A NCAC 2K .0503 - Required minimum flow for small hydroelectric projects.

15A NCAC 2K .0504 - Monitoring requirements for minimum flows.

Comment Procedures: All persons interested in or potentially affected by this matter are invited to attend the public hearings. Written comments may be presented at the public hearings or submitted through June 8, 1994. Please submit comments to: Mr. John D. Sutherland, Division of Water Resources, P.O. Box 27687, Raleigh NC 27611-7687. Comments may also be presented orally at the hearings. So that all persons desiring to speak may have an opportunity to do so, the length of verbal statements may be limited at the discretion of the hearing officers.

THE ENVIRONMENTAL MANAGEMENT COMMISSION IS CONSIDERING ALTERNATIVE METHODS FOR ESTABLISHING MINIMUM FLOWS FOR THE BYPASSED REACHES OF HYDROELECTRIC PROJECTS THAT WOULD RESULT IN HIGHER OR LOWER MINIMUM FLOWS THAN THOSE DESCRIBED IN RULE .0503, INCLUDING FLOWS RANGING DOWN TO THE SEVEN-DAY, TEN-YEAR LOW FLOW (7Q10). THE COMMISSION INVITES THE PUBLIC TO COMMENT ON THE BENEFITS AND COSTS OF THE MINIMUM FLOWS IN THE PROPOSED RULE, AS WELL AS ON THOSE OF HIGHER AND LOWER MINIMUM FLOWS. THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY ADOPT RULES ON MINIMUM RELEASES FROM DAMS THAT DIFFER

FROM THE REVISIONS PROPOSED HEREIN, IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE, THE PUBLIC HEARINGS, AND THE HEARING COMMENTS RECEIVED, AND THAT THE CHANGES ARE NOT A SUBSTANTIAL CHANGE FROM WHAT WAS PROPOSED.

These Rules affect the expenditure or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on March 4, 1994, OSBM on March 4, 1994, N.C. League of Municipalities on March 4, 1994, and N.C. Association of County Commissioners on March 4, 1994.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2K - DAM SAFETY

SECTION .0500 - MINIMUM STREAM FLOWS TO MAINTAIN AQUATIC HABITAT

.0501DEFINITIONS

(a) Aquatic habitat is divided into three classes - "poor," "moderate," and "good."

(1) Streams with poor aquatic habitat are those which are rated "poor" for two or more of the following three characteristics:

- (A) Substrate;
- (B) Cover; and
- (C) Macro-invertebrate organisms.

(2) Streams with moderate aquatic habitat are those which exhibit physical conditions and biota which are intermediate between the poor and good categories, and for which the fish assemblage rating is not "good."

(3) Streams with good aquatic habitat are those which receive at least two "good" ratings when the substrate, cover, and macro-invertebrate organism characteristics are evaluated. The fish assemblage also must receive a "good" rating.

(b) Cover means objects within or overhanging the stream channel which provide shelter for aquatic organisms. "Good" cover occurs when cover is widespread and diverse. "Poor" cover occurs when the amount of cover is small or non-existent.

(c) Substrate means the predominant particle

size of the material which makes up the stream bed. "Good" substrate is composed of at least 50 percent clean substrate with gravel or cobble. "Poor" substrate is composed of at least 80 percent silt, sand, or smooth bedrock.

(d) The macro-invertebrate organisms of the affected reach are rated as "good" if the affected reach is rated good or excellent in the Division of Environmental Management's (DEM) biological monitoring database, or by a site-specific survey which follows DEM procedures. Macro-invertebrates are rated "poor" if the reach is rated fair or poor in DEM's biological monitoring database, or by a site-specific survey which follows DEM procedures.

(e) The fish assemblage rating is based on the North Carolina Index of Biotic Integrity (IBI). Existing ratings from the DEM biological monitoring database will be used where available. If no rating exists, then a site-specific survey will be conducted following DEM procedures. The fish assemblage will be rated as "good" if the IBI rating is good, good-excellent, or excellent. The fish assemblage will be rated as "poor" if the IBI rating is poor or lower.

(f) The affected reach of stream means that section of a stream downstream of a dam which experiences significant changes in hydrology. The exact delineation of the affected reach will be site-specific and depend on factors including, but not limited to:

- (1) volume of storage in the impoundment;
- (2) upstream and downstream hydrologic characteristics of the stream;
- (3) withdrawals from the impoundment; and
- (4) downstream point source discharges to the stream.

For the purpose of evaluating aquatic habitat, the affected reach of a stream does not include any portion which is in the backwater of a downstream dam when the level of that downstream impoundment is at normal pool.

(g) "Special case" streams are those which exhibit at least one of the following characteristics:

- (1) designation as Outstanding Resource Waters;
- (2) populations of aquatic species listed as threatened or endangered by the U.S. Fish and Wildlife Service, or species which are listed as threatened or endangered by the N.C. Wildlife Resources Commission;
- (3) self-sustaining populations of wild trout; or

- (4) exceptional fishery resources as determined by the Wildlife Resources Commission.

Statutory Authority. G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.

.0502 REQUIRED MINIMUM FLOW FOR DAMS (NOT SMALL HYDRO PROJECTS)

(a) A dam operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural stream bed, is exempt from this Rule.

(b) A dam proposed for a small stream with a mean annual daily flow less than or equal to 3.0 cubic feet per second (cfs) shall be subject to the following review process in determining the required minimum flow:

- (1) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7-day, 10-year low flow (7Q10) is less than or equal to 0.2 cfs; and if there are no existing point source discharges of wastewater to the affected stream reach; then no minimum release will be required.
- (2) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7Q10 is less than or equal to 0.2 cfs; and one or more existing point source discharges of wastewater enter the affected stream reach; then the minimum release shall be equal to the 7Q10.
- (3) If the mean annual daily flow is less than or equal to 3.0 cfs and the 7Q10 is greater than 0.2 cfs, then the minimum release shall be equal to the 7Q10.

(c) If the mean annual daily flow is greater than 3.0 cfs, then the following procedures shall be used to determine the minimum flow requirement:

- (1) The minimum flow for a dam on a stream with poor aquatic habitat shall be the 7Q10 flow determined by using U.S. Geological Survey procedures.
- (2) The minimum flow for a dam on a stream with moderate aquatic habitat shall be determined using regression equations provided by the Department. One type of equation requires a continuous record of flows from a gaging station, and another type does not require this flow record. When it is possible to use either type of equation, then the more statistically accurate formula shall be used.
- (A) The regression equations will vary according to the geographic region of the state in which the stream is located. The geographic region shall be determined from the North Carolina Atlas published by the University of North Carolina Press.
- (B) If regression formulas are not available for a region, then a field study shall be conducted by the applicant to determine the required minimum flow. Such a field study shall be subject to the review and approval of the Department.
- (C) All flows used in regression equations shall be measured in cubic feet per second, all drainage areas shall be measured in square miles, and all logarithmic expressions shall refer to base 10 logarithms.
- (D) The regression equation used to determine the minimum flow for a stream in the piedmont which exhibits moderate aquatic habitat, and for which no suitable stream gage record exists, shall be as follows:

$$LRF = (3.204 \times M) - (2.618 \times D)$$

LRF = LOG of regression flow

M = LOG of mean annual daily flow

D = LOG of drainage area

The regression flow (RF) is calculated by raising 10 to the power of the LRF.

If the drainage area is greater than 95 square miles, the required minimum flow is 1.4 x RF. Otherwise the required minimum flow is equal to RF.

- (E) The regression equation used to determine the minimum flow for a stream in the piedmont which exhibits moderate aquatic habitat, and for which a suitable stream gage record does exist, shall be as follows:

$$LRF = (0.812 \times M) + (8.111 \times E85) - (4.806 \times E92) - (3.275 \times E95)$$

LRF = LOG of regression flow

M = LOG of mean annual daily flow
E85 = LOG of 85% annual exceedance flow
E92 = LOG of 92.5% annual exceedance flow
E95 = LOG of 95% annual exceedance flow

The regression flow (RF) is calculated by raising 10 to the power of the LRF.

The required minimum flow is 1.1 x RF.

- (3) The minimum flow for a dam on a special case stream, or on a stream with good aquatic habitat, shall be determined by a site-specific instream flow study. This study shall be conducted by the applicant or his consultants, and shall be subject to approval by the Department.
 - (A) A plan of study shall be developed in consultation with the Department and submitted to the Department for review and approval prior to commencement of the study.
 - (B) The Department will have the option of participating in the collection of all field data and shall be notified prior to the collection of any set of data.
 - (C) The Department may review the field data and results of these studies to determine the stream flow needed to maintain aquatic habitat.
- (4) If the applicant or owner disputes the minimum flow determined for streams with poor or moderate aquatic habitat, he may undertake a site-specific field study subject to the review and approval of the Department. The final minimum release required will not exceed the amount determined by the procedures described in this Rule.
- (5) The minimum release schedule for a water supply reservoir shall include provisions for reductions in the minimum flow which coincide with reductions in the usable water supply storage remaining in the impoundment and with reductions in the amount of water withdrawn from the reservoir.
 - (A) This system of tiered releases shall apply to new water supply reservoirs and any existing water supply reservoirs for which the minimum release is revised.
 - (B) The exact percentage of storage which triggers reductions in minimum flow will depend on several site-specific factors, including, but not limited to:
 - (i) size of the reservoir;
 - (ii) rate of the water supply demand;
 - (iii) hydrologic characteristics of the impounded stream;
 - (iv) the impoundment levels which result in local efforts to reduce water usage through conservation measures.
 - (C) At least three levels of minimum releases shall be included in the release schedule for a water supply reservoir.
 - (D) When usable water supply storage has been reduced to a level which triggers the first reduction in minimum flow, then the average daily water withdrawal shall be reduced by at least 10 percent from the average daily withdrawal prior to the reduction in the minimum release. The water supply operator shall accomplish this reduction in withdrawal within two weeks of the reduction in the minimum release.
 - (E) When usable water supply storage has been reduced to a level which triggers the second reduction in minimum flow, then the average daily water withdrawal shall be reduced by at least 20 percent from the average daily withdrawal prior to the first reduction in the minimum release. The water supply operator shall accomplish this further reduction in withdrawal within two weeks of the second reduction in the minimum release.
 - (F) The water system operator shall document reduction in water withdrawals by submitting reports of daily water withdrawals to the Department. These shall be submitted every two weeks for as long as the minimum release is reduced below the amount normally required.
 - (G) A conceptual example is shown in the table below. However, the percentages of water supply storage which trigger the changes in minimum release will be site-specific according to the factors described in Part (B) of this Paragraph.

