

RBR/LFN/7434/.A2/.N67

# *The* **NORTH CAROLINA REGISTER**

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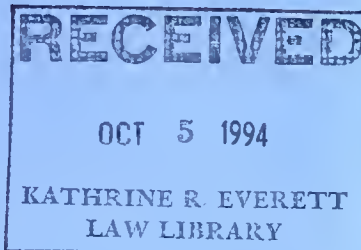
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**ISSUE DATE:   October 3, 1994**



**Volume 9 • Issue 13 • Pages 957 - 1062**



## 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 3 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-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 Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
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
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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.

Revised 03/94

**EXECUTIVE ORDER NO. 61  
AMENDING THE NORTH CAROLINA  
EMERGENCY RESPONSE COMMISSION**

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

Section 1 of Executive Order Number 17 is hereby amended to read:

**Section 1. Creation and Membership.**

There is created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

Director, Division of Emergency Management, Department of Crime Control and Public Safety, who shall serve as Chairperson;

Coordinator, State Highway Patrol Hazardous Materials, Department of Crime Control and Public Safety;

Safety Director, Department of Agriculture;

Supervisor, Facilities Assessment Unit, Division of Environmental Management, Department of Environment, Health, and Natural Resources;

Director, Solid Waste Management Division, Department of Environment, Health, and Natural Resources;

Director, Radiation Protection Division, Department of Environment, Health, and Natural Resources;

Director, Office of Waste Reduction (Pollution Prevention Program), Department of Environment, Health, and Natural Resources;

Director, Emergency Planning, Division of Highways, Department of Transportation;

Chief, Transportation Inspection, Division of Motor Vehicles (Enforcement Section), Department of Transportation;

Manager, Training/Standards Program, Fire and Rescue Services Division, Department of Insurance;

Chief, Emergency Medical Services, Division of Facility Services, Department of Human Resources; and

Assistance Deputy Commissioner of Labor for Occupational Safety and Health, Department of Labor; and

Six at-large members from local government and private industry with technical expertise in the emergency response field may be appointed by the Governor and serve for terms of two (2) years at the pleasure of the Governor.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 26th day of August, 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.*

U.S. Department of Justice

Civil Rights Division

DLP:ZJB:EMP:emr  
DJ 166-012-3  
94-2890

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

September 2, 1994

David A. Holec, Esq.  
City Attorney  
P. O. Box 1388  
Lumberton, North Carolina 28359-1388

Dear Mr. Holec:

This refers to the annexation [Ordinance No. 1452 (1994)] to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 6, 1994.

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

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

PUBLIC NOTICE OF AVAILABILITY OF 303(d) LIST

Announcement is hereby given of the availability of North Carolina's 303(d) list. Section 303(d) of the Clean Water Act requires states to develop a list of waters not meeting water quality standards or which have use impairment and where existing control strategies for point and nonpoint source pollution will not achieve the standards or uses designated for that waterbody. North Carolina has developed its 303(d) list, and the list is available for review and comment.

**INFORMATION:** A copy of the 303(d) list is available by writing or calling:

Ruth C. Swanek, Supervisor  
Instream Assessment Unit  
Water Quality Section  
N.C. Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535

Telephone (919) 733-5083

Persons wishing to comment on the list are invited to submit their comments in writing to the above address no later than November 2, 1994. All comments received prior to that date will be considered when revising the list.

The 303(d) list and supporting information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of costs of reproduction.

Date: September 9, 1994

Steve W. Tedder, Chief  
Water Quality Section  
Division of Environmental Management

## TITLE 7 - DEPARTMENT OF CULTURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Arts Council intends to amend rules cited as 7 NCAC 12 .0002, .0003, .0005 and adopt .0006.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Jean W. McLaughlin, Visual Arts Director, North Carolina Arts Council, Department of Cultural Resources, Raleigh, NC 27601-2807. The demand must be made within 15 days of the notice.*

*Reason for Proposed Action: These rules are being requested because of ratification of Article 47A of Chapter 143 of the General Statutes by the 1994 General Assembly.*

*Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Jean W. McLaughlin, Visual Arts Director, North Carolina Arts Council, Department of Cultural Resources, Raleigh, NC 27601-2807 within 30 days after the proposed rules are published or until the date of any public hearing held on the proposed rule, whichever is longer.*

## CHAPTER 12 - ART WORKS IN STATE BUILDINGS PROGRAM

### .0002 DISBURSEMENT OF FUNDS

~~The Office of State Budget and Management will approve the transfer of all funds determined appropriate for the acquisition of art from the appropriate capital improvement code to the Department of Cultural Resources. Upon notification by the Department of Cultural Resources, the using agency shall transfer the funds for the administrative costs of this program and for the repair and conservation of works of art in the Artworks for State Buildings collection to the Department of Cultural Resources. Upon notification by the Department of Cultural Resources, the using agency shall issue a check or~~

checks for the costs of acquiring the artworks made payable as directed by the Department. Checks shall be returned to the Department of Cultural Resources for mailing.

*Statutory Authority G.S. 143-408.4; 143-408.5.*

### .0003 PROGRAM ADMINISTRATION

The Department of Cultural Resources, through the North Carolina Arts Council, shall establish a single administrative fund for the Art Works ~~in~~ for State Buildings Program. No more than ~~8%~~ 20% of available program funds may be applied to the administration of the program. The North Carolina Arts Council may supplement funding for program administration.

*Statutory Authority G.S. 143-408.4.*

### .0005 SELECTION AND INSTALLATION

The North Carolina Arts Council shall:

- (1) coordinate the input and involvement of the using ~~owning~~ agency in the selection process;
- (2) submit for approval to the Art Works ~~in~~ for State Buildings committee, as established by G.S. 143-408.5(b), the project artist selection plan;
- (3) advertise the need for artist services in the North Carolina Purchase Directory;
- (4) appoint a pre-selection committee comprised of a minimum of three arts professionals, directed by the Public Art Administrator, to recruit and screen artists of exceptional merit;
- (5) submit for approval to the Art Works ~~in~~ for State Buildings committee the artist(s) recommended through the approved plan;
- (6) contract with artist(s) and oversee the completion of commissioned art work(s); and
- (7) coordinate with the Department of Administration, the using ~~owning~~ agency and the designer to arrange for installation of work(s) of art.
- ~~(8) own all works of art acquired under this act and maintain records of the art works;~~
- ~~(9) provide condition reports on art works and request funds as necessary for the on going maintenance of the art works; and~~
- ~~(10) provide the owning agency with a letter of agreement which specifies routine allowable maintenance.~~

Statutory Authority G.S. 143-408.4; 143-408.5.

**.0006 MAINTENANCE, REPAIR  
AND CONSERVATION**

(a) The North Carolina Arts Council shall provide each using agency with instructions for routine maintenance. The agencies shall refer any need for repair or conservation beyond routine allowable maintenance to the North Carolina Arts Council for professional care and handling.

(b) The North Carolina Arts Council shall provide condition reports on artworks and request additional funds as necessary for the ongoing repair and conservation of the artworks.

Statutory Authority G.S. 143-408.4; 143-408.5.

**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules cited as 10 NCAC 15A .0701 - .0705; 18L .1601 - .1606.*

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

*The public hearing will be conducted at 1:30 p.m. on November 1, 1994 at the Sheraton Inn University Center, 2800 Middleton Avenue, Durham, NC 27705.*

**Reason for Proposed Action:**

**10 NCAC 15A .0701 - .0705** - To clarify roles and scope of responsibility of the State psychiatric hospitals, Dorothea Dix Hospital Deaf Unit staff, and the Regional adult coordinators of mental health services for the deaf in admitting deaf clients into State psychiatric hospitals and transferring deaf clients to the specialized Deaf Unit at Dorothea Dix Hospital.

**10 NCAC 18L .1601 - .1606** - Federal regulations pursuant to Part H of the Individuals with Disabilities Education Act stipulate that the lead agency for the State infant/toddler program (DMH/DD/SAS) develop procedures for assuring the availability of a surrogate parent for children participating in early intervention who require this service.

**Comment Procedures:** Any interested person may present comments by oral presentation or submitting a written statement. Persons wishing to make oral presentations should contact Charlotte Tucker, Division of MH/DD/SAS, 325 N. Salisbury St., Raleigh, NC 27603, 919-733-4774. Written comments will be accepted through November 2, 1994. Time limits for oral remarks may be imposed. Fiscal information regarding these rules is available from the Division, upon request.

**CHAPTER 15 - MENTAL HEALTH  
HOSPITALS**

**SUBCHAPTER 15A - GENERAL  
RULES FOR HOSPITALS**

**SECTION .0700 - ADMISSION OF DEAF  
CLIENTS TO STATE PSYCHIATRIC  
HOSPITALS AND TRANSFER OF DEAF  
CLIENTS TO DOROTHEA DIX HOSPITAL**

**.0701 PURPOSE AND SCOPE**

(a) The purpose of the rules in this Section is to set forth procedures for State psychiatric hospitals when establishing policy for the:

- (1) admission of deaf clients to State psychiatric hospitals; and
- (2) transfer of deaf clients from State psychiatric hospitals to the Dorothea Dix Hospital Deaf Unit (DDH DU).

(b) These Rules shall be used in conjunction with the transfer requirements in G.S. 122C-206 and rules contained in 10 NCAC 15A .0100.

Statutory Authority G.S. 122C-206; 143B-147.

**.0702 DEFINITIONS**

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

- (1) "Certified interpreter" means an interpreter who is certified by the National Registry of Interpreters for the Deaf (NRID), or has received an A or B degree in the North Carolina Interpreter Classification System.
- (2) "Clinical impressions" mean information provided by the Regional Adult Coordinator of Mental Health Services for the Deaf to assist in differentiating psychiatric conditions from the cultural norms of deafness.
- (3) "Deaf client" means an individual who:
  - (a) is admitted to a State psychiatric hospi-

- tal and has a severe to profound hearing loss;
- (b) utilizes any modality of sign language as the primary means of communication; or
- (c) would benefit from a signing environment.
- (4) "Dorothea Dix Hospital Deaf Unit" means the statewide 17-bed co-ed psychiatric unit for deaf adults (age 18 and above) located on the Dorothea Dix Hospital campus.
- (5) "Regional adult coordinator of mental health services for the deaf" means the professional who provides mental health services for deaf adults through the Division's designated regional deaf service centers.

*Statutory Authority G.S. 122C-206; 143B-147.*

**.0703 ADMISSION OF DEAF CLIENTS TO STATE PSYCHIATRIC HOSPITALS**

(a) Except for Dorothea Dix Hospital, upon admission of a client to a State psychiatric hospital, the hospital shall adhere to the following procedures:

- (1) within 24 hours, the responsible professional designated by the hospital director shall notify the Regional Adult Coordinator of Mental Health Services for the Deaf to arrange an assessment of the deaf client;
- (2) within 60 hours of notification by the hospital, the Regional Adult Coordinator shall perform the assessment which shall become part of the primary client record and shall include, but not be limited to:
- (A) an evaluation of the deaf client's language and communication abilities;
- (B) cultural and social information;
- (C) clinical impression; and
- (D) recommendations.

(b) Each State psychiatric hospital that admits a client shall be responsible for obtaining and providing interpreter services from the time of admission until the client is transferred.

*Statutory Authority G.S. 122C-206; 143B-147.*

**.0704 TRANSFER OF DEAF CLIENTS TO THE DOROTHEA DIX DEAF UNIT**

(a) A voluntarily admitted deaf client, who has been determined by the treatment team to require a hospital stay of 15 days or more, shall be eligible for transfer to the DDH DU at the time of such determination.

(b) An involuntarily admitted deaf client who, after the initial court hearing is committed shall be eligible for transfer to the DDH DU after the initial court hearing.

(c) Upon transferring a client to the DDH DU, as determined in Paragraphs (a) or (b) of this Rule, the responsible professional at the sending facility shall:

- (1) comply with the transfer requirements set forth in G.S. 122C-206 and 10 NCAC 15A .0100; and
- (2) explain and ensure that the process for transfer is interpreted by the Regional Coordinator or a certified interpreter.

*Statutory Authority G.S. 122C-206; 143B-147.*

**.0705 DOROTHEA DIX HOSPITAL DEAF UNIT**

(a) The Director of Admissions at Dorothea Dix Hospital shall forward the information required in Rule .0704 of this Section to the Coordinator of the Deaf Unit.

(b) The Director of Admissions, the Coordinator of the Deaf Unit, and the responsible professional at the sending facility shall mutually determine the date of transfer.

(c) The Director of Admissions and the Coordinator of the Deaf Unit may refuse to accept a transfer if the client is determined to be inappropriate for transfer:

- (1) the Coordinator of the Deaf Unit shall consult with the State Coordinator of Mental Health Services for the Deaf; and
- (2) such refusal of transfer shall be documented by both facilities involved, in order to provide background information should a review of the decision be requested.

(d) The Dorothea Dix Hospital Admissions Office shall:

- (1) complete a new "Identification/Face Sheet-Form A" upon receiving a transferred client; and
- (2) incorporate into the primary client record, information which is generated by the DDH DU.

(e) The DDH DU treatment team and the appropriate area program shall be responsible for

discharge planning, and shall ensure that:

- (1) all transferred clients shall be directly discharged from the DDHDU to the community;
- (2) a copy of the aftercare plan is shared with the appropriate Regional Coordinator upon consent of the client, the legally responsible person, and with the sending hospital; and
- (3) transportation for discharged clients shall be provided in accordance with established transportation policy of Dorothea Dix Hospital.

*Statutory Authority G.S. 122C-206; 143B-147.*

## **CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS**

### **SUBCHAPTER 18L - PROGRAM COMPONENT OPERATIONAL STANDARDS**

#### **SECTION .1600 - SURROGATE PARENTS FOR ELIGIBLE INFANTS AND TODDLERS IN EARLY INTERVENTION SERVICES**

##### **.1601 CIRCUMSTANCES REQUIRING SURROGATE PARENTS**

The area program shall assure the availability of a surrogate parent for infants and toddlers eligible for early intervention services when:

- (1) a biological parent or guardian cannot be identified;
- (2) efforts to locate the parent are unsuccessful; or
- (3) the child is involved in a voluntary placement agreement or is placed in protective custody through the local Department of Social Services.

*Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.*

##### **.1602 IDENTIFYING NEED FOR AND SELECTION OF A SURROGATE PARENT**

(a) The child service coordinator shall be responsible for identifying the need for a surrogate parent.

(b) Identification shall be based on any pertinent information and input from:

- (1) the local Department of Social Services; and
- (2) anyone serving on the infant/toddler

interagency council.

(c) The Area Program Director, or a designee, serving the county of the child's legal residence shall select the surrogate parent.

*Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.*

##### **.1603 RESPONSIBILITIES OF A SURROGATE PARENT**

A surrogate parent shall have the responsibility of being an active spokesperson for a child in matters related to the:

- (1) evaluation and assessment of the child;
- (2) development and implementation of the child's IFSP, including annual evaluations and periodic reviews; and
- (3) ongoing provision of early intervention services to the child.

*Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.*

##### **.1604 PRIORITIES FOR SELECTION OF A SURROGATE PARENT**

(a) The area program shall make every effort to select a surrogate parent who has close ties to the child.

(b) In instances when children are placed in foster care or in the care of another individual, the biological parents or guardian shall be given first consideration to act as the surrogate parent.

(c) The following order of priority shall then be considered when selecting the surrogate parent:

- (1) person "acting as a parent" - A grandparent, governess, neighbor, friend, or private individual who is caring for the child;
- (2) interested relative;
- (3) foster parent;
- (4) friend of the child's family; or
- (5) other individuals.

(d) The biological parent or guardian shall be informed about the selection of the surrogate parent.

*Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.*

##### **.1605 CRITERIA FOR SELECTION PROCESS**

Anyone who serves as a surrogate parent shall:

- (1) not have conflicting interests with those of the child who is represented;
- (2) have knowledge and skills that ensure the

- best possible representation of the child;  
 (3) not have any prior history of abuse or neglect; or  
 (4) not be an employee of the agency involved in the provision of early intervention or other services for the child. However, a person who otherwise qualifies to be a surrogate parent is not considered an employee based on being paid by a public agency to serve as a surrogate or foster parent.

Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

#### .1606 TRAINING REQUIREMENTS FOR A SURROGATE PARENT

(a) Anyone who serves as a surrogate parent, and is not related to the child, shall have participated in training provided by or approved by the area mental health, developmental disabilities and substance abuse program.

(b) Training shall include, but not be limited to, the following topics:

- (1) Part H of the Individuals with Disabilities Education Act, regarding parents' rights, entitlements for children, and services offered;
- (2) developmental and emotional needs of eligible infants and toddlers;
- (3) available advocacy services; and
- (4) relevant cultural issues if the child's culture is different from that of the surrogate parent.

(c) The level of training approach shall be based on needs of the surrogate parent, as determined by the surrogate parent in conjunction with the area program.

Statutory Authority G.S. 143B-147; 20 U.S.C. Sections 1401 et. seq., 1471 et. seq.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Division of Medical Assistance intends to amend rule cited as 10 NCAC 26B .0110.*

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

*The public hearing will be conducted at 1:30*

*p.m. on November 3, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.*

**Reason for Proposed Action:** *Amendment necessary to cover non-emergency ambulance transportation whether the services are specialized or routine care that cannot be provided in the recipient's residence and the individual's health would be endangered by any other means of transport.*

**Comment Procedures:** *Written comments concerning this amendment must be submitted by November 3, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

### CHAPTER 26 - MEDICAL ASSISTANCE

#### SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

#### SECTION .0100 - GENERAL

#### .0110 AMBULANCE SERVICES

(a) Reimbursement for ambulance services shall be made only for transportation to the nearest facility (hospital, nursing home, or intermediate care facility), ~~or for transportation to a physician's doctor's office or clinic in an emergency when the physician's treatment is necessary to stabilize a patient enroute to the nearest appropriate facility that provides medical services.~~

(b) Services provided by an ambulance provider under the Medicaid program must be demonstrated to be medically necessary and are subject to limitations described herein. Medical necessity is indicated when the patient's condition is such that any other means of transportation would endanger the patient's health. Ambulance transportation is not considered medically necessary when any other means of transportation can be safely utilized.

(c) Emergency ambulance transportation for the client to receive immediate and prompt medical services arising in an emergency situation. Emergency transportation to a physicians' office is covered only if all the following, conditions are met:

- (1) The patient is enroute to a hospital.
- (2) There is medical need for a professional to stabilize the patient's condition.
- (3) The ambulance continues the trip to the hospital immediately after stabilization.