<u>LEVEL</u>	<u>REMAINING USABLE WATER SUPPLY STORAGE</u>	<u>MINIMUM RELEASE</u>	<u>WATER CONSERVATION</u>
<u>1</u>	<u>between 70% and 100%</u>	<u>A</u>	<u>-----</u>
<u>2</u>	<u>between 40% and 70%</u>	<u>B</u>	<u>10%</u>

A = normal minimum release determined by a field study, regression equation, or use of the 7Q10

B = intermediate reduction in minimum release

C = low minimum release equal to no more than the 7Q10

- (6) An existing dam which was built subject to review under the National or the State Environmental Policy Acts, and for which a minimum release has been established, will not have its minimum release changed under this Rule. However, the Department may review and adjust the minimum flow released by any other existing dam if there is evidence of any of the following conditions downstream of that dam.

(A) water quality standards not being maintained;

(B) water quality classifications which are being only partially supported or not being supported; or

(C) aquatic habitat not being maintained.

- (7) If the minimum release required from an existing water supply reservoir is reviewed by the Department, any increase in minimum flow will be determined on a case-by-case basis in consideration of the following factors, including, but not limited to:

(A) availability of water to meet existing demands;

(B) rate of growth in water demand;

(C) planned development of alternative sources of water supply;

(D) structural difficulties;

(E) capital costs; and

(F) anticipated improvements in water quality and aquatic habitat in the affected reach resulting from the proposed change in minimum flow.

- (i) The change in minimum release shall be set no higher than an amount which would reduce the water supply safe yield, as determined by standard accepted engineering practices, by more than 10 percent.

- (ii) If a new minimum release requirement is being delayed until a new source of water supply is developed, then this delay shall not exceed a period of five years from the written notification that a new minimum release will be required. This period may be extended by approval of the Environmental Management Commission.

Statutory Authority. G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.

.0503 REQUIRED MINIMUM FLOW FOR SMALL HYDROELECTRIC PROJECTS

(a) This Section applies only to a dam operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural stream bed. The length of the bypassed reach shall be measured from the toe of the dam to the point where the diverted water re-enters the natural channel, following the center-line of the natural channel.

(b) The minimum release for a hydroelectric project subject to this Rule will be determined according to the procedures described in Subparagraphs (b)(1)-(5) of this Rule. If at any time the inflow just upstream of the dam is less than the minimum flow required in the bypassed reach, then the minimum flow may be reduced to a level equal to this inflow.

- (1) If the aquatic habitat in the bypassed reach is rated poor, then the minimum

release to the bypassed reach shall be determined as follows:

- (A) If the 7Q10 is less than or equal to 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be the 7Q10 flow.

- (B) If the 7Q10 is greater than 10 percent of the mean annual daily flow, and there are no existing point source discharges of wastewater to the bypassed reach, then the minimum release to the bypassed reach shall be 0.8 times the 7Q10.

- (C) If the 7Q10 is greater than 10 percent of the mean annual daily flow, and one or more existing point source discharges of wastewater enter the bypassed reach, then the minimum release to the bypassed reach shall be the 7Q10 flow.

- (2) If the bypassed reach does not have an aquatic habitat rating of "poor," is not on a special case stream, and is located in the piedmont region, as defined in Rule .0502(c)(2)(A) of this Section, then the minimum release to the bypassed reach shall be determined as follows:
 - (A) If the 7Q10 is less than or equal to six percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 3.0 times the 7Q10 flow.
 - (B) If the 7Q10 is greater than six percent of the mean annual daily flow, and less than or equal to 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 2.2 times the 7Q10 flow.
 - (C) If the 7Q10 is greater than 10 percent of the mean annual daily flow, then the minimum release to the bypassed reach shall be 1.2 times the 7Q10 flow.
- (3) The minimum flow determined by the procedures described in Subparagraphs (b)(1) and (2) of this Rule may be adjusted downward by the Department based on factors including, but not limited to:
 - (A) the type of aquatic habitat present in the bypassed reach;
 - (B) the length of the bypassed reach.
- (4) If the applicant or owner disputes the minimum flow determined by the procedures described in Subparagraphs (b)(1) and (2) of this Rule, he may undertake a site-specific field study subject to the review and approval of the Department. The final minimum release required will not exceed the amount determined by the procedures described in this Section.
- (5) The minimum flow for a dam on a special case stream, or on a stream located in the mountain region, as defined in Rule .0502(c)(2)(A) of this Section, which does not exhibit poor aquatic habitat; shall be determined by a site-specific instream flow study. This study shall be conducted by the applicant or his consultants, and shall be subject to approval by the Department.

- (A) A plan of study shall be developed in consultation with the Department and submitted to the Department for review and approval prior to commencement of the study.
- (B) The Department will have the option of participating in the collection of all field data and shall be notified prior to the collection of any set of data.
- (C) The Department may review the field data and results of these studies to determine the stream flow needed to maintain aquatic habitat.

Statutory Authority. G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.

.0504 MONITORING OF MINIMUM FLOW REQUIREMENTS

(a) An owner of a dam with a minimum flow requirement greater than 1.0 cfs shall install, calibrate, and maintain one or more stream staff gages following procedures described in U.S. Geological Survey Water Supply Paper 2175, "Measurement and Computation of Streamflow." Plans for such gages shall be submitted to the Department for approval prior to installation. Staff gages shall be calibrated to indicate the water surface elevations which correspond to the required flows. Calibration shall be verified at least every two years. All initial calibration and re-calibration measurements, including field data, shall be provided to the Department within 30 days of completion.

(b) If the minimum release from a dam is less than or equal to 1.0 cfs, then an accurately calibrated release mechanism such as a gate or pipe opening shall be acceptable in lieu of a staff gage. Plans for making the required release shall be submitted to the Department for review and approval prior to construction, repair, or modification of the dam.

(c) An owner of a dam who does not comply with a minimum flow requirement may be required to install automated gaging which continuously monitors flow. Records from this type of gage shall be provided to the Department upon request, for the time period being investigated.

(d) Minimum release requirements may be temporarily modified or suspended for reasons including pre-scheduled maintenance or construction involving the dam. The Department must approve a written request for a temporary change in the minimum flow requirement prior to any

change in the minimum release.

(e) Temporary reduction or cessation of the minimum flow as a result of emergency conditions or equipment failure shall not constitute a violation of the minimum flow requirement, so long as the event is reported to the Department within 48 hours. The Department may set forth a schedule for correcting the problem and restoring the

required minimum flow. If the schedule is not met, and the problem continues to cause violation of the minimum flow requirement, then this violation may be subject to enforcement action.

Statutory Authority. G.S. 143-215.24; 143-215.25; 143-215.31; 143-215.32; 143-215.33; 143-215.36.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Solid Waste Management intends to amend rule cited as 15A NCAC 13B .1628.

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

The public hearing will be conducted at 10:00 a.m. on May 23, 1994 at the Ground Floor Hearing Room, Archdale Bldg., 512 North Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Amendment is necessary for North Carolina municipal solid waste facilities (MSWLFs) to comply with U.S. EPA financial assurance rule requirements published in the October 9, 1991 Federal Register. The text proposed for deletion was published in error in the NC Register. Amendment will also allow greater flexibility in determining the post-closure care period and the amount accumulated in the capital reserve fund for MSWLFs.

Comment Procedures: Any person requiring information may contact Mr. Brad R. Rutledge, Division of Solid Waste Management, Solid Waste Section, Post Office Box 27687, Raleigh, NC 27611-7687, Telephone (919) 733-0692. Written comments must be submitted to the above address no later than June 1, 1994. Notice of an oral presentation may be given to the above address prior to the public hearing.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFs)

.1628 FINANCIAL ASSURANCE RULE

(a) Applicability and Effective Date.

- (1) The requirements of this Rule apply to owners and operators of all MSWLF units that receive waste on or after October 9, 1993, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.
- (2) The requirements of this Rule are effective April 9, 1994.
- (3) MSWLF units owned and operated by units of local government or public authorities may elect to use a Capital Reserve Fund as described in Paragraph (e)(1)(I) of this Rule.
- (4) Owners and operators of all MSWLF units shall submit detailed cost estimates for closure and post-closure in accordance with Rule .1629 of this Section and this Rule; and, if necessary, for corrective action programs in accordance with Rule .1637 of this Section and this Rule.
- (5) Under this Rule, when documents are required to be placed in the operating record of a MSWLF unit, three copies shall be forwarded to the Division.
- (6) When allowable mechanisms as specified in Paragraph (e) of this Rule are used in combination to

provide financial assurance for closure, post-closure or corrective action, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities.

(b) Financial Assurance for Closure.

- (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units at any time during the active life in accordance with the closure plan required under Rule .1629 of this Section. A copy of the closure cost estimate shall be placed in the MSWLF's closure plan and the operating record.
 - (A) The cost estimate shall equal the cost of closing the largest area of all MSWLF units at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .1629 of this Section.
 - (B) During the active life of the MSWLF unit, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.
 - (C) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.
 - (D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. Prior to any reduction of the closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.
- (2) The owner or operator of each MSWLF unit shall establish financial assurance for closure of the MSWLF unit in compliance with Paragraph (e) of this Rule. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Rule .1627(c) of this Section for final closure certification.

(c) Financial Assurance for Post-Closure Care.

- (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under Rule .1629 of this Section. The post-closure cost estimate used to demonstrate financial assurance in Subparagraph (2) of this Paragraph shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period and be placed in the operating record.
- (A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.
- (B) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the post-closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.
- (C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.
- (D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Prior to any reduction of the post-closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the post-closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.

- (2) The owner or operator of each MSWLF unit shall establish, in a manner in accordance with Paragraph (e) of this Rule, financial assurance for the costs of post-closure care as required under Rule .1629 (c) of this Section. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with Rule .1627(d) of this Section.
- (d) Financial Assurance for Corrective Action.
 - (1) An owner or operator of a MSWLF unit required to undertake a corrective action program under Rule .1637 of this Section shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action program for the entire corrective action period. The owner or operator shall notify the Division that the estimate has been placed in the operating record.
 - (A) The owner or operator shall annually adjust the estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) until the corrective action program is completed in accordance with Rule .1637(f) of this Section. For owners and operators using the local government financial test, the corrective action cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.
 - (B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.
 - (C) The owner or operator may reduce the corrective action cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum remaining costs of corrective action. Prior to any reduction of the corrective action cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the corrective action cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the MSWLF's operating record.
- (2) The owner or operator of each MSWLF unit required to undertake a corrective action program under Rule .1637 of this Section shall establish, in a manner in accordance with Paragraph (e) of this Rule, financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with Rule .1637(f) and (g) of this Section.
- (e) Allowable Mechanisms.
 - (1) The mechanisms used to demonstrate financial assurance under this Rule shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases shall be available whenever they are needed. Owners and operators shall choose from the options specified in Parts (A) through (I) of this Paragraph.
 - (A) Trust Fund.
 - (i) An owner or operator may satisfy the requirements of this Paragraph by establishing a trust fund which conforms to the requirements of this Part. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement shall be placed in the facility's operating record.
 - (ii) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.
 - (iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in Part (J) of this Paragraph, divided by the number of years in the pay-in period as defined in Part (A)(ii) of this Paragraph. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in Part (J) of this Paragraph. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for corrective action (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (v) The initial payment into the trust fund shall be made before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment.
 - (vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this Paragraph, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Part.
 - (vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee and Division for these expenditures. Requests for reimbursement shall be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall document in the operating record that reimbursement has been received.
 - (viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.
 - (ix) The trust agreement shall be accompanied by a formal certification of acknowledgement. Schedule A of the trust agreement shall be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.
- (B) Surety Bond Guaranteeing Payment or Performance.
- (i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this Part. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond ~~or a payment bond~~ which conforms to the requirements of this Part. The bond shall be effective before the initial receipt of waste or before the effective date of this Rule, (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. The owner or operator shall place a copy of the bond in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
 - (ii) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in Paragraph (e)(1)(J) of this Rule.