(d) Non-emergency ambulance transportation to and from a physician directed office, clinic, or other medical facility in which the individual is an inpatient is covered in the following situation:

- (1) Medical necessity is indicated when the use of other means of transportation is medically contraindicated because it would endanger the patient's health. This refers to clients who require transport by stretcher.
- (2) Client is in need of medical specialized services that cannot be provided in the place of residence.
- (3) Return transportation from a facility which has capability of providing total care for every aspect of injury or disease to a facility which has fewer resources to offer highly specialized care.

(e) When claiming Medicaid reimbursement, providers of ambulance services must submit documentation to show that ambulance services were medically necessary. At a minimum the documentation must include:

- (1) Proper completion of claim form with recipient's medical condition described in sufficient detail to demonstrate that transportation by any other means would be medically inappropriate.
- (2) Legible copy of ambulance call report which indicates purpose for transport, all treatments and notes patient's response.
- (3) Sufficient description of patient's condition to justify that patient could only be moved by stretcher.

(f) Prior approval is required for non-emergency transportation for recipients to receive out-of-state services or to return to North Carolina or nearest appropriate facility.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.170.

\*\*\*\*\*

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

NCAC 50B .0101 - .0102, .0201, .0204, .0207, .0311, .0313, .0402 - .0404, and .0408.

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

*The public hearing will be conducted at 1:30 p.m. on November 3, 1994 at the N.C. Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.*

#### **Reason for Proposed Action:**

**10 NCAC 50B .0101, .0201, .0204, .0207, .0311, .0313, .0402 - .0404** - Rules confirms action of the 1994 General Assembly to automatically grant Medicaid eligibility to recipients or SSI payments.

**10 NCAC 50B .0102, .0408** - The legislature recently adopted provisions mandating Medicaid coverage for all children below the poverty level.

**Comment Procedures:** Written comments concerning these amendments must be submitted by November 3, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN: APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

**Editor's Note:** 10 NCAC 50B .0102 was filed as a temporary amendment effective September 12, 1994 and October 1, 1994, 10 NCAC 50B .0408 was filed as a temporary amendment effective September 12, 1994 and October 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

10 NCAC 50B .0403 Paragraph (n) is proposed to be deleted with a November 1, 1994 effective date. It is published in this Register in italics.

## **CHAPTER 50 - MEDICAL ASSISTANCE**

### **SUBCHAPTER 50B - ELIGIBILITY DETERMINATION**

#### **SECTION .0100 - COVERAGE GROUPS**

##### **.0101 MANDATORY**

The following groups required by 42 U.S.C. 1396a (a) (10) shall be eligible for Medicaid:

- (1) Recipients receiving AFDC.

- (2) Deemed recipients of AFDC including:
  - (a) Individuals denied AFDC solely because the payment amount would be less than ten dollars (\$10.00),
  - (b) Participants in AFDC work supplementation programs approved in the AFDC State Plan,
  - (c) Individuals deemed to be AFDC recipients for four months following termination of AFDC due to collection or increased collection of child support,
  - (d) Individuals receiving transitional Medicaid as described in 42 U.S.C. 1396s when AFDC eligibility is lost due to increased earnings,
  - (e) Individuals for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under Title IV E of the Social Security Act as described at 42 U.S.C. 673 (b).
- (3) Qualified pregnant women as defined at 42 U.S.C. 1396d(n)(1).
- (4) Qualified children as defined at 42 U.S.C. 1396d(n)(2).
- (5) Pregnant women, during a 60 day period following termination of the pregnancy, for pregnancy related and post partum services if they applied for Medicaid prior to termination of the pregnancy and were eligible on the date pregnancy is terminated.
- (6) Children, born to a woman who was eligible for and receiving Medicaid on the date of the child's birth, for up to one year from the date of birth; as described at 42 U.S.C. 1396a(e)(4).
- (7) ~~Aged, blind or disabled individuals who meet financial eligibility criteria more restrictive than those of the SSI program~~ Individuals receiving SSI under Title XVI of the Social Security Act.
- (8) Individuals who meet the requirements under 42 U.S.C. 1382h(a) or (b)(1).
- (9) Blind or disabled individuals who were eligible in December 1973 as blind or disabled and who for each consecutive month since December 1973 continue to meet December 1973 eligibility criteria.
- (10) Individuals who were eligible in December 1973 as aged, or blind, or disabled with an essential spouse and who, for each consecutive month since December 1973, continue to live with the essential spouse and meet December 1973

eligibility criteria.

- (11) Individuals who in December 1973 were eligible as the essential spouse of an aged, or blind, or disabled individual and who for each consecutive month since December 1973, have continued to live with that individual who has met December 1973 eligibility criteria.
- (12) Qualified Medicare Beneficiaries described at 42 U.S.C. 1396d(p).
- (13) Pregnant women whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2), for pregnancy related services including labor and delivery.
- (14) Children born after September 30, 1983 and who are under age 19 who are described at 42 U.S.C. 1396a(1).
- (15) Qualified Disabled and Working Individuals described at 42 U.S.C. 1396d(s).
- (16) Individuals as described at 42 U.S.C. 1396a(a)(10)(E)(iii).
- (17) Individuals who would continue to be eligible for SSI except for specific Title II benefits or cost-of-living adjustments as described at 42 U.S.C. 1383c.

*Authority G.S. 108A-54; 42 U.S.C. 1396a (a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.*

#### .0102 OPTIONAL

The following optional groups of individuals described by 42 U.S.C. 1396a(a)(10)(A)(ii) and 42 U.S.C. 1396a(a)(10)(C) shall be eligible for Medicaid:

- (1) Children:
  - (a) Children under age one whose family income is more than the amount established under ~~Paragraph Item~~ (14), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly;
  - (b) Children under age 21 who meet the eligibility requirements of this Subchapter; -
  - (c) Qualified children under age 19 as described in Item (4), Rule .0101 of

this Section, who were born on or before September 30, 1983, and whose income is not more than 100% of the federal poverty level;

- (d) Adopted children under age 18 with special needs, as described at 42 U.S.C. 1396a(a)(10)(A)(ii)(VIII).
- (2) Individuals receiving optional state supplemental payment.
- (3) Caretaker relatives of eligible dependent children.
- (4) Pregnant women:
  - (a) Whose countable income is more than the amount established under ~~Paragraph~~ Item (13), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly, or
  - (b) Who, if their countable income exceeds the percent of the federal poverty level, established in ~~Subparagraph~~ Sub-item (4)(a) of this Rule, meet the eligibility criteria for medically needy set forth in this Subchapter.

*Authority G.S. 108A-54; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133.*

## SECTION .0200 - APPLICATION PROCESS

### .0201 ACCEPTANCE OF APPLICATION

(a) A client shall be allowed to apply without delay. Without delay is the same day the client appears at the county department of social services expressing a financial or medical need.

(b) Except for individuals who are requesting Medicaid as Aged, Blind or Disabled and who are potentially eligible for SSI for whom the Social Security Administration determines Medicaid eligibility based on eligibility for SSI, the The county department of social services shall not act to discourage any individual from applying for Medicaid. It shall be considered discouragement if any employee of the county department of social services:

- (1) requires or suggests the individual wait to apply until he applies for other benefits or until an application for other benefits has been approved or denied;

or

- (2) incorrectly states or suggests the individual is not eligible for Medicaid; or
  - (3) gives incorrect or incomplete information about Medicaid programs; or
  - (4) requires the individual provide or obtain any information needed to establish eligibility prior to signing an application; or
  - (5) any other fact which proves to the satisfaction of the county agency or a hearing officer that the client was discouraged from applying.
- (c) The client shall be informed verbally and in writing, that:
- (1) he can apply without delay.
  - (2) a decision shall be made concerning his eligibility within 45 calendar days from the date of application for Medicaid, except for M-AD. For M-AD the application processing standard shall be 60 calendar days from the date of application for applications which do not require a disability determination, and 90 calendar days for applications which require a disability determination; or
  - (3) he shall receive a written decision concerning his eligibility.

(d) The client shall apply in his county of residence.

(e) The date of the application shall be the date the client or his representative signs the state prescribed application form under penalty of perjury.

(f) If an individual requests assistance by mail, the letter shall be considered a request for information. Within three workdays following receipt of the request, the county agency shall mail follow-up information to the individual. The county agency shall advise the individual to come to the agency to apply and be interviewed, or if he is unable to come in person, to contact the agency so other arrangements can be made to take his application.

(g) If an individual requests assistance by telephone, he shall be advised to come to the county agency to sign an application and be interviewed; or, if he is unable to come to the agency in person other arrangements shall be made to take his application.

(h) An individual or his representative must request a determination for retroactive SSI

Medicaid no later than 60 days from the date of the SSI Medicaid disposition notice or 90 days if good cause is established. Good cause exists when:

- (1) the applicant does not receive the SSI Medicaid notice;
- (2) the applicant or his representative dies;
- (3) the applicant is incapacitated, incompetent, or unconscious and there is no representative acting on his behalf;
- (4) the applicant or spouse, child, or parent of applicant is hospitalized of an extended period of time;
- (5) the applicant's representative fails to meet the required time frame.

*Authority G.S. 108A-54; 42 C.F.R. 435.906; 42 C.F.R. 435.907; 42 C.F.R. 435.911; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992.*

#### **.0204 EFFECTIVE DATE OF ASSISTANCE**

(a) Medicaid coverage shall be effective as follows:

- (1) The month of application, or for SSI recipients, the month application for SSI; or
- (2) As much as three months prior to the month of application when the client received medical services covered by the program and was eligible during the month or months of medical need; or
- (3) If the client applies prior to meeting a non-financial requirement, Medicaid shall begin no earlier than the calendar month in which all non-financial requirements are met; or
- (4) For pregnancy related services under M-PW, the month of application or as much as three months prior to the month of application in which all eligibility requirements are met in the month or months.