- (iii) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - (iv) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of Paragraph (e)(1) (A) of this Rule except the requirements for initial payment and subsequent annual payments specified in Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.
 - (v) Payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and Division.
 - (vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this Rule.
 - (vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.
- (C) Letter of Credit.
- (i) An owner or operator may satisfy the requirements of this Paragraph by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Part. The letter of credit shall be effective before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section. The owner or operator shall place a copy of the letter of credit in the operating record. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.
 - (ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.
 - (iii) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in Paragraph (e)(1)(J) of this Rule. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.
 - (iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is released from the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.
 - (v) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of Paragraph (e)(1)(A) of this Rule except the requirements for initial payment and subsequent annual payments specified in Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.
 - (vi) Payments made under the terms of the letter of credit shall be deposited by the issuing institution directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and the Division.
- (D) Insurance.
- (i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this Part. The insurance shall be effective before the initial receipt of waste or before the effective date of this Rule, (April 9, 1994), whichever is later. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in North Carolina. The owner or operator shall place a copy of the insurance policy in the

- operating record.
 - (ii) The closure or post-closure care insurance policy shall guarantee that funds shall be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever is applicable. The policy shall also guarantee that once closure or post-closure care begins, the insurer shall be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.
 - (iii) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (e)(1)(J) of this Rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.
 - (iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement shall be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall document in the operating record that reimbursement and Division approval has been received.
 - (v) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.
 - (vi) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this Rule.
 - (vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
 - (viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this Rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.
- (E) Corporate Financial Test.
[Reserved]
- (F) Local Government Financial Test. An owner or operator of a MSWLF which is a unit of local government may satisfy the requirements of this Paragraph by demonstrating that it meets the requirements of the local government financial test as specified in this Part. Financial terms used in this Part are to be interpreted consistent with generally accepted accounting principles. The test consists of a financial component, a public notice component, and a record-keeping and reporting component. A unit of local government shall satisfy each of the three components annually to pass the test.
- (i) Financial Component. In order to satisfy the financial component of the test, a unit of local government shall meet the criteria of either (I) or (II) of this Subpart and in addition shall meet the conditions outlined in (III) of this Subpart.
 - (I) A ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue [as stated on the Local Government

Commission's Annual Financial Information Report (AFIR) Part 2] less than or equal to 0.43; a ratio of operating cash plus investments (as stated on the AFIR Part 7) to total operating expenditures (as stated on the AFIR Part 4 Columns a and b and Part 5 for municipalities or Part 5 excluding educational capital outlays for counties) greater than or equal to 0.05; and a ratio of annual debt service (as stated on the AFIR Part 4 Section I) to total operating expenditures less than or equal to 0.20.

- (II) A current bond rating of Baa or above as issued by Moody's, BBB or above as issued by Standard & Poor's, BBB or above as issued by Fitch's, or 75 or above as issued by the Municipal Council; a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test to total revenue less than or equal to 0.43.
 - (III) A unit of local government shall not have operated at a total operating fund deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; it shall not currently be in default on any outstanding general obligation bonds or any other long-term obligations; and it shall not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's, BBB as issued by Standard & Poor's, BBB as issued by Fitch's or lower than 75 as issued by the Municipal Council.
- (ii) **Public Notice Component.** In order to satisfy the Public Notice Component of the test, a unit of local government shall disclose its closure, post-closure, and corrective action cost estimates and relevant information in accordance with generally accepted accounting principles.
 - (iii) **Record-keeping and Reporting Component.** To demonstrate that the unit of local government meets the requirements of this test, a letter signed by the unit of local government's chief financial officer (CFO) and worded as specified in Part (e)(2)(G) of this Rule shall be placed in the operating record in accordance with the deadlines of Subpart (iv) of this Part. The letter shall:
 - (I) List all the current cost estimates covered by a financial test, as described in Subpart (v) of this Part;
 - (II) Provide evidence and certify that the unit of local government meets the conditions of either Subpart (i)(I) or (i)(II) of this Part; and
 - (III) Certify that the unit of local government meets the conditions of Subpart (i)(III) of this Part.
 - (iv) In the case of closure and post-closure care, the Chief Financial Officer's letter shall be placed in the operating record before the initial receipt of waste or by April 9, 1994, whichever is later. In the case of corrective action, the CFO's letter shall be placed in the operating record no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636.
 - (v) When calculating the "current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test" referred to in Part (F)(i) of this Paragraph, the unit of local government shall include cost estimates required for municipal solid waste management facilities under 15A NCAC 13B .1600, as well as cost estimates required for all other environmental obligations it assures through a financial test, including but not limited to those associated with hazardous waste treatment, storage, and disposal facilities under 15A NCAC 13A .0009 and .0010, petroleum underground storage tank facilities under 15A NCAC 2N .0100 through .0800, Underground Injection Control facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200, and PCB storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100.
 - (vi) Annual updates of the financial test letter shall be placed in the operating record within 120 days after the close of each succeeding fiscal year.
 - (vii) If the unit of local government no longer meets the requirements of Parts (i), (ii), and (iii) of this Paragraph, the unit of local government shall notify the Division of intent to establish alternate financial assurance within 120 days after the end of the fiscal year for which the year-end financial data show that the unit of local government no longer meets the

requirements. The unit of local government shall provide alternate financial assurance within 150 days after the end of said fiscal year.

- (viii) The unit of local government is no longer required to comply with the requirements of this Part if alternate financial assurance is substituted as specified in this Rule or if the unit of local government is no longer required to demonstrate financial responsibility in accordance with Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(G) Corporate Guarantee.

[Reserved]

(H) Local Government Guarantee.

[Reserved]

(I) Capital Reserve Fund.

- (i) MSWLF units owned or operated by units of local government or public authority may satisfy the requirements of this Paragraph by establishing a capital reserve fund which conforms to the requirements of this Part. The unit of local government or public authority shall be an entity which has the authority to establish a capital reserve fund under authority of G.S. 159 and whose financial operations are regulated and examined by a State agency. The capital reserve fund shall be established consistent with auditing, budgeting and government accounting practices as prescribed in G.S. 159 and by the Local Government Commission. A copy of the capital reserve fund ordinance or resolution with a certified copy of the meeting minutes and a copy of documentation of initial and subsequent year's deposits shall be placed in the MSWLF's operating record.

- (ii) Payments into the capital reserve fund shall be made annually by the unit of local government or public authority over the term of the initial permit or over the remaining life of the MSWLF unit, in the case of a capital reserve fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. The pay-in period shall not extend beyond December 31, 1997 for an existing MSWLF unit not designed and constructed with a base liner system approved by the Division.

- (iii) For a capital reserve fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in Subpart (ii) of this Part. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.

- (iv) For a capital reserve fund used to demonstrate financial assurance for corrective action, the first payment into the capital reserve fund shall be at least equal to one-half of the current cost estimate for corrective action. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for corrective action (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.

- (v) The initial payment into the capital reserve fund shall be made before the initial receipt of waste or before the effective date of this Rule (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Rule .1636 of this Section.

Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment.

- (vi) If the unit of local government or public authority establishes a capital reserve fund after having used one or more alternate mechanisms specified in this Paragraph, the initial payment into the capital reserve fund shall be at least the amount that the fund would contain if the capital reserve fund were established initially and annual payments made according to the specifications of this Part.
- (vii) The unit of local government or public authority authorized to conduct closure, post-closure care or corrective action activities may expend capital reserve funds to cover the remaining costs of closure, post-closure care, corrective action activities or for the debt service payments on financing arrangements for closure, post-closure care or corrective action activities. Monies in the capital reserve fund can only be used for these purposes unless the fund is terminated in accordance with Paragraph (e)(1)(I)(viii) of this Rule. The unit of local government or public authority shall document justifying expenditures and place a copy in the operating record.
- (viii) The capital reserve fund may be terminated by the unit of local government or public authority only if it substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.
- (J) Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Paragraph by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in Parts (A), (B), (C), (D), (E), (F), (G), (H) and (I) of this Paragraph, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated. Mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.
- (K) The wording of the instruments shall be identical to the wording specified in Paragraph (e)(2) of this Rule.
- (2) Wording of Instruments.
 - (A) Trust Agreement.
 - (i) A trust agreement for a trust fund, as specified in Paragraph (e)(1)(A) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

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

Whereas, the Division of Solid Waste Management, the "Division," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds shall be available when needed for closure, post-closure care, or corrective action of the facility,

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Division. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B.

Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Division.

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

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

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or

- collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Division a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Division shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

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

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

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this

successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Division, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

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

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Division by certified mail within 10 days following expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

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

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

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

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

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Paragraph (e)(2)(A)(i) of this Rule as were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

- (ii) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund.

State of
County of

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

[Signature of Notary Public]

- (B) A surety bond guaranteeing payment into a trust fund, as specified in Paragraph (e)(1)(B) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:

Effective date:

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

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

State of incorporation:

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

Solid Waste Section Permit Number, name, address, and closure, or post-closure, ~~or corrective action~~ amount(s) for each facility guaranteed by this bond [indicate closure, and post-closure, ~~and corrective action~~ amounts separately]:

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Division of Solid Waste Management (hereinafter called the Division), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required, under the Solid Waste Management Rule .0201 as amended, to have a permit in order to own or operate each solid waste management facility identified above, and

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

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

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure, and post-closure, ~~and corrective action~~ of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

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

Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

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

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

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Paragraph (e)(2)(B) of this Rule as were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: \$

- (C) A surety bond guaranteeing performance of closure, post-closure care, or corrective action, as specified in Paragraph (e)(1)(B) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
Solid Waste Section Permit Number, name, address, and closure, post-closure, or corrective action amount(s) for each facility guaranteed by this bond [indicate closure, post-closure, and corrective action amounts separately]:
Total penal sum of bond: \$
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Division of Solid Waste Management (hereinafter called the Division), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required, under the Solid Waste Management Rule .0201 as amended, to have a permit in order to own or operate each solid waste management facility identified above, and

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

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

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

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

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

Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Division that the Principal has been found in violation of the closure requirements for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has been found in violation of the post-closure requirements for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has been found in violation of the corrective action requirements for a facility for which this bond guarantees performance of corrective action, the Surety(ies) shall either perform corrective action in accordance with the corrective action program and other permit requirements or place the corrective action amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the Division during the 90 days following receipt by both the Principal and the Division of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Division.

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or

operator and to the Division, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Division, as evidenced by the return receipts.

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Paragraph (e)(2)(C) of this Rule as was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Names and address]
State of incorporation:
Liability limit: \$
[Signature(s)]
[Names(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: \$

- (D) A letter of credit, as specified in Paragraph (e)(1)(C) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

North Carolina Department of Environment, Health, and Natural Resources
Solid Waste Management Division
Solid Waste Section
P.O. Box 27687
Raleigh, North Carolina 27611-7687

Dear Sir or Madam:

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

- (1) your sight draft, bearing reference to this letter of credit No. _____, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements of 15A NCAC 13B .1628 as amended."

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

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

We certify that the wording of this letter of credit is identical to the wording specified in Paragraph (e)(2)(D) of this Rule as were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution], [Date]

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

- (E) A certificate of insurance, as specified in Paragraph (e)(1)(D) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

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

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

Facilities Covered: [List for each facility: The Solid Waste Section Permit Number, name, address, and the amount of insurance for closure or the amount for post-closure care (these amounts for all facilities covered shall total the face amount shown below).]

Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-

closure care"] for the facilities identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of Paragraph (e)(1) of this Rule, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the North Carolina Division of Solid Waste Management (Division), the Insurer agrees to furnish to the Division a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Paragraph (e)(2)(E) of this Rule as were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

- (F) A capital reserve fund, as specified in Paragraph (e)(1)(I) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CAPITAL RESERVE FUND RESOLUTION

ESTABLISHMENT AND MAINTENANCE OF THE MUNICIPAL SOLID WASTE LANDFILL CAPITAL RESERVE FUND

WHEREAS, there is a need in [location of landfill site, (e.g. City of Raleigh, County of Wake)] to provide funds for [closure, post-closure, or corrective action] for the [permit number], [name] landfill; and

WHEREAS, the [location] shall bear the cost of [closure, post-closure, or corrective action] for the landfill at an estimated cost of [cost estimate].

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1. The Governing Board hereby creates a Capital Reserve Fund for the purpose of [closure, post-closure, or corrective action] for the [permit number] landfill.

Section 2. This Fund shall remain operational ~~for a period not to exceed~~ during the life of the landfill and the post-closure care ~~plan period~~ beginning [date] and ending [date] ~~or until a cumulative sum not to exceed [cost estimate in words] ([cost estimate in numbers]) has been received as estimated at the time of annual update of this Resolution.~~

Section 3. The Board shall appropriate or transfer an amount of no less than [annual payment] each year to this Fund.

Section 4. This Resolution shall become effective and binding upon its adoption.

[Signature of County Commissioner]

[Signature of Chief Financial Officer]

[Date]

- (G) A local government financial test, as specified in Part (e)(1)(F) of this Rule, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to the Department of Environment, Health, and Natural Resources, Solid Waste Section, Post Office Box 27687, Raleigh, North Carolina 27611-7687.]

I am the chief financial officer of [name and address of unit of local government]. This letter is in support of this unit of local government's use of the financial test to demonstrate financial assurance, as specified in 15A NCAC 13B .1628 (e)(1)(F).

[Fill out the following paragraph regarding the municipal solid waste facilities and associated cost estimates. For each facility, include its permit number, name, address and current closure, post-closure, or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, or corrective action.]

This unit of local government is the owner or operator of the following facilities for which financial assurance for closure, post-closure, or corrective action is demonstrated through the financial test specified in 15A NCAC 13B .1628 (e)(1)(F). The current closure, post-closure, or corrective action cost estimates covered by the test are shown for each facility: _____.

The fiscal year of this unit of local government ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this unit of local government's Annual Financial Information Report (AFIR) for the latest completed fiscal year, ended [date].

[Fill in the Ratio Indicators of Financial Strength section if the criteria of 15A NCAC 13B .1628 (e)(1)(F)(i)(I) are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of 15A NCAC 13B .1628 (e)(1)(F)(i)(II) are used.]

RATIO INDICATORS OF FINANCIAL STRENGTH

- | | | |
|-----|---|---------|
| 1. | Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above] | \$..... |
| *2. | Sum of cash and investments (AFIR Part 7) | \$..... |
| *3. | Total expenditures (AFIR Part 4 Columns a & b and Part 5 for municipalities or Part 5 excluding educational capital outlays for counties) | \$..... |
| *4. | Annual debt service (AFIR Part 4 Section I) | \$..... |
| 5. | Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules: | |
| | MSWLF under 15A NCAC 13B .1600 | \$..... |

PROPOSED RULES

Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0009 and .0010	\$.....
Petroleum underground storage tanks under 15A NCAC 2N .0100 - .0800	\$.....
Underground Injection Control System facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200	\$.....
PCB commercial storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100	\$.....
Total assured environmental costs	\$.....
*6. Total Annual Revenue (AFIR Part 2)	\$.....

Circle either "yes" or "no" to the following questions.

- | | | |
|----|--|--------|
| 7. | Is line 5 divided by line 6 less than or equal to 0.43? | yes/no |
| 8. | Is line 2 divided by line 3 greater than or equal to 0.05? | yes/no |
| 9. | Is line 4 divided by line 3 less than or equal to 0.20? | yes/no |

BOND RATING INDICATOR OF FINANCIAL STRENGTH

- | | | |
|----|---|---------|
| 1. | Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above] | \$..... |
| 2. | Current bond rating of most recent issuance and name of rating service | |
| 3. | Date of issuance bond | |
| 4. | Date of maturity of bond | |
| 5. | Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules: | |
| | MSWLF under 15A NCAC 13B .1600 | \$..... |
| | Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0009 and .0010 | \$..... |
| | Petroleum underground storage tanks under 15A NCAC 2N .0100 - .0800 | \$..... |
| | Underground Injection Control System facilities under 15A NCAC 2D .0400 and 15A NCAC 2C .0200 | \$..... |
| | PCB commercial storage facilities under 15A NCAC 2O .0100 and 15A NCAC 2N .0100 | \$..... |
| | Total assured environmental costs | \$..... |

*6. Total Annual Revenue (AFIR Part 2)

\$.....

Circle either "yes" or "no" to the following question.

7. Is line 5 divided by line 6 less than or equal to 0.43?

yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 13B .1628(e)(2)(G) as such rules were constituted on the date shown immediately below. I further certify the following: (1) that the unit of local government has not operated at a total operating fund deficit equal to five percent or more of total annual revenue in either of the past two fiscal years, (2) that the unit of local government is not in default on any outstanding general obligations bonds or long-term obligations, and (3) does not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's, BBB as issued by Standard & Poor's, BBB as issued by Fitch's, or 75 as issued by the Municipal Council.

[Signature]

[Name]

[Title]

[Date]

Statutory Authority G.S. 130A-294.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rule cited as 21 NCAC 32B .0305.

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

The public hearings will be conducted at 8:30 a.m. on May 19, 1994 at the Medical Board Office, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: To consider acceptance of Board certification/recertification by osteopathic specialty boards in family medicine, internal medicine and pediatrics as equivalent to Board certification by allopathic specialty boards.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at

the hearing should be directed before June 1, 1994 to the following address: Administrative Procedures, Medical Board, PO Box 20007, Raleigh, NC 27619.

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0300 - LICENSE BY ENDORSEMENT

.0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) To be eligible for license by endorsement of credentials, graduates of medical schools approved by the LCME or AOA must supply certification of passing scores on one of the following written examinations:

- (1) National Board of Medical Examiners;
- (2) FLEX - under Rule .0314 of this Section;
- (3) Written examination administered by an allopathic or composite state medical board which issued the original license on the basis of written examination other than FLEX;
- (4) National Board of Osteopathic Examiners, all parts taken after January 1, 1990; or
- (5) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examina-

tions as set out in Rule .0215(c) of this Subchapter.

(b) Graduates of medical schools not approved by LCME or AOA, and graduates of AOA approved schools not qualifying under Rule .0305(a)(4) must supply certification of passing scores on one of the following written examinations:

- (1) FLEX - under Rule .0314 of this Section;
- (2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification, or with American Osteopathic Boards of Family Physicians, Internal Medicine, and Pediatrics certification and recertification; or
- (3) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215(c) of this Subchapter.

(c) A physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board, is eligible for license by endorsement.

(d) Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule .0314 of this Section must meet the requirements of Paragraph (c) in this Rule.

Statutory Authority G.S. 90-10; 90-13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rule cited as 21 NCAC 32M .0006.

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

The public hearings will be conducted at 6:30 p.m. on May 18, 1994 at the Medical Board Office, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: *To make prescribing privileges the same for all physician extenders in the state to reduce confusion and error..*

Comment Procedures: *Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before June 1, 1994 to the following address: Administrative Procedures, Medical Board, PO Box 20007, Raleigh, NC 27619.*

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

.0006 PRESCRIBING PRIVILEGES

(a) The NP Applicant and supervising physicians shall acknowledge in the application that they are familiar with laws and rules regarding prescribing; and shall agree to comply with these laws and rules by incorporating the laws and rules, into their written standing protocols for each approved practice site.

(b) The prescribing stipulations contained in these Rules apply to writing prescriptions and ordering the administration of medications.

(c) Prescribing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the NP in the approved practice site must be included in the written standing protocols as outlined in Rule .0009(2) of this Section.
- (2) Controlled Substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed or ordered as established in written standing protocols, provided all of the following restrictions are met:
 - (A) dosage units for schedules 2, 2N, 3 and 3N are limited to a one week's supply;
 - (B) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled without a specific written or verbal order from the supervising physician; and
 - (C) the NP has an assigned DEA number which is entered on each prescription for a controlled substance.
- (3) The NP may prescribe a drug not included in the site-specific written stand-

ing protocols only as follows:

- (A) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the NP; and
- (B) the verbal or written order as described in Part (c)(3)(A) of this Rule must be signed by the NP with a notation that it is issued on the specific order of the supervising physician. (For example: Mary Smith, NP, on order of John Doe, M.D.)
- (4) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which are excluded from refills.
- (5) Each prescription must be noted on the patient's chart and include the following information:
 - (A) medication dose;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of NP.
- (6) The prescribing number assigned by the Board of Medical Examiners to the NP must appear on all prescriptions issued by the NP.
- (7) Prescription Format:
 - (A) All prescriptions issued by the NP shall contain the supervising physician(s) name, the name of the patient, and the NP's name, telephone number, and prescribing number.
 - (B) The NP's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (c)(2) of this Rule.