(b) Assistance shall be authorized beginning on the first day of the month except when:

- (1) The client's income exceeds the income level and he must spenddown the excess income for medical care. The client shall be authorized on the day his incurred medical care costs equal the amount of the excess income.
- (2) The assets of AFDC related cases, or

cases protected by grandfather provisions, and all Medically Needy cases are reduced to the assets limit during the month. The client shall be authorized on the day the assets are reduced, or incurred medical care costs equal the amount of the excess income, whichever occurs later.

(c) Medicaid coverage shall end on the last day of the last month of eligibility except for those individuals eligible for emergency conditions only as described in Rule .0302 of this Subchapter. The last month of eligibility shall be:

- (1) The month in which timely notice of termination expires; or
- (2) The month in which adequate notice of termination expires; or,
- (3) The last month of the certification period.

*Authority G.S. 108A-54; 42 C.F.R. 435.914; 42 C.F.R. 435.919.*

#### **.0207 REFERRALS**

For all Medicaid applicants and recipients for whom the county department of social services determines eligibility, the The Income Maintenance Caseworker shall explain and make referrals for:

- (1) Healthy Children and Teen Program;
- (2) Family planning services;
- (3) Food stamps;
- (4) Governmental benefits including RSDI, SSI, VA;
- (5) Vocational rehabilitation services;
- (6) Protective services if the client has reason to believe a child receiving assistance has been neglected, abused, or exploited;
- (7) Women, Infants and Children Program (WIC).

*Authority G.S. 108A-54; 42 C.F.R. 441.56; 42 U.S.C. 1396a(a).*

### **SECTION .0300 - CONDITIONS FOR ELIGIBILITY**

#### **.0311 RESERVE**

North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group is determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Items (4) and (5) of this

~~Rule. elected the option under Section 1902(f) of the Social Security Act to limit Medicaid eligibility for the aged, blind or the disabled to individuals who meet eligibility requirements more restrictive than those under Supplemental Security Income.~~ Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.
- (a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:
  - (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
  - (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.
- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services of a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, contact the clerk of court for intervention. The resources shall be excluded in determining financial

eligibility pending action by the clerk of court.

- (c) When a Medicaid application is filed on behalf of an individual who:
  - (i) is alleged to be mentally incompetent,
  - (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
  - (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence is supported by a physician's certification or other competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, the resources shall be excluded except as provided in Sub-items (1)(d) or (e) of this Rule.
- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in Chapters 1 or 35A of the North Carolina General Statutes.
- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by

competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual that the member was in fact incompetent. Any such showing of incompetence is subject to rebuttal by competent evidence as specified herein and in Sub-item (1)(c) of this Rule.

(2) The limitation of resources held for reserve for the budget unit shall be as follows:

- (a) For Family and Children's related categorically needy cases, one thousand dollars (\$1,000) per budget unit;
- (b) For ~~aged, blind or disabled cases and~~ Family and Children's related medically needy cases, one thousand five hundred dollars (\$1,500) for a budget unit of one person, two thousand two hundred fifty dollars (\$2,250) for a budget unit of two persons and increases of one hundred dollars (\$100.00) for each additional person in the budget unit over two, not to exceed a total of three thousand, fifty dollars (\$3,050);
- (c) For aged, blind, and disabled cases, two thousand dollars (\$2000) for a budget unit of one and three thousand dollars (\$3000) for a budget unit of two.
- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
  - (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
  - (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy ~~and medically needy aid to the aged, blind, or disabled cases protected~~

~~by grandfathered provisions are aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:~~

- (a) The value of personal effects and household goods are not counted.
- (b) Value of tenancy in common interest in real property is not counted.
- (c) Value of life estate interest in real property is not counted.
- ~~(a) Cash on hand;~~
- ~~(b) The current balance of savings accounts, except savings of a student saving his earnings for educational purposes;~~
- ~~(c) The current balance of checking accounts;~~
- ~~(d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);~~
- ~~(e) Equity in motor vehicles, including motor homes, determined to be non-essential according to Rule .0403 of this Subchapter;~~
- ~~(f) Equity in excess of one thousand dollars (\$1,000) in motor vehicles, including motor homes, determined to be essential according to Rule .0403 of this Subchapter;~~
- ~~(g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
- ~~(h) Negotiable and salable promissory notes and loans;~~
- ~~(i) Trust funds;~~
- ~~(j) The portion of lump sum payments remaining after the month of receipt;~~
- ~~(k) Individual Retirement Accounts or other retirement accounts or plans;~~
- ~~(l) Equity in real property not used as the homesite or not producing an income;~~
- ~~(m) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;~~
- ~~(n) Salable remainder interest in life estate property not used as the budget unit's homesite;~~

- (e) ~~Patient accounts in long term care facilities.~~
- (5) Resources counted in the determination of financial eligibility for aid to ~~category~~ needy aged, blind or disabled cases not protected by grandfathered provisions are medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Act except for the following methodologies:
- (a) The value of personal effects and household goods are not counted.
- (b) Personal property is not a countable resource if it:
- (i) is used in a trade or a business; or
- (ii) is used to produce goods and services for personal use; or
- (iii) produces a net annual income.
- (c) Real property not exempted under homesite rules is not a countable resource if it:
- (i) is used in a trade or business; or
- (ii) is used to produce goods and services for personal use; or
- (iii) is non-business income producing property that produces net annual income after operational expenses of at least six percent of equity value per methodologies under Title XVI of the Social Security Act.
- (d) Value of tenancy in common interest in real property is not counted.
- (e) Value of life estate interest in real property is not counted.
- (f) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
- (a) ~~Cash on hand;~~
- (b) ~~The balance of savings accounts, except savings of a student saving his earnings for educational purposes;~~
- (c) ~~The balance of savings account, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;~~
- (d) ~~The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self employment deposited to pay~~
- ~~annual expenses;~~
- (e) ~~Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);~~
- (f) ~~Trust funds;~~
- (g) ~~Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
- (h) ~~Negotiable and salable promissory notes and loans;~~
- (i) ~~Revoceable burial contracts and burial trusts;~~
- (j) ~~The portion of lump sum payments remaining after the month of receipt;~~
- (k) ~~Individual Retirement Accounts or other retirement accounts or plans;~~
- (l) ~~Patient accounts in long term care facilities;~~
- (m) ~~Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;~~
- (n) ~~Equity in real and/or personal property when the combined equities is six thousand dollars (\$6,000) or less and the property does not yield a net annual income of at least six percent of the equities;~~
- (o) ~~Equity in real and/or personal property when the combined equities exceed six thousand dollars (\$6,000);~~
- (p) ~~Equity in personal property, subject to (5) (m) and (n) of this Rule, is limited to:~~
- (i) ~~Mobile homes not used as homesite;~~
- (ii) ~~Boats, boat trailers and boat motors;~~
- (iii) ~~Campers;~~
- (iv) ~~Farm and business equipment;~~
- (q) ~~Equity in real property, subject to (5) (m) and (n) of this Rule, is limited to:~~
- (i) ~~Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;~~
- (ii) ~~Fee simple interest;~~
- (iii) ~~Salable remainder interest;~~

- (iv) ~~Tenancy by the entirety interest only;~~
- (6) ~~Resources counted in the determination of financial eligibility for aid to medically needy aged, blind or disabled cases not protected by grandfathered provisions are:~~
  - (a) ~~Cash on hand;~~
  - (b) ~~The balance of savings accounts, except savings of a student saving his earnings for educational purposes;~~
  - (c) ~~The balance of savings accounts, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;~~
  - (d) ~~The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;~~
  - (e) ~~Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand dollars (\$1,000);~~
  - (f) ~~Trust funds;~~
  - (g) ~~Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
  - (h) ~~Negotiable and salable promissory notes and loans;~~
  - (i) ~~Revocable burial contracts and burial trusts;~~
  - (j) ~~The portion of lump sum payments remaining after the month of receipt;~~
  - (k) ~~Individual Retirement Accounts or other retirement accounts or plans;~~
  - (l) ~~Patient accounts in long term care facilities;~~
  - (m) ~~Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;~~
  - (n) ~~Equity in real property and personal property that does not produce a net annual income;~~
  - (o) ~~Equity in personal property, subject to (6)(m) of this Rule, is limited to:~~
    - (i) ~~Mobile homes not used as homesite;~~
    - (ii) ~~Boats, boat trailers and boat motors;~~
    - (iii) ~~Campers;~~

- (iv) ~~Farm and business equipment;~~
- (p) ~~Equity in real property, subject to (6)(m) of this Rule, is limited to interest in real estate other than that used as the budget unit's homesite and includes:~~
  - (i) ~~Fee simple interest;~~
  - (ii) ~~Tenancy by the entirety interest only;~~
  - (iii) ~~Salable remainder interest;~~
  - (iv) ~~Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons.~~
- (6) (7) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
  - (d) The portion of lump sum payments remaining after the month of receipt;
  - (e) Cash value of life insurance policies owned by the budget unit;
  - (f) Revocable trust funds;
  - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (h) Negotiable and salable promissory notes and loans;
  - (i) Revocable pre-paid burial contracts;
  - (j) Patient accounts in long term care facilities;
  - (k) Individual Retirement Accounts or other retirement accounts or plans;
  - (l) Equity in non-essential personal property limited to:
    - (i) Mobile homes not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment;
    - (v) Equity in excess of one thousand five hundred dollars (\$1,500) in one motor

vehicle determined to be essential under Rule .0403 of this Subchapter;

- (vi) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
- (m) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
  - (i) Fee simple interest,
  - (ii) Tenancy by the entirety interest only,
  - (iii) Salable remainder interest,
  - (iv) Value of burial plots.