(d) The NP must obtain approval to dispense these drugs and devices included in the written standing orders for each approved practice site from the Board of Pharmacy, and must carry out the function of dispensing in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.

Statutory Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 58 Fed. Reg. 31,171 (1993) (to be codified at 21 C.F.R. 1301).

CHAPTER 42 - BOARD OF

EXAMINERS IN OPTOMETRY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners in Optometry intends to amend rules cited as 21 NCAC 42A .0001; 42C .0002, .0004 - .0005 and 42J .0001.

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

The public hearing will be conducted at 9:00 a.m. on May 25, 1994 at the 109 N. Graham Street, Wallace, NC 28466.

Reason for Proposed Action: To change the address of the Board, to conform with new statutes authorizing the creation of professional limited liability companies, and to increase the fee for optometry license renewal.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be directed before June 1, 1994 to the following address: NC Board of Examiners in Optometry, 109 N. Graham Street, Wallace, NC 28466.

SUBCHAPTER 42A - ORGANIZATION

.0001 LOCATION

The location of the office of the Board is ~~321-E. Main Street, P.O. Drawer 609, Wallace, North Carolina, 28466-0609~~ 109 N. Graham Street, Wallace, North Carolina, 28466-2713. The Board's phone number is ~~(919)~~ (910) 285-3160; its WATS number is (800) 426-4457 (in-state only); and its fax number is ~~(919)~~ (910) 285-4546.

Statutory Authority G.S. 90-117.5.

SUBCHAPTER 42C - PROFESSIONAL CORPORATIONS AND LIMITED LIABILITY COMPANIES

.0002 APPLICATION

An optometrist who has a certificate of registration issued by the Board may make application to the Board for a certificate of registration for a "professional corporation" or "professional limited

liability company". When the Board makes the findings in G.S. 55B-10, it shall issue a certificate of registration for a professional corporation or professional limited liability company upon payment of the registration fee. The certificate shall remain effective until January 1 following the date of registration.

Statutory Authority G.S. 55B-10; 57C-2-01; 90-117.5.

**.0004 NAMING CORPORATION
OR LIMITED LIABILITY COMPANY**

(a) A corporate or limited liability company name must include either:

- (1) the name of a shareholder or member of the corporation or limited liability company and the shareholder's or member's degree; or
- (2) the word or words "optometry", "optometric", or "optometrists", followed, in the case of corporation, by the words "professional association" or the abbreviation "P.A.", or, in the case of a limited liability company, by the words "professional" and "limited liability company," or some abbreviation thereof that is permissible under G.S. 57C-2-01(c) and 57C-2-30 or 57C-7-06.

(b) The name of the shareholder or member, the shareholder's or member's degree, and the words "optometrists", "optometry", or "optometric" must appear on any corporate or limited liability company sign or advertisement.

Statutory Authority G.S. 55B-5; 57C-2-01; 57C-2-30; 57C-7-06; 90-117.5.

.0005 ANNUAL RENEWAL

A certificate of registration for a professional corporation or professional limited liability company must be renewed on or before December 31. The required renewal fee must accompany the application.

Statutory Authority G.S. 55B-11; 57C-2-01; 90-117.5.

SUBCHAPTER 42J - FEE SCHEDULE

.0001 FEES

The Board hereby establishes the following fees:

- (1) Each application for general optometry examinations \$400.00
- (2) Each general optometry license

renewal ~~\$215.00~~ \$245.00

- (3) Each certificate of license to a resident optometrist desiring to change to another state or territory \$200.00
- (4) Each license issued to a practitioner of another state or territory to practice in this state \$250.00
- (5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has moved from and returned to this state \$250.00
- (6) Each application for registration as an optometric assistant or renewal thereof \$ 50.00
- (7) Each application for registration as an optometric technician or renewal thereof \$ 50.00
- (8) Each duplicate license \$ 50.00
- (9) Each renewal license for each branch office \$ 45.00
- (10) Each certificate of registration for a professional corporation or limited liability company \$ 50.00
- (11) Each renewal certificate of registration for a professional corporation or limited liability company \$ 25.00

Statutory Authority G.S. 55B-10; 55B-11; 57C-2-01; 90-117.5; 90-123

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Corr</i>	=	<i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

NORTH CAROLINA ADMINISTRATIVE CODE

MARCH 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	21	Occupational Licensing Boards
10	Human Resources	1 - Acupuncture	
11	Insurance	8 - Certified Public Accountant Examiners	
15A	Environment, Health and Natural Resources	16 - Dental Examiners	
19A	Transportation	32 - Medical Examiners	
20	State Treasurer	46 - Pharmacy	
		54 - Practicing Psychologists	
		57 - Real Estate Appraisal	
		58 - Real Estate	
		25	State Personnel

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2	NCAC	48C	.0008		✓				04/01/94	180 DAYS
10	NCAC	3R	.3001		✓				04/01/94	
			.3020		✓				04/01/94	
			.3030		✓		✓		04/01/94	
			.3032		✓		✓		04/01/94	
			.3040		✓		✓		04/01/94	
			.3050		✓		✓		04/01/94	
	14K		.0103		✓		✓		04/01/94	
			.0201		✓		✓		04/01/94	
			.0402 - .0403		✓		✓		04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	14L	.0501 - .0506			✓			04/01/94	
			.0508			✓			04/01/94	
		14M	.0201 - .0207			✓			04/01/94	
			.0209			✓			04/01/94	
			.0301 - .0304			✓			04/01/94	
			.0401 - .0410			✓			04/01/94	
		14N	.0601 - .0607			✓			04/01/94	
		14O	.0101 - .0107			✓			04/01/94	
			.0201 - .0206			✓			04/01/94	
			.0208 - .0212			✓			04/01/94	
			.0701 - .0703	✓					04/01/94	
			.0704	✓			✓		04/01/94	
			.0705 - .0710	✓					04/01/94	
		14Q	.0305	✓			✓		04/01/94	
		18L	.1512		✓		✓		04/01/94	
		18M	.0802		✓		✓		04/01/94	
			.0818		✓				04/01/94	
		18N	.0601 - .0602	✓			✓		04/01/94	
			.0603	✓					04/01/94	
			.0604	✓			✓		04/01/94	
			.0605	✓					04/01/94	
			.0701	✓			✓		04/01/94	
			.0702 - .0703	✓					04/01/94	
			.0704	✓			✓		04/01/94	
			.0705 - .0707	✓					04/01/94	
			.0708	✓			✓		04/01/94	
			.0709	✓					04/01/94	
		18Q	.0709 - .0712			✓			04/01/94	
			.0714 - .0715			✓			04/01/94	
			.0801 - .0805			✓			04/01/94	
			.0807 - .0811			✓			04/01/94	
			.0813			✓			04/01/94	
		22W	.0101	✓			✓		04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	26B	.0124	✓			✓		04/01/94	
		26H	.0511	✓					04/01/94	
		26I	.0301	✓					04/01/94	
			.0302	✓			✓		04/01/94	
			.0303	✓					04/01/94	
			.0304	✓			✓		04/01/94	
			.0305	✓					04/01/94	
		45H	.0202		✓		✓		04/01/94	
11	NCAC	11B	.0112			✓			04/01/94	
			.0138			✓			04/01/94	
		11C	.0120			✓			04/01/94	
			.0133	✓					04/01/94	
			.0308		✓		✓		04/01/94	
			.0311		✓				04/01/94	
		11D	.0102 - .0103			✓			04/01/94	
		11F	.0201 - .0203	✓			✓		04/01/94	
			.0204	✓					04/01/94	
			.0205 - .0208	✓			✓		04/01/94	
		12	.0560	✓					04/01/94	
		15	.0012	✓					04/01/94	
15A	NCAC	2B	.0211		✓				04/01/94	
			.0305		✓		✓		04/01/94	
			.0308		✓		✓		04/01/94	
			.0315 - .0316		✓		✓		04/01/94	
		2H	.0301 - .0306			✓			04/01/94	
		10B	.0114		✓				07/01/94	
			.0212		✓		✓		07/01/94	
			.0404		✓				07/01/94	
		10C	.0205		✓				07/01/94	
			.0407		✓				07/01/94	
		10D	.0004		✓				07/01/94	
		13A	.0016		✓				04/01/94	
		13B	.1601		✓		✓		04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	13B	.1628		✓		✓		04/01/94	
		18A	.1205		✓		✓		04/01/94	
			.2610		✓		✓		04/01/94	
		21H	.0314		✓		✓		04/01/94	
19A	NCAC	2A	.0201			✓			01/01/94	
		2D	.0409			✓			01/01/94	
			.0411			✓			01/01/94	
		2E	.0216 - .0217		✓				04/01/94	
			.0218 - .0219		✓		✓		04/01/94	
			.0221		✓		✓		04/01/94	
		3D	.0515			✓			01/01/94	
			.0604			✓			01/01/94	
			.0818			✓			01/01/94	
			.0826			✓			01/01/94	
		3H	.0101 - .0106			✓			01/01/94	
20	NCAC	7	.0101		✓				04/01/94	
			.0102		✓		✓		04/01/94	
			.0103 - .0107		✓				04/01/94	
			.0201 - .0202		✓		✓		04/01/94	
			.0203		✓				04/01/94	
			.0301		✓		✓		04/01/94	
			.0302		✓				04/01/94	
			.0303		✓		✓		04/01/94	
			.0304		✓				04/01/94	
			.0305		✓		✓		04/01/94	
			.0401		✓				04/01/94	
			.0402 - .0404		✓		✓		04/01/94	
			.0501 - .0505		✓				04/01/94	
			.0602		✓				04/01/94	
			.0603		✓		✓		04/01/94	
21	NCAC	1	.0101 - .0103	✓					03/18/94	180 DAYS
		8A	.0105			✓			04/01/94	
			.0301		✓				04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	8A	.0307 - .0308		✓		✓		04/01/94	
			.0309		✓				04/01/94	
			.0315		✓				04/01/94	
		8B	.0202		✓		✓		04/01/94	
			.0502		✓		✓		04/01/94	
		8F	.0103		✓		✓		04/01/94	
			.0105		✓		✓		04/01/94	
			.0107		✓		✓		04/01/94	
			.0112	✓			✓		04/01/94	
			.0302		✓		✓		04/01/94	
			.0409		✓		✓		04/01/94	
			.0501			✓			04/01/94	
		8G	.0101 - .0103			✓			04/01/94	
			.0106 - .0109			✓			04/01/94	
			.0112 - .0114			✓			04/01/94	
			.0201 - .0205			✓			04/01/94	
			.0208 - .0210			✓			04/01/94	
			.0211 - .0213			✓			04/01/94	
			.0301 - .0306			✓			04/01/94	
			.0310 - .0312			✓			04/01/94	
			.0401		✓		✓		04/01/94	
			.0406		✓		✓		04/01/94	
			.0409		✓		✓		04/01/94	
		8H	.0002		✓				04/01/94	
			.0003			✓			04/01/94	
			.0004		✓				04/01/94	
		8I	.0001		✓		✓		04/01/94	
			.0004		✓		✓		04/01/94	
		8J	.0001 - .0002		✓		✓		04/01/94	
			.0005		✓		✓		04/01/94	
			.0006		✓				04/01/94	
			.0008		✓		✓		04/01/94	
			.0010		✓				04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	8J	.0011	✓					04/01/94	
		8K	.0104 - .0105		✓				04/01/94	
			.0201		✓				04/01/94	
			.0301	✓					04/01/94	
		8L	.0001 - .0003			✓			04/01/94	
			.0005 - .0006			✓			04/01/94	
			.0008			✓			04/01/94	
			.0010 - .0018			✓			04/01/94	
			.0019 - .0025			✓			04/01/94	
		8M	.0102		✓		✓		04/01/94	
			.0201		✓		✓		04/01/94	
			.0301		✓		✓		04/01/94	
			.0304		✓				04/01/94	
		8N	.0101 - .0102	✓					04/01/94	
			.0103	✓			✓		04/01/94	
			.0201	✓			✓		04/01/94	
			.0202 - .0203	✓					04/01/94	
			.0204	✓			✓		04/01/94	
			.0205 - .0207	✓					04/01/94	
			.0208 - .0211	✓			✓		04/01/94	
			.0212 - .0213	✓					04/01/94	
			.0301	✓					04/01/94	
			.0302 - .0306	✓			✓		04/01/94	
			.0307	✓					04/01/94	
			.0401 - .0406	✓			✓		04/01/94	
			.0407 - .0408	✓					04/01/94	
		16F	.0002 - .0005		✓				04/01/94	
			.0007 - .0008		✓				04/01/94	
			.0010		✓				04/01/94	
		16S	.0101 - .0102	✓					04/01/94	
			.0201 - .0202	✓					04/01/94	
			.0203	✓			✓		04/01/94	
			.0204	✓					04/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	16S	.0205	✓					04/01/94	
		32B	.0209		✓				04/01/94	
			.0212		✓		✓		04/01/94	
			.0305		✓				04/01/94	
			.0402		✓		✓		04/01/94	
			.0706		✓		✓		04/01/94	
	46		.1606	✓			✓		04/01/94	
	54		.1605		✓				04/01/94	
			.1609	✓					04/01/94	
			.2007	✓					04/01/94	
			.2701 - .2702	✓					04/20/94	180 DAYS
	57A		.0101 - .0102	✓					07/01/94	
			.0201 - .0203	✓					07/01/94	
			.0204	✓			✓		07/01/94	
			.0205	✓					07/01/94	
			.0206 - .0207	✓			✓		07/01/94	
			.0208 - .0209	✓					07/01/94	
			.0210	✓			✓		07/01/94	
			.0301 - .0306	✓					07/01/94	
			.0401 - .0408	✓					07/01/94	
			.0501	✓			✓		07/01/94	
	57B		.0101 - .0104	✓					07/01/94	
			.0201	✓			✓		07/01/94	
			.0202	✓					07/01/94	
			.0203	✓			✓		07/01/94	
			.0204 - .0205	✓					07/01/94	
			.0206 - .0207	✓			✓		07/01/94	
			.0208 - .0212	✓					07/01/94	
			.0301 - .0303	✓					07/01/94	
			.0304	✓			✓		07/01/94	
			.0305	✓					07/01/94	
			.0306	✓			✓		07/01/94	
			.0307	✓					07/01/94	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	57B	.0401 - .0403	✓					07/01/94	
			.0501 - .0503	✓					07/01/94	
			.0601 - .0602	✓					07/01/94	
			.0603	✓			✓		07/01/94	
			.0604 - .0612	✓					07/01/94	
	57C		.0101 - .0103	✓					07/01/94	
			.0104	✓			✓		07/01/94	
			.0201	✓					07/01/94	
			.0301	✓			✓		07/01/94	
			.0302 - .0303	✓					07/01/94	
			.0401	✓					07/01/94	
	58D		.0203		✓				04/01/94	
			.0209		✓				04/01/94	
25	NCAC	1D	.0512		✓		✓		06/01/94	

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).

COMMERCE

Banking Commission

<i>4 NCAC 3F .0202 - Permissible Investments</i>	<i>RRC Objection 12/16/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>

Credit Union

<i>4 NCAC 6C .1401 - Signature Guarantee</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Marine Fisheries

<i>15A NCAC 3I .0010 - Military Prohibited and Restricted Areas</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 3J .0107 - Pound Nets</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 3K .0301 - Size and Harvest Limit</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 3O .0102 - Procedure and Requirements to Purchase License</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 3O .0204 - Marking Shellfish Leases and Franchises</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 3O .0205 - Lease Renewal</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>

Soil and Water Conservation Commission

<i>15A NCAC 6F .0001 - Purpose</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 6F .0003 - Requirements for Certification of Waste Mgmt Plans</i>	<i>RRC Objection 02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 6F .0004 - Approved Best Management Practices (BMPs)</i>	<i>RRC Objection 01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>
<i>15A NCAC 6F .0005 - Technical Specialist Designation Procedure</i>	<i>RRC Objection 01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 02/17/94</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10D .0002 - General Regulations Regarding Use</i>	
<i>Agency Withdrew Rule</i>	<i>03/17/94</i>

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10 NCAC 22T .0101 - <i>Scope of Health Screening Services</i>	RRC Objection	01/20/94
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10 NCAC 22T .0201 - <i>Provision of Health Screening Services</i>	RRC Objection	01/20/94
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10 NCAC 22U .0101 - <i>Scope of Senior Companion</i>	RRC Objection	01/20/94
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10 NCAC 22W .0101 - <i>Scope of Home Care Services</i>	RRC Objection	02/17/94
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10 NCAC 26I .0304 - <i>Hearing Procedures</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

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11 NCAC 11C .0308 - <i>Foreign HMO: Successful Operation</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
11 NCAC 11F .0207 - <i>Specific Standards for Morbidity, Interest and Mortality</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
11 NCAC 11F .0208 - <i>Reserves for Waiver of Premium</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

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21 NCAC 8A .0105 - <i>Purposes and Responsibilities</i>	RRC Objection	03/17/94
Agency Repealed Rule	Obj. Removed	03/17/94
21 NCAC 8F .0103 - <i>Filing of Examination Applications and Fees</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8F .0112 - <i>Candidate's Request to Sit in Another Jurisdiction</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8G .0409 - <i>Computation of CPE Credits</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8J .0008 - <i>Firm Registration</i>	RRC Objection	03/17/94
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21 NCAC 8N .0103 - <i>CPAs Outside North Carolina</i>		
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21 NCAC 26 .0209 - <i>Unprofessional Conduct</i>	RRC Objection	01/20/94
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21 NCAC 26 .0210 - <i>Dishonest Practice</i>	RRC Objection	01/20/94
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21 NCAC 26 .0211 - <i>Incompetence</i>	RRC Objection	01/20/94
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21 NCAC 32B .0402 - Fee	RRC Objection	03/17/94
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21 NCAC 32B .0706 - Fee	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 32M .0006 - Prescribing Privileges	RRC Objection	02/17/94
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21 NCAC 57B .0207 - Administration	RRC Objection	03/17/94
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21 NCAC 57B .0306 - Instructor Requirements	RRC Objection	03/17/94
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21 NCAC 57B .0603 - Criteria For Course Approval	RRC Objection	03/17/94
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21 NCAC 57C .0104 - Petition to Reopen Proceeding	RRC Objection	03/17/94
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17 NCAC 6B .0612 - Tax Credit for Qualified Business Investments	RRC Objection	03/17/94
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25 NCAC 1D .0211 - Salary Rate	RRC Objection	02/17/94
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25 NCAC 1D .0512 - Policy Making/Confidential Exempt Priority Consideration	RRC Objection	02/17/94
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ORDER OF DISMISSAL AND FINAL DECISION

HA-YILYAH HA-SHE'B,
Petitioner,

v.

NCCU,
Respondent.

another permanent state employee, effective August 1, 1992. The Petitioner did not file a grievance regarding his denial of a promotion within thirty days of his receiving notice that he was not the successful applicant for the position.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Administrative and judicial review of state personnel matters is governed by the North Carolina State Personnel Act, Chapter 126 of the North Carolina General Statutes and the Administrative Procedures Act, Chapter 150B of the North Carolina General Statutes.
2. A state employee may file a contested case with the Office of Administrative Hearings ("OAH"), and thereby pursue an appeal, regarding any matter over which the State Personnel Act grants the State Personnel Commission subject matter jurisdiction. However, because OAH's jurisdiction over appeals involving personnel matters is derivative from the State Personnel Commission's jurisdiction, OAH does not have subject matter jurisdiction to hear matters when an appeal to the State Personnel Commission is not authorized by Chapter 126. There are many personnel matters for which no right of appeal to the State Personnel Commission is provided.
3. The Petitioner's Petition indicates that he is appealing a dismissal from employment. The only purported dismissal regarding the Petitioner occurred on July 19, 1993. After further communication between the Petitioner and the Respondent, the dismissal was rescinded and the Petitioner was reinstated to his position as a Trades Worker I. The Petitioner was never actually separated from employment with the Respondent. Therefore, there is no dismissal for the Petitioner to appeal. Furthermore, if the Petitioner's intention is to appeal the July 19, 1993 action whereby the Respondent purported to dismiss him, he has failed to allege any facts that would tend to indicate that he suffered any actual adverse consequences as result of the Respondent's actions on July 19, 1993. The Petitioner has failed to state a claim for relief over which OAH has jurisdiction in regard to July 19, 1993 purported dismissal.
4. The Petitioner's Petition alleges that he has suffered a demotion without just cause. The term "demotion" is defined in the North Carolina Administrative Code as "a change in status downward resulting from assignment to a position of lower level." 25 NCAC 1D .0401. Although the Petitioner was assigned different job duties upon his return to work in August, 1993, his new job assignment was also within the Trades Worker I category. The Petitioner contends that this new job assignment affords him less opportunities for promotion than the job he held prior to his returning to work and, therefore, he considers his current job assignment to be a demotion. The Petitioner's current job assignment falls within the Trades Worker I category. Although his duties have changed, the Petitioner has not been assigned to a lower level position. Even if the Petitioner's perception that his opportunities for promotion have been diminished by his current job assignment is correct, in order to state a claim for relief, the Petitioner must be able to demonstrate that his lesser status is the result of being assigned to a position of lower level than that which he previously occupied in order to meet the definition of demotion found in the Administrative Code. The facts as alleged by the parties do not indicate that the Petitioner has sustained a demotion to a lower level position. Therefore, the Petitioner has failed to state a claim upon which relief over which OAH has jurisdiction.
5. The Petitioner checked retaliation as a grounds for his appeal. The State Personnel Act provides a right of appeal to any State employee "who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, lay off or termination or employment was forced upon him in retaliation for opposition to alleged discrimination" Nothing in the various documents the Petitioner has filed or in his oral arguments indicates that the retaliation and harassment that the Petitioner is complaining about is the result of the Petitioner's opposition to alleged discrimination. Not all forms of conduct that might be considered retaliatory form a basis for

pursuing an appeal before the State Personnel Commission. Again, the Petitioner has failed to state a claim upon which relief can be based and over which OAH has jurisdiction.