(7) (8) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:

- (a) Cash on hand;
- (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (c) The balance of checking accounts less the currently monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
- (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
- (e) Trust funds;
- (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (g) Negotiable and salable promissory notes and loans;
- (h) Revocable prepaid burial contracts;
- (i) Patient accounts in long term care facilities;
- (j) Individual Retirement Accounts or other retirement accounts or plans;
- (k) Equity in non-essential, non-income producing personal property limited to:
  - (i) Mobile home not used as home,
  - (ii) Boats, boat trailers and boat motors,
  - (iii) Campers,
  - (iv) Farm and business equipment,
  - (v) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
- (l) Equity in real property is limited to interest in real estate other than that

used as the budget unit's homesite and is limited to:

- (i) Fee simple interest,
- (ii) Tenancy by the entirety interest only,
- (iii) Salable remainder interest,
- (iv) Value of burial plots.

*Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.*

### .0313 INCOME

(a) For family and children's cases, income ~~Income~~ from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
  - (A) RSDI,
  - (B) Veteran's Administration,
  - (C) Railroad Retirement,
  - (D) Pensions or retirement benefits,
  - (E) Workmen's Compensation,
  - (F) Unemployment Compensation,
  - (G) Support Payments,
  - (H) Contributions,
  - (I) Dividends or interest from stocks, bonds, and other investments,
  - (J) Trust fund income,
  - (K) Private disability or employment compensation,
  - (L) That portion of educational loans, grants, and scholarships for maintenance,
  - (M) Work release,
  - (N) Lump sum payments,
  - (O) Military allotments,
  - (P) Brown Lung Benefits,
  - (Q) Black Lung Benefits,
  - (R) Trade Adjustment benefits,
  - (S) SSI when the client is in long term care,
  - (T) VA Aid and Attendance when the client is in long term care,
  - (U) Foster Care Board payments in excess of state maximum rates for M-AF clients who serve as foster parents,
  - (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d),
  - (W) Income allowed from an

- institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d),
- (X) Sheltered Workshop Income,
  - (Y) Loans if repayment of a loan and not counted in reserve,
  - (Z) Income deemed to Family and Children's clients.
- (2) Earned Income.
- (A) Income from wages, salaries, and commissions,
  - (B) Farm Income,
  - (C) Small business income including self-employment,
  - (D) Rental income,
  - (E) Income from roomers and boarders,
  - (F) Earned income of a child client who is a part-time student and a full-time employee,
  - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents,
  - ~~(H) Earned income tax credits for the Aged, Blind or Disabled only;~~
  - (H) ~~(H)~~ VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule will be considered available unless specifically excluded by Paragraph (b) of this Rule, or by regulation or law.
- (b) For family and children's cases, income from the following sources shall not be counted in the calculation of financial eligibility:
- (1) Earned income of a child who is a part-time student but is not a full-time employee;
  - (2) Earned income of a child who is a full-time student;
  - (3) Incentive payments and training allowances made to WIN training participants;
  - (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program,
- and other programs under Titles I, II, and III of Public Law 93-113;
- (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
  - ~~(6) Earnings of MAABD clients who are participating in ADAP (Adult Developmental Activity Program) training programs for a specified period;~~
  - ~~(6)~~ (7) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work, sporadic babysitting, etc.;
  - ~~(7)~~ (8) Relocation payments;
  - ~~(8)~~ (9) Value of the coupon allotment under the Food Stamp Program;
  - ~~(9)~~ (10) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. If home grown produce is sold, count as earned income;
  - ~~(10)~~ (11) Benefits received from the Nutrition Program for the Elderly;
  - ~~(11)~~ (12) Food Assistance under the Child Nutrition Act and National School Lunch Act;
  - ~~(12)~~ (13) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
  - ~~(13)~~ (14) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, etc., except for any portion used or designated for maintenance;
  - ~~(14)~~ (15) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
  - ~~(15)~~ (16) Benefits received under Title VII of the Older Americans Act of 1965;
  - ~~(16)~~ (17) Payments received under the Experimental Housing Allowance

- Program (EHAP);
- (17) ~~(18)~~ In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (18) ~~(19)~~ Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (19) ~~(20)~~ Income of a child under 21 in the budget unit who is participating in JTPA and is receiving as a child;
- (20) ~~(21)~~ Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (21) ~~(22)~~ Payments to Indian tribe members as permitted under P.L. 94-114;
- (22) ~~(23)~~ Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (23) ~~(24)~~ SSI except for individuals in long term care;
- (24) ~~(25)~~ HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (25) ~~(26)~~ Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his affairs. Such benefits must be accounted for separate from the payee's own income and resources;
- (26) ~~(27)~~ Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (27) ~~(28)~~ The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (28) ~~(29)~~ Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (29) ~~(30)~~ Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (30) ~~(31)~~ HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (31) ~~(32)~~ Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (32) ~~(33)~~ Adoption assistance;
- (33) ~~(34)~~ Incentive payments made to a client participating in a vocational rehabilitation program;
- (34) ~~(35)~~ Title XX funds received to pay for services rendered by another individual or agency;
- (35) ~~(36)~~ Any amount received as a refund of taxes paid.
- ~~(37) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a disabled widow or widower resulting from the 1983 Actuarial Reduction Formula (ARF) which caused the loss of SSI effective January, 1984, for an MAA, MAB, or MAD client:~~
- ~~(A) Who received a disabled widow or widower's benefit and SSI simultaneously in 1983 as identified by the Social Security Administration; and~~
- ~~(B) Who lost SSI because of the elimination of the ARF; and~~
- ~~(C) Who is not now eligible for SSI; and~~
- ~~(D) Who was between 50 and 59 years of age in 1983; and~~
- ~~(E) Who applied for Medicaid no later than June 30, 1988; and~~
- ~~(F) Who is classified as Categorically Needy;~~
- ~~(38) Any Cost of Living Allowance (COLA) increase in the RSDI benefit for a client or his financially responsible spouse or parent(s), who:~~
- ~~(A) Is classified as Categorically Needy for the MAA, MAB, or MAD programs; and~~
- ~~(B) Lost SSI or State/County Special Assistance (S/C SA) for any reason; and~~
- ~~(C) Would currently be eligible for SSI or S/C SA if all COLA's since he was last eligible for and received RSDI and SSI or S/C SA concurrently were disregarded;~~
- ~~(39) The RSDI benefit for a client who:~~
- ~~(A) Is a disabled widow or widower or surviving divorced spouse; and~~

~~(B) Received SSI for the month prior to the month he began receiving RSDI, and~~

~~(C) Would continue to be eligible for SSI if the RSDI benefit were not counted, and~~

~~(D) Is not entitled to a Medicare Part A.~~

~~(40) Earnings of aged, blind and disabled individuals who have a plan for achieving self support (PASS) that is approved by the Social Security Administration.~~

(c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility is based on standards and methodologies in Title XVI of the Social Security Act.

(d) For aged, blind, and disabled cases, income from the following sources shall not be counted:

(1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit which resulted in the loss of SSI for those individuals described in Item (17) of Rule .0101 of this Subchapter.

(2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration.

(e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

(1) The income level shall be reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;

(2) An individual living in a long term care facility or other medical institution shall be allowed as income level a deduction for personal needs described under Rule .0314 (Personal Needs Allowance) of this Subchapter; -

(3) The categorically needy income level for an aged, blind, and disabled individual or couple is the SSI individual or couple amount. This is the current Federal Benefit Rate (FBR).

Authority *G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732;*

*42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d); 45 C.F.R. 233.20; P.L. 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992.*

## SECTION .0400 - BUDGETING PRINCIPALS

### .0402 FINANCIAL RESPONSIBILITY AND DEEMING

The income and resources of financially responsible persons are deemed available to the applicant or recipient in the following situations:

(1) For aged, blind, and disabled cases in a private living arrangement, financial responsibility and deeming of income and resources is based on methodologies in Title XVI of the Social Security Act: ~~exists for:~~

- (a) spouses when living together or temporarily absent;
- (b) parents for disabled or blind children under age 19 who are living in the household with them or temporarily absent.

(2) For aged, blind, and disabled institutionalized individuals:

(a) who have a spouse living in the community, ~~eases in long term care,~~ financial responsibility and deeming of income and resources is consistent with Section 1924 of the Social Security Act. ~~exist for:~~

- ~~(a) spouse to spouse only for the month of entry into a long term care facility;~~
- (b) parents for dependent children under age 19 in skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, or hospitals whose care and treatment is not expected to exceed 12 months as certified by the patient's physician.

(3) For AFDC related cases, except pregnant women described at 42 U.S.C. 1396a(1), financial responsibility exists for:

- (a) spouses when living together or one spouse is temporarily absent in long term care;
- (b) parents for dependent children under age 21 living in the home with them or temporarily absent;
- (c) parents for dependent children under age 21 in nursing facilities or

intermediate care facilities for the mentally retarded except when such care and treatment is expected to exceed 12 months as certified in writing by their attending physician.