6. The Petitioner has checked on his Petition "Other" as a grounds for his appeal, and has indicated that "whistle blower" is the grounds for this allegation. Chapter 126 does not give OAH jurisdiction over whistle blower claims. Therefore, this allegation by the Petitioner fails to state a claim over which OAH has jurisdiction.
7. The Petitioner also alleges that he was denied a position for which he applied. The facts alleged by both parties indicate that the only position for which the Petitioner has applied during the course of his employment with the Respondent is a Maintenance III position which was posted on June 18, 1992, and was filled effective August 1, 1992. The State Personnel Act requires that an employee appeal an adverse personnel action within thirty days of the occurrence or knowledge of the occurrence. Thus, the Petitioner's attempt to now appeal the denial of the 1992 promotion is untimely and OAH lacks jurisdiction over this claim.
8. Insofar as the Petitioner has failed to state a claim upon which relief can be based and has failed to state a claim which OAH has jurisdiction over, the Petitioner's Petition for a Contested Case Hearing must be dismissed.

FINAL DECISION

The Petitioner's petition for a contested case hearing is DISMISSED.

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty days after the person is served with a copy of the Final Decision. North Carolina General Statutes section 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This the 13th day of April, 1994.

Brenda B. Becton
Administrative Law Judge

time the petition was filed, that section stated that appeals would be governed by the Administrative Procedure Act if they concerned "the enforcement of rules" adopted by the Commission for Health Services, "the suspension and revocation of permits and program participation", and "the imposition of administrative penalties." The statute did not include claims by persons adversely affected by the issuance of a permit by the North Carolina Department of Environment, Health, and Natural Resources ("the Department"). The statute did not grant third parties the right to review in the OAH. Petitioners did not, therefore, have the statutory right to file a petition challenging the issuance of a permit in OAH.

4. The day after Petitioners filed their challenge, the statutory right to file a challenge in OAH was expanded. The new statutory provision changed the law by allowing "any person" challenging any action of the Department taken pursuant to Chapter 130A or pursuant to rules promulgated under the Chapter to file a petition for contested case hearing in OAH. Petitioners could not take advantage of this statutory change because it limits the time for taking a challenge to 30 days after notice of the contested action, and Petitioners waited almost 60 days to file this action. Therefore, the petition should be dismissed for lack of jurisdiction.

5. Even if the Petitioners had been given a right to file their challenge in OAH, they have not stated a claim for relief.

6. Petitioners ground their challenge on two legal bases--one statutory and the other regulatory. The Petitioners now concede that their statutory challenge, based on the Department's alleged failure to comply with N.C.G.S. § 130A-295, should be dismissed since that statute applies to hazardous waste facilities and not to this solid waste landfill.

7. Petitioners regulatory challenge is based on rules adopted on June 30, 1993, to become effective October 9, 1993, and codified at 15A N.C.A.C. 13B .1600 et. seq. The action challenged in this case, issuance of the construction permit, took place before the effective date of these regulations. New regulations and other newly adopted laws are presumed to have prospective effect only. Wilson Ford Tractor, Inc. v. Massey-Ferguson, Inc., 105 N.C. App. 570, 573, 414 S.E.2d 43, 35 (1992). In this case, there is no language in the regulations stating that they are to be applied retroactively nor otherwise indicating an intent to apply them retroactively. Hence, these regulations have prospective effect only and cannot govern the actions of the Department in issuing a permit before the regulations became effective. Petitioners' challenge to the August 6, 1993 permit issuance based on an alleged violation of regulations effective October 9, 1993 should therefore be dismissed.

8. Even giving the Petition a very generous reading, it does not allege facts that indicate a violation of the statutes or regulations effective at the time the construction permit was issued. The gist of petitioners' complaint is that the permit does not include adequate requirements to control leachate or to protect adjacent wetlands. The regulations in effect on August 6, 1993 required new landfills to have liners and leachate collection systems "as necessary to comply with groundwater standards", and also prohibited the discharge of fill or dredge material into wetlands. 15A N.C.A.C. 13B .0503.

9. The petition alleges that potential malfunctions in the leachate collection system "could possibly" cause some undefined groundwater contamination, but it does not allege facts that indicate a design change is "necessary to comply with groundwater standards." Groundwater standards do not prohibit all groundwater contamination. On the contrary, they require that groundwater contaminants be kept within specified limits outside the compliance boundary which is 250 feet from the waste boundary or 50 feet within the property boundary, whichever point is closer to the source. The Petition does not allege that the permitted leachate collection system is inadequate to meet these specific standards and therefore does not allege a violation of the former rules with respect to groundwater.

10. With respect to wetlands, the petition merely alleges that borrow area depressions "will likely" create lakes, in which case those so called lakes "may impact" wetlands. These statements, however liberally construed, do not amount to an allegation that the construction permit allowed the "discharge of dredged or fill material" into wetlands and therefore the petition fails to state a violation of any applicable rule or regulation.

11. Viewing the petition as a whole, and giving the Petitioner the benefit of every reasonable inference, the petition itself fails to "state facts tending" to establish that the agency acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. It therefore fails to state a claim for relief and must be dismissed.

12. Even if the petition had stated a claim and was properly before OAH, East Carolina Environmental, Inc. and Addington Environmental, Inc. have demonstrated that summary judgment should be entered against Petitioners. Documents from the permitting file and the affidavit of William Hodges, a professional engineer with experience in the design of over 100 sanitary landfills, demonstrate that the leachate collection system for this landfill has been hydraulically designed to remove leachate from the landfill under even extreme circumstances such as a 25 year storm event. It will thus prevent groundwater contamination even after complete settlement. Mr. Hodges affidavit also makes clear that the proposed landfill construction was preceded by a wetlands delineation analysis, in which the Corps of Engineers concurred, to ensure that construction activities would not take place in or have an adverse impact on wetlands.

13. Mr. Hodges' affidavit also demonstrates that the construction of the landfill under the challenged construction permit was completed on October 8, 1993, and an operating permit has been issued for the landfill by the state. This operating permit superseded the construction permit, and hence the Petitioners' challenge to the construction permit has become moot.

14. The record in this case establishes cause for the intervention of ten counties that now use and find it necessary to continue to use the landfill to satisfy their solid waste management requirements, including Bertie County where the landfill is located. These counties, including Bertie County, have acted within their authority under G.S. § 153A-136 to regulate solid waste and their use of the landfill is consistent with applicable state regulations.

15. Even if Petitioners had a right to OAH review, they still must establish that they are "aggrieved persons" who have been specially damaged distinct from the rest of the community and substantially prejudiced by the issuance of the construction permit in this case. The record establishes that the new landfill is located immediately adjacent to the existing landfill which is unlined and lacks the environmental protections found in the new landfill. The Petitioners have failed to state facts tending to show or proffer evidence tending to establish that construction of the new and environmentally more protective landfill adjacent to the old landfill would cause them special damages distinct from the rest of the community and substantially prejudice them.

16. Petitioners have filed no affidavits in response to the pending motion for summary judgment. However, the North Carolina Rules of Civil Procedure, adopted by OAH rules, require an opponent of summary judgment to file affidavits or present other evidence which "must set forth specific facts showing that there is a genuine issue for trial." If Petitioners contend they have not had time to gather the necessary evidence, the Rules require that they file "affidavits" explaining what "facts essential to justify [their] opposition" could not be presented by affidavit or otherwise. In this case Petitioner's brief states that further discovery is needed, but they have not explained by affidavit or otherwise what facts essential to justify their opposition could not be presented now. Indeed, it appears that the Respondents' challenged decision and the entire file on which that decision was based are a matter of public record which Petitioners' have had many months to review. Petitioners' inability to present evidence, by way of conflicting expert testimony or otherwise, to contradict the Hodges affidavit or to explain why such evidence could not now be presented demonstrates that summary judgment should be entered against them.

Based on the foregoing Conclusions of Law, it is hereby ORDERED that the motions to dismiss are granted and the Petition is hereby DISMISSED because the Petitioners do not have a right by statute or otherwise to a contested case hearing in the Office of Administrative Hearings and because the Petition fails to state a claim for relief. Alternatively, if this matter is remanded, the undersigned will recommend that the

Petition be dismissed on summary judgment because the record demonstrates that there is no genuine issue of fact material to the disposition of Petitioners' claims and the Respondent is entitled to judgment as a matter of law.

DATED this 6th day of April, 1994.

The Honorable Fred G. Morrison, Jr.
Senior Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 DOJ 1071

WILLIE DAVID MOORE
Petitioner,

v.

N.C. CRIMINAL JUSTICE EDUCATION AND
TRAINING STANDARDS COMMISSION
Respondent.

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RECOMMENDED DECISION

The above-captioned matter was heard before Administrative Law Judge Dolores O. Nesnow on February 23, 1994, in High Point, North Carolina.

APPEARANCES

For Petitioner: Abraham Penn Jones
Attorney at Law
PO Box 326
Raleigh NC 27602
Attorney for Petitioner

For Respondent: Robin P. Pendergraft
Special Deputy Attorney General
NC Department of Justice
PO Box 629
Raleigh NC 27602-0629
Attorney for Respondent

ISSUE

Did Respondent err in determining that Petitioner's certification as a correctional officer must be suspended based on a DWI received by Petitioner on or about May 26, 1993?

STATUTES AND RULES

N.C. Gen. Stat. 20-138.1
N.C. Gen. Stat. 20-179
N.C. Admin. Code, tit. 12, r. 9A.0103(5)
N.C. Admin. Code, tit. 12, r. 9A.0103(20)(b)
N.C. Admin. Code, tit. 12, r. 9A.0204(b)(3)(A)
N.C. Admin. Code, tit. 12, r. 9A.0205(b)(1)

MOTION

On February 22, 1994, at 4:00 p.m., a Motion to Quash was filed by Respondent. The Motion was taken up as the first order of business at the call of the case on the following day.

Respondent's Motion to Quash involved a subpoena duces tecum for:

1. Copies of all personnel files relating to Petitioner;
2. Records of all correctional officers of any rank who received any misdemeanor infractions within the last year and are still employed at Piedmont Correctional Institute.