- (d) parents for dependent children under age 21, in institutions for medical, surgical or inpatient psychiatric care, including inpatient treatment for substance abuse except when such care and treatment is expected to exceed 12 months as certified in writing by their attending physician and approved by the Division of Medical Assistance.
- (4) For pregnant women described at 42 U.S.C. 1396a(1) financial responsibility exists for:
  - (a) The pregnant woman's spouse if living in the home or temporarily absent from the home;
  - (b) The father of the unborn child if not married to the pregnant woman but living in the home and acknowledging paternity of the unborn child.
- (5) Parental financial responsibility for children in private living arrangements or long term care facilities for whom the county has legal custody or placement responsibility is based on court ordered support and voluntary contributions from the parents.

assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;

- (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph (e) (n) of this Rule.

(d) For all aged, blind, and disabled cases, the The reserve resource limit, financial responsibility, and countable and non-countable assets are based on standards and methodology in Title XVI of the Social Security Act except as specified in Items (4) and (5) in Rule .0311 of this Subchapter, for the budget unit for aged, blind or disabled cases shall be determined as follows:

- (1) ~~The reserve limit for two persons shall be allowed when spouses live together in a private living situation or when the couple share the same room in long term care;~~
- (2) ~~Allow the reserve limit for one person for the Community Alternative Program (CAP) client with a spouse at home and only count the resources that are available to the CAP client in determining his countable reserve;~~
- (3) ~~The reserve limit for one person is allowed for the client who is in long term care and the spouse remains in the home;~~
- (4) ~~The reserve allowance for one person is allowed for the client who is in long term care and the spouse is in domiciliary care;~~
- (5) ~~The reserve limit allowed for a blind or disabled minor child who lives with his parent or parents or is temporarily~~

*Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c. 1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.823.*

#### **.0403 RESERVE**

(a) The value of resources held by the client or by a financially responsible person shall be considered available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;
- (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public

absent includes the child and the parent or parents with whom the child lives;

- (6) ~~The reserve limit allowed for a blind or disabled dependent child under age 19 who is in long term care shall include only the child if his care and treatment are expected to exceed 12 months, as certified by the child's physician.~~

(e) Countable resources for Family and Children's related cases will be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.

(f) The homesite shall be excluded from countable resources for Family and Children's related cases as follows:

- (1) ~~For all aged, blind or disabled cases and family and children's related cases, the~~ The homesite is the client's principal place of residence, which includes the house and in the city the lot on which the house sits and all the buildings on the lot, or in a rural area the land on which the house sits, up to one acre, and all buildings on the acre, and, ~~for all aged, blind, or disabled cases and medically needy family and children's related cases,~~ the homesite also includes up to twelve thousand dollars (\$12,000) tax value in real property contiguous to the principal place of residence, regardless of whether the principal place of residence is owned by the client.
- (2) Additional value in real property contiguous to the principal place of

residence shall be a countable resource.

- (3) ~~The exclusion of the homesite from countable resources set forth in Subparagraphs (f)(1) and (2) of this Rule shall also be applicable for all aged, blind, or disabled cases when the client is in long term care and his spouse, minor children, or adult disabled children remain in the home or a physician has certified in writing that the client will return home within six months from the date of entry into the hospital or long term care facility.~~

(g) ~~For categorically needy aged, blind or disabled cases without grandfathered protection, nonhome property and personal property that is income producing shall be excluded from resources when the budget unit's equity in the property does not exceed six thousand dollars (\$6,000) and the property produces a net annual return of at least six percent of the excludable equity value for each income producing activity.~~

(g) (h) For medically needy Families and Children cases ~~and medically needy aged, blind or disabled cases without grandfathered protection,~~ if the client or any member of the budget unit has ownership in a probated estate, the value of the individual's proportionate share of the countable property shall be a countable resource unless the property can be excluded as the homesite or as income producing property, as stated in Paragraphs (e) and (f) of this Rule.

(h) (i) For family and children's related cases ~~the~~ The equity in non-excluded real property shall be counted toward the reserve level of the budget unit.

(i) (j) A motor vehicle shall be determined an essential vehicle for medically needy Family and Children's related cases, when it must be specially equipped for use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment, as follows:

- (1) ~~For aged, blind or disabled individuals with grandfathered protection, if public transportation cannot be used because it is not available or because of his physical or mental condition and the vehicle is needed to:~~
  - (A) Obtain regular medical treatment, or
  - (B) Retain employment, or
  - (C) Go shopping if the shopping area is more than one half mile from the client's home, or
  - (D) Go shopping if the client is responsible for shopping and is

~~physically limited from walking one-half mile, or~~

~~(E) Transport children to and from school and the school is not within reasonable walking distance;~~

~~(2) For aged, blind or disabled cases without grandfathered protection and medically needy Family and Children's related cases, a vehicle must be specially equipped for use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment.~~

~~(j) (k) For family and children's related cases~~ The value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.

~~(k) (t) For family and children's related cases~~ The current market value of a remainder interest in life estate shall be determined by applying the remainder interest percentage from the chart in the Medicaid Eligibility Manual to the tax value of the property. A lower current market value for remainder interest may be established by offering the interest for sale and the highest offer received, if any, is less than the value determined by application of the values chart to the tax value.

~~(m) For all aged, blind or disabled cases, up to one thousand five hundred dollars (\$1,500) may be excluded from countable resources for the client and his spouse under the burial exclusion. Apply the one thousand five hundred dollar (\$1,500) burial exclusion for each individual separately. Only the following resources may be excluded and they must be excluded in the following order:~~

- ~~(1) Irrevocable pre need burial contracts, burial trusts, or other irrevocable arrangements established for burial expenses;~~
- ~~(2) Face value of life insurance policies that accrue cash value when the total face value of all policies for the budget unit is one thousand five hundred dollars (\$1,500) or less and the cash value was not counted in reserve;~~
- ~~(3) Revocable burial contracts or trusts established for burial expenses. Any excess remains a countable resource;~~
- ~~(4) Cash value of life insurance that has been designated for burial expenses if the cash value was considered in determining countable reserve. Any cash value in excess of one thousand five hundred dollars (\$1,500) remains a~~

~~countable resource.~~

~~(n) For all aged, blind or disabled cases and medically needy Family and Children's related cases, the value of trust funds established for the client or for any member of the budget unit is a countable resource unless it is determined by the courts that the funds are not available for the beneficiary of the trust.~~

(Editor's Note: Paragraph (n) above is proposed to be deleted with a November 1, 1994 effective date subject to review by the Rules Review Commission.)

~~(l) (n)~~ For a married individual:

(1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under these rules must be considered when determining his or her countable reserve.

(2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (p) of this Rule.

~~(m) (e)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or
- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

Authority G.S. 108A-54; 108A-55; 143-127.1(d); S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R.

435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; *Deficit Reduction Act of 1984* (P.L. 98-369), Section 2373; *Correll v. DSS/DMA/DHR*, No. 406PA91 (North Carolina Supreme Court); *Schweiker v. Gray Panthers*, 453 U.S. 34, 101 S. Ct. 2633, 69 L. Ed.2d 460 (1981).

#### .0404 INCOME

(a) Income that is actually available and that which the client or someone acting in his behalf can legally make available for support and maintenance shall be counted.

(b) Only income actually available or predicted to be available to the budget unit for the certification period eligibility is being determined shall be counted.

(c) Disregards. (1) For aged, blind, and disabled cases allow income disregards based on disregards allowed by Title XVI of the Social Security Act. M-AA or M-AD clients, disregard the first twenty dollars (\$20.00) per month of earned income, plus one half of the next sixty dollars (\$60.00), not to exceed a total disregard of fifty dollars (\$50.00) monthly.

(2) ~~For M-AB clients, disregard the first eighty-five dollars (\$85.00) per month of earned income, plus one half of the remainder.~~

(3) ~~If earned income is paid in a lump sum for services rendered over a period of more than one month, apply the disregard on a monthly basis for the number of months involved.~~

(d) Deductions subtracted after disregards are:

(1) Child or incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per child over two years of age or adult or two hundred dollars (\$200.00) per child under two years of age for Family and Children's related cases.

(2) ~~Child care cost for M-AABD cases.~~

(3) A standard deduction of ninety dollars (\$90.00) from the total earned income of each budget unit member for Family and Children's related cases.

(4) For aged, blind, and disabled cases apply income deductions based on deductions allowed by Title XVI of the Social Security Act. A standard deduction is based on the amounts listed below for aged, blind or disabled cases, or actual work related expenses if greater than the standard, but in no case

~~may the deduction exceed sixty-five dollars (\$65.00) plus one half of the remainder of gross income.~~

Gross Income	Standard Deduction
\$1 - 50	\$ 2.00
51 - 100	4.00
101 - 150	11.00
151 - 200	19.00
201 - 300	43.00
301 - 400	79.00
401 - up	127.00

(e) Exemptions.

(1) ~~After applying all disregards and deductions, twenty dollars (\$20.00) per month shall be exempted from income from any source for aged, blind, or disabled cases per budget unit.~~

(2) ~~The twenty dollar (\$20.00) exemption shall be applied for individuals in long term care only to establish financial eligibility for Medicaid. It shall not be allowed in the computation for cost of care.~~

(e) (f) Except for M-PW wages, wage deductions and work-related expenses shall be calculated by converting the average amount per pay period into a monthly amount:

- (1) If paid weekly, multiply by 4.333.
- (2) If paid bi-weekly, multiply by 2.1666.
- (3) If paid semi-monthly, multiply by 2.
- (4) If paid monthly, use the monthly gross.
- (5) If salaried, and contract renewed annually, divide annual income etc. by 12.

(f) ~~(g)~~ For M-PW cases, the budget unit's actual income for the calendar month of eligibility shall be verified.

*Authority G.S. 108A-25(b); 42 C.F.R. 435.121; 42 C.F.R. 435.401; 42 C.F.R. 435.603; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.734; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 45 C.F.R. 435.845; 45 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.*

#### .0408 CLASSIFICATION

(a) The following individuals shall be classified as categorically needy:

- (1) Individuals who receive cash payments under programs of public assistance;
- (2) Deemed recipients of SSI described in Item (17) of Rule .0101 of this Subchapter; or Individuals who are eligible for public assistance cash payments but

~~who choose not to apply for cash payments;~~

- (3) Deemed recipients of AFDC described in ~~Paragraph~~ Sub-item (2)(b) of Rule .0101 of this Subchapter;
  - (4) Pregnant women described in:
    - (A) ~~Paragraph (e)~~ Item (3) or ~~(m)~~ (13) of Rule .0101 of this Subchapter; or
    - (B) ~~Subparagraph (d)(1)~~ Sub-item (1)(d) of Rule .0102 of this Subchapter;
  - (5) Individuals under 21 described in:
    - (A) ~~Paragraph Item (d)~~ (4) or ~~(n)~~ (14) of Rule .0101 of this Subchapter; or
    - (B) ~~Subparagraph (a)(1) or (a)(2)~~ Sub-item (1)(a) of Rule .0102 of this Subchapter; or
    - (C) ~~Subparagraph (a)(3)~~ Sub-item (1)(d) of Rule .0102 of this Subchapter who meet the eligibility requirements for categorically needy in this Subchapter;
  - (6) Qualified Medicare Beneficiaries described in ~~Paragraph Item~~ (1) of Rule .0101 of this Subchapter;
  - (7) Individuals described in ~~Paragraph Item~~ (9), ~~or (10) or (11)~~ of Rule .0101 of this Subchapter who were receiving cash assistance payments in December 1973;
  - (8) Individuals described in ~~Paragraph (e)~~ Item (5) of Rule .0101 of this Subchapter who were classified categorically needy when pregnancy terminated; ~~or~~
  - (9) Individuals described in ~~Paragraph (f)~~ Item (6) of Rule .0101 of this Subchapter whose mother is classified as categorically needy;
  - (10) Individuals described in Sub-item (1)(c) of Rule .0102 of this Subchapter; or
  - (11) Individuals described in Sub-item (1)(d) of Rule .0102 of this Subchapter.
- (b) The following individuals who are not eligible as categorically needy and meet the requirements for medically needy set forth in this Subchapter shall be classified medically needy:
- (1) Pregnant women described in:
    - (A) ~~Paragraph (e)~~ Item (5) of Rule .0101 of this Subchapter who were classified medically needy when their pregnancy terminated; or
    - (B) ~~Subparagraph (d)(2)~~ Sub-item (4)(b) of Rule .0102 of this Subchapter;
  - (2) Individuals under age 21;
  - (3) Caretaker relatives of eligible dependent children; or

- (4) Aged, blind or disabled individuals not eligible for a public assistance cash payment.

Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4.

## 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 rule cited as 12 NCAC 9A .0103.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person interested in this proposed rule amendment may demand a Public Rule-Making Hearing by submitting a written request for such hearing to the Commission within 15 days of publication of this notice. This request should be directed to Scott Perry, Deputy Director, at the address listed below.*

*Reason for Proposed Action: This rule amendment is required in order to accurately revise the Commission's definitions for "Class A" and "Class B" misdemeanor, which will be materially altered when the Structured Sentencing Act (1993 Session Laws, Chapters 538 and 539) becomes effective on October 1, 1994. Failure to allow this rule amendment will abolish the Commission's ability to evaluate criminal justice applicants and officers based upon the commission or conviction of misdemeanor offenses.*

*Comment Procedures: Any person interested in this proposed rule amendment may present written comments relevant to the proposed action to the Commission by November 2, 1994. Written comments should be directed to Scott Perry, Deputy Director, at the address listed below. This proposed rule amendment is available for public inspection and copies may be obtained at the following address: Criminal Justice Standards Division, N.C. Dept. of Justice, 1 West Morgan Street, Room 150, Court of Appeals Bldg., P.O.*

Drawer 149, Raleigh, NC 27602.

**CHAPTER 9 - CRIMINAL JUSTICE  
EDUCATION AND TRAINING  
STANDARDS**

**SUBCHAPTER 9A - CRIMINAL JUSTICE  
EDUCATION AND TRAINING  
STANDARDS COMMISSION**

**SECTION .0100 - COMMISSION  
ORGANIZATION AND PROCEDURES**

**.0103 DEFINITIONS**

The following definitions apply throughout this Chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (6) "Correctional Officer" means any employee of the North Carolina Department of Correction who is responsible for the custody or treatment of inmates.
- (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and further includes probation and parole

intake officers; probation/parole officers-surveillance; probation/parole intensive officers; and, state parole case analysts.

- (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (9) "Criminal Justice Training Points" means points earned toward the Criminal Justice Officers' Professional Certificate Program by successful completion of commission-approved criminal justice training courses. Twenty classroom hours of commission-approved criminal justice training equals one criminal justice training point.
- (10) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee formally appointed in writing by the Department head.
- (11) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (12) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (13) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
  - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
  - (b) for Youth Services and Department of Correction personnel, that the officer is then attending the last or final phase of

the approved training course necessary for fully satisfying the total course completion requirements.

- (14) "High School" means a school accredited as a high school by:
- (a) the Department or board of education of the state in which the school is located; or
  - (b) the recognized regional accrediting body; or
  - (c) the state university of the state in which the school is located.
- (15) "In-Service Training" means any and all training prescribed in Subchapter 9E Rule .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (16) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (17) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately

without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

- (18) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of Chapter 17E of the General Statutes.
- (19) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of commission-approved law enforcement training courses. Twenty classroom hours of commission-approved law enforcement training equals one law enforcement training point.
- (20) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (21) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
- (a) "Class A Misdemeanor" means an act

committed or omitted in violation of any common law, duly enacted ordinance, or criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months, which is not classified as a Class B Misdemeanor pursuant to Sub-item (21)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina, similar the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which is expressly included herein as a Class A Misdemeanor, if the defendant offender was could have been sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)], for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North

Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years, which is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor manual as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicles vehicle or traffic offenses designated as being misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar the laws of other jurisdictions with the

following exceptions: Class B Misdemeanor ~~misdemeanor~~ does expressly include, either first or subsequent offenses of ~~G.S. 20-138(a) or (b), 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).~~ driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years. This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense.

- (22) "Parole Case Analyst" means an employee of the North Carolina Department of Correction who works under the supervision of the North Carolina Parole Commission, whose duties include analyzing and processing cases under consideration for parole, preparing and presenting parole recommendations, analyzing and processing executive clemency matters and interviewing inmates.
- (23) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with Rule 9C .0404.
- (24) "Probation/Parole Officer" means an employee of the Division of Adult Probation and Parole whose duties include supervising, evaluating, treating, or instructing offenders placed on

probation or parole or assigned to any other community-based program operated by the Division of Adult Probation and Parole.

- (25) "Probation/Parole Intake Officer" means an employee of the Division of Adult Probation and Parole, other than a regular Probation/Parole officer, whose duties include conducting, preparing, or delivering investigations, reports, and recommendations, either before or after sentencing, upon the request or referral of the court, the Parole Commission, or the Director of the Division of Adult Probation and Parole.
- (26) "Probation/Parole Intensive Officer" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole officer, probation/parole intake officer, and probation/parole officer-surveillance who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole, whose duties include supervising, investigating, reporting, counseling, treating, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who serves as the lead officer in such a unit.
- (27) "Probation/Parole Officer - Surveillance" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole and a probation/parole intake officer who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who is trained in community corrections and law enforcement techniques.
- (28) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHz

frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHz frequency (K) band and either of which operates in the stationary and/or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHz (Ka) band and operates in either the stationary or moving mode.

- (29) "Resident" means any youth committed to a facility operated by the North Carolina Division of Youth Services.
- (30) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, penal, correctional, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (31) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (32) "Speed-Measuring Instruments" means those devices or systems formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically restricted in the approved list of 12 NCAC 9C .0601.
- (33) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (34) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.
- (35) "State Youth Services Officer" means an employee of the North Carolina Division of Youth Services whose duties include the evaluation, treatment, instruction, or supervision of juveniles committed to that agency.