Petitioner responded that the request for the personnel files of other correctional officers was withdrawn. Petitioner further noted that he was withdrawing his request for his own personnel file since the personnel file in the custody of the Superintendent of Piedmont Correctional Institute is not the major personnel file, but is only a local "jacket."

This Motion requiring no further action, no ruling was issued.

PRESENTATION OF HEARING

Upon being called to present their case, Respondent noted that they would call no witnesses since the Stipulations to the Class B Misdemeanor and the rules which regulate disciplinary action based upon such a conviction, speak for themselves. Respondent further asserted that any grounds for a reduction in sentencing must be presented by the Petitioner. Respondent then requested particular notice of the rule as outlined above. N.C. Admin. Code tit 12, r. 9A.0103(5), N.C. Admin. Code tit. 12, r.9A.0103(20)(b), and N.C. Admin. Code tit. 12, r.9A.0204(b)(3)(A).

EXHIBITS

For Petitioner:

- P#1 Letter to Petitioner from Ronald E. Jones, Superintendent, Piedmont Correctional Institution - 7/8/93
- P#2 Letter to Petitioner from Ronald E. Jones, Superintendent, Piedmont Correctional Institution - 8/2/93
- P#3 Letter to Petitioner dated 8/9/93 informing him of his demotion and transfer; Letter to Petitioner from Jeffrey R. Becker, NC DOC - 8/26/93; Memo to Jeffrey Becker, NC DOC from Petitioner - 8/20/93
- P#4 Petitioner's PMS for 6/1/92 to 5/31/93

For Respondent:

- R#1 Citation issued to Petitioner on 3/3/93
- R#4 Impaired driving sentence form - 5/26/93
- R#5 Letter to Petitioner from David D. Cashwell, Director, N.C. Department of Justice, Criminal Justice Standards Division

STIPULATION AGREEMENTS

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Petitioner received the Deferral of Suspension of his Law Enforcement Officer Certification letter mailed by Respondent on August 2, 1993.
2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and title 12 of the North Carolina Administrative Code, Chapter 9, to certify criminal justice officers and to deny, revoke, or suspend such certification.
3. Petitioner applied with Respondent's predecessor, the North Carolina Criminal Justice Training and Standards Council, for certification as a correctional officer with the North Carolina Department of Correction (Odom Correctional Institution) in July 1974.

4. Petitioner was issued a probationary certification (PRB245829000) by the Council effective July 19, 1974.
5. Petitioner successfully completed the Basic Course for Correctional Officers at the North Carolina Justice Academy on March 28, 1975.
6. Petitioner was issued a general certification (GNB245829000) by the Council effective March 22, 1976.
7. Petitioner separated from his employment with the Department of Correction (Piedmont Correctional Institution) on October 9, 1990 for extended military active duty.
8. Petitioner applied with Respondent for certification as a correctional officer with the Department of Correction (Piedmont Correctional Institution) in May 1991.
9. Petitioner was issued a general certification (GNB245829000) by Respondent effective June 10, 1991.
10. On or about January 30, 1993, Petitioner was charged by Trooper H.L. Howell with the offense of Driving While Impaired (DWI) in violation of N.C. Gen. Stat. 20-138.1.
11. On or about May 26, 1993, Petitioner entered a plea of guilty to and was found guilty of DWI (93CR01588) before and by the Honorable Robert W. Johnson, District Court Judge Presiding. The Court imposed a level two (2) punishment and sentenced Petitioner to a term of imprisonment for one (1) year, suspended the sentence for the term of three (3) years at which time he was placed on supervised probation. The Court further ordered that Petitioner serve an active term of seven (7) days in the custody of the Sheriff of Iredell County.
12. DWI is a Class B Misdemeanor.

Based upon careful consideration of the testimony and evidence presented at the hearing and the documents and exhibits received into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner has been a correctional officer with the North Carolina Department of Correction (DOC) for 19 years.
2. In January of 1993, Petitioner was charged with DWI and subsequently pled guilty to that charge in Iredell County District Court.
3. Petitioner received a 12 month sentence suspended for three years, supervised probation, a monetary fine, a requirement to attend a substance abuse course, and the revocation of his license for 7 days. Petitioner also received 7 days active time which he was allowed to serve on weekends.
4. During the 19 years of Petitioner's service with DOC, he rose from the lowest rank, Correctional Officer, to the rank of Captain.
5. At the time Petitioner was cited for DWI, he reported that citation in a timely manner to his supervisor as is required by the regulations of DOC.
6. At the time Petitioner pled guilty and was convicted of DWI, he reported that conviction to his supervisor in a timely manner as is required by the regulations of DOC.
7. Previously, Petitioner had received two other convictions for DWI: one in 1979 and the other on January 14, 1987.

8. The Superintendent of Piedmont Correctional Institution (Piedmont), Ronald E. Jones, on July 8, 1993, took the following punitive action against Petitioner for the DWI conviction:
 - a. Petitioner was reduced from the rank of Captain to the rank of Correctional Officer;
 - b. Petitioner received a reduction in pay of 15%; and
 - c. Petitioner was transferred from Piedmont Correctional Institution to Rowan Correctional Institution.
9. During his time at Piedmont, Petitioner's direct supervisor was Todd Pinion.
10. Superintendent Jones testified and it is found as fact that Petitioner was a good worker, was always on time, was a leader among his peers, and has a good work ethic.
11. Superintendent Jones further testified that Petitioner's evaluations, to his knowledge, were at least "good" and probably many were above average.
12. Superintendent Jones was the ultimate decision maker as to the punishment given to Petitioner.
13. Superintendent Jones decided on the punishment as outlined above because he considered the DWI to be a serious violation and a particularly important violation since Petitioner was a Captain and a leader who was expected to set an example for people on his crew.
14. Petitioner was promoted to Correctional Captain in 1992 and during his tenure as a Captain he supervised 60 other officers on the second shift.
15. Petitioner testified, and it is found as fact, that on the night of his DWI, he had been visiting friends in Salisbury, 33 miles from his home in Statesville. He testified that he was drinking but that he stopped drinking at some time prior to the time when he anticipated he would be driving.
16. Petitioner also testified that on his way home, he drove a curve to the right and crossed the line at the right shoulder of the road. He was stopped by a trooper because of the swerving of his vehicle and when the trooper asked if he had been drinking, he responded "Yes."
17. The trooper gave Petitioner a portable breathalyzer and then took him to the Iredell Sheriff's Office for an additional breathalyzer test.
18. Petitioner was told that he had blown a .12 on the initial blow and a .11 on the second.
19. After receiving the 1979 DWI, Petitioner received a reprimand from Respondent.
20. After receiving the 1987 DWI, Petitioner received a written warning from Respondent.
21. During his tenure as Correctional Officer, Petitioner has received no complaints from his fellow officers or supervisors, but has received complaints from inmates which he testified is a common occurrence.
22. During his tenure as a Correctional Officer, Petitioner received no reprimands other than the ones involving the DWIs.
23. When Petitioner took the examination for promotion to the rank of Correctional Captain, Petitioner received 100% on the examination and was only one of three in the State to receive that grade. Petitioner received a letter of commendation which was placed in his "jacket."
24. Petitioner testified that his only explanation for the three DWIs is that he apparently made bad decisions concerning driving after he had been drinking.

25. On August 2, 1993, Petitioner was sent a letter from the Director of Criminal Justice Training and Standards informing him that his certification was being suspended for five years, but that suspension was being deferred during the time in which Petitioner might file a request for an administrative hearing.
26. N.C. Gen. Stat. 17C-6 provides that the N.C. Criminal Justice Education and Training Standards Commission (Commission) shall have the power to promulgate rules and to establish minimum educational and training standards for law enforcement officers.
27. N.C. Admin. Code tit. 12, r.9A.0103(5) defines Correctional Officer and .0103(20)(b) defines Class B Misdemeanor.
28. N.C. Admin. Code tit. 12, r.9A.0204(b)(3)(A) provides that the Commission may suspend, revoke, or deny the certification of a Criminal Justice Officer who has been convicted of a Class B Misdemeanor.
29. N.C. Admin. Code tit. 12, r.9A.0205(b)(1) provides that a suspension or denial shall be not less than 5 years. That rule further provides that the Commission may reduce or suspend the period of sanction or substitute a period of probation following an administrative hearing where the cause of sanction is commission of a crime other than those listed in part (a) this rule, which subpart does not include Class B Misdemeanors.
30. N.C. Gen. Stat. 20-138.1 defines the offense of impaired driving.
31. N.C. Gen. Stat. 20-179 provides that, for purposes of sentencing after a conviction of N.C. Gen. Stat. 20-138.1, an aggravating factor would be a prior conviction involving impaired driving within the prior 7 years.

Based on the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Petitioner was convicted of a Class B Misdemeanor and the Commission may suspend or revoke his certificate for a period not less than 5 years.
2. A Class B Misdemeanor is a crime which does not fall under N.C. Admin. Code, tit. 12, r.9A.0205(a) and the Commission may reduce or suspend the five year suspension or revocation or may substitute a period of probation following an administrative hearing.
3. Petitioner has three times been convicted of DWI, albeit some years apart. The evidence which indicates that Petitioner is a good, successful and long-term employee, also indicates that he has a long-standing problem of some nature which involves alcohol consumption during his off duty time.

The Commission has been authorized by regulation (N.C. Admin. Code, tit. 12, r.9A.0205(b)) to exercise its discretion in determining the appropriate sanction after an administrative hearing, including either a shortened period of suspension or revocation or probation.

This Petitioner has been sentenced by the Courts of General Justice and has, no evidence to the contrary, served that sentence. Petitioner has also been sanctioned internally by his demotion, transfer, and reduction in pay.

An additional and severe sanction from the Commission, while such sanction would clearly send a strong message to other law enforcement officers and to the public, may not achieve the critically important goal of keeping Willie Moore from driving under the influence again. In fact, unemployment of a long term career employee might contribute to this occasional but dangerous

occurrence.

For these reasons and in recognition of Petitioner's 19 years of service and, more importantly, in recognition of the unique opportunity the Respondent has to effect a change in the Petitioner's drinking habits which create a danger to the people of the State, the undersigned recommends that the Commission consider a penalty less than a five year suspension or revocation.

Based on the above, the undersigned makes the following:

RECOMMENDATION

That the Commission suspend Petitioner's certificate for five years with all but three months of that time suspended on the condition that Petitioner complete an alcohol rehabilitation program or an alcohol-related therapy program, which program shall be approved by the Commission and paid for by Petitioner, and on the further condition that Petitioner not further violate any alcohol related laws. Any further alcohol-related violation during the five year period will be a violation of the conditions of this sanction and will immediately activate the full five year suspension.

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 Criminal Justice Education and Training Standards Commission.

This the 11th day of April, 1994.

Dolores O. Nesnow
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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4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
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