Statutory Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Sheriffs' Education and Training Standards Commission intends to amend rule cited as 12 NCAC 10B .0103.*

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

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person interested in this proposed rule amendment may demand a Public Rule-Making Hearing by submitting a written request for such hearing to the Commission within 15 days of publication of this notice. This request should be directed to Joan Neuner, Director, at the address listed below.*

*Reason for Proposed Action: This rule amendment is required in order to accurately revise the Commission's definitions for "Class A" and "Class B" misdemeanor, which will be materially altered when the Structured Sentencing Act (1993 Session Laws, Chapters 538 and 539) becomes effective on October 1, 1994. Failure to allow this rule amendment will abolish the Commission's ability to evaluate criminal justice applicants and officers based upon the commission or conviction of misdemeanor offenses.*

*Comment Procedures: Any person interested in this proposed rule amendment may present written comments relevant to the proposed action to the Commission by November 2, 1994. Written comments should be directed to Joan Neuner, Director, at the address listed below. This proposed rule amendment is available for public inspection and copies may be obtained at the following address: Sheriffs' Standards Division, N.C. Dept. of Justice, P.O. Drawer 629, Raleigh, NC 27602.*

## CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

### SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

#### SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

# **.0103 DEFINITIONS**

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this Chapter, unless the context clearly requires otherwise:

- (1) "Appointment" as it applies to a deputy sheriff means the date the deputy's oath of office is administered, and as it applies to a jailer means either the date the jailer's oath of office was administered, if applicable, or the jailer's actual date of employment as reported on the Report of Appointment (Form F-4) by the employing agency, whichever is earlier.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict of or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Department Head" means the chief administrator of any criminal justice agency. Department head includes the sheriff or a designee formally appointed in writing by the Department head.
- (4) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (5) "Division" means the Sheriffs' Standards Division.
- (6) "High School" means a school accredited as a high school by:
  - (a) the Department or Board of Education of the state in which the high school is located; or
  - (b) the recognized regional accrediting body; or
  - (c) the state university of the state in which the high school is located.
- (7) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires.
- (8) "Essential Job Functions" means those tasks deemed by the agency head to be necessary for the proper performance of a justice officer.
- (9) "Lateral Transfer" means certification of

a justice officer when the applicant for certification has previously held general or grandfather certification as a justice officer or a criminal justice officer as defined in G.S. 17C-2(c), excluding state correctional officers, state probation/parole officers, and state youth services officers, provided the applicant has been separated from a sworn law enforcement position for no more than one year, or has had no break in service.

(10) "Misdemeanor" means those criminal offenses not classified by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the Commission as follows:

- (a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, or criminal statute, or ~~criminal traffic code~~ of this state, ~~or any other jurisdiction, either civil or military, for which maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred or its political subdivisions includes imprisonment for a term of not more than six months, which is not classified as a Class B Misdemeanor pursuant to Subitem (10)(b) of this Rule.~~ Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under ~~Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina,~~ similar the laws of other jurisdictions,

or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (~~G.S. 20-138.1~~) which is expressly included herein as a class A misdemeanor, if the ~~defendant~~ offender ~~was could have been sentenced under~~ punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)] ~~for a term of not more than six months.~~ Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class "A" Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, ~~or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws and statutes of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or~~

criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor ~~vehicles~~ vehicle or traffic offenses designated as being misdemeanors under Chapter 20 (~~Motor Vehicles~~) of the General Statutes of North Carolina or similar the laws of other jurisdictions with the following exceptions: : Class B Misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-166 (~~duty to stop in event of accident~~), driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years. This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense and shall also include a violation of G.S. 20-28(b) (~~driving while license permanently revoked or suspended~~).

- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "Dual Certification" means that a justice officer holds probationary, general, or grandfather certification as both a deputy

- sheriff and a jailer with the same employing agency.
- (13) "Jailer" means any person performing responsibilities, either on a full-time, part-time, permanent or temporary basis, which include but are not limited to the control, care, and supervision of any inmates incarcerated in a county jail or other confinement facility under the direct supervision and management of the sheriff.
- (14) "Deputy Sheriff" means any person who has been duly appointed and sworn by the sheriff and who is authorized to exercise the powers of arrest in accordance with the laws of North Carolina.
- (15) "Commission" as it pertains to criminal offenses shall mean a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of Chapter 150B of the North Carolina General Statutes, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (16) "Sworn Law Enforcement Position" means a position with a criminal justice agency of the United States, any state, or a political subdivision of any state which, by law, has general power of arrest held by a person who has successfully completed the North Carolina Basic Law Enforcement Training Course.

*Statutory Authority G.S. 17E-7.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Marine Fisheries Commission intends to amend rules cited as 15A NCAC 31 .0001; 3J .0106, .0401; 3M .0504; 3O .0201, .0205, .0208 and adopt 3I .0015 - .0016; 3M .0513; 3O .0110.*

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

*The public hearings will be conducted at:*

7:00 p.m.  
November 1, 1994  
NC AQUARIUM  
Manteo, North Carolina

7:00 p.m.  
November 2, 1994  
Pitt Community College  
Highway 11S  
Room 153  
Fulford Building  
Greenville, North Carolina

7:00 p.m.  
November 7, 1994  
Joslyn Hall  
Carteret Community College  
3505 Arendell Street  
Morehead City, North Carolina

7:00 p.m.  
November 9, 1994  
Archdale Building  
512 North Salisbury Street  
Raleigh, North Carolina

7:00 p.m.  
November 16, 1994  
John A. Holms High School  
600 Woodard St.  
Edenton, North Carolina

7:00 p.m.  
November 17, 1994  
University of North Carolina  
Morton Hall  
Randall Street  
Lot G  
Wilmington, North Carolina

***Reason for Proposed Action:***

**15A NCAC 3I .0001** - Amends definition of channel net for clarification; defines live rock, coral, shellfish production, marketing, and planting effort of leases and franchises.

**15A NCAC 3I .0015** - Allows for collection of replacement costs for violations of Fisheries Rules. Specifies methods for determination of costs; lists species for which replacement costs may be assessed. This should be an additional deterrent to violators.

**15A NCAC 3I .0016** - Prohibits the taking of coral or live rock. Emergency action in federal waters and prohibitions in waters of some southern states

may cause more pressure on North Carolina's limited amount of this natural resource.

**15A NCAC 3J .0106** - Restricts area where channel nets are allowed. This is needed for navigational safety.

**15A NCAC 3J .0401** - Extends the expiration date for this rule another year. Conflicts with gear in all areas is yet to be resolved.

**15A NCAC 3M .0504** - Allows, through proclamation, for larger size limit on hook-and-line caught weakfish. This will allow for a larger creel limit as required for compliance by the Atlantic Coastal Fisheries Cooperative Management Act.

**15A NCAC 3M .0513** - Establishes a closed season for taking of blueback herring, alewife, American shad and hickory shad. Populations of these species are at low levels and stocks are considered stressed.

**15A NCAC 3O .0110** - Establishes procedures for transfer of vessel license both from one vessel to another or from one individual to another. Transfer from one vessel to another was authorized by 1993 (Regular Session 1994), c. 576, s. 3.

**15A NCAC 3O .0201** - Outlines process for determination of production and marketing on leases and franchises. This amendment is necessary based on a recent contested case ruling.

**15A NCAC 3O .0205** - Clarifies process for denial of renewals because of pollution. This amendment is necessary based on a recent contested case ruling.

**15A NCAC 3O .0208** - Requires new lease or franchise owners to meet production and marketing requirements. This amendment is necessary based on a recent contested case ruling.

**Comment Procedures:** Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 10 AM, December 1, 1994. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings.

#### **BUSINESS SESSION**

The Marine Fisheries Commission will conduct a Business Session on December 2 - 3, 1994, at the MDS Center, 422 Raleigh Road, Smithfield, NC, beginning at 9:00 A.M. on the morning of December 2, 1994, to decide on these proposed rules.

### **CHAPTER 3 - MARINE FISHERIES**

### **SUBCHAPTER 3I - GENERAL RULES**

#### **.0001 DEFINITIONS**

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment. All fishing equipment used in coastal fishing waters except:
  - (A) Seines less than 12 feet in length;
  - (B) Spears;
  - (C) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
  - (D) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
  - (E) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and
  - (F) Cast Nets.
- (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
- (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
- (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (6) Use. Employ, set, operate, or permit to be operated or employed.
- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power to capture

- fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp ~~which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat at both ends.~~
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish. Determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized

sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.

- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important seafood species.
- (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
- (B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to

- clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
- (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
- (I) Fire corals (Class Hydrozoa);
- (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
- (iii) Bryozoans (Phylum Bryozoa);
- (iv) Tube Worms (Phylum Annelida):
- (I) Fan worms (Sabellidae);
- (II) Feather duster and Christmas tree worms (Serpulidae);
- (III) Sand castle worms (Sabellaridae).
- (v) Mussel banks (Phylum Mollusca:Gastropoda);
- (vi) Colonial barnacles (Arthropoda:Crustacea:Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
- (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
- (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
- (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
- (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
- (i) Sea fans (Gorgonia sp.);
- (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
- (iii) Sea pansies (Renilla sp.).
- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
- (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

Statutory Authority G.S. 113-134; 143B-289.4.

**.0015 REPLACEMENT COSTS OF MARINE AND ESTUARINE RESOURCES - FISH**

(a) Fish, as used throughout this Rule, is defined in G.S. 113-129(7).

(b) Replacement Costs Distinguished. As it applies to fishes the term "replacement costs" must be distinguished from the "value" of the fish concerned. Except in cases where fish may lawfully be sold on the open market, as with commercially reared species, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only anglers, but conservationists and those to whom the value of fishes is primarily aesthetic, cannot be measured in dollar amounts. The average cost of fish legally taken by anglers including travel and lodging, fishing equipment and bait, excise taxes on equipment, licenses and other fees, may fairly be estimated. This too, however, is a reflection on the value of existing fishery resources rather than a measure of the cost of their replacement. Thus, the relative value of fish species should be considered only as they may bear on the necessity or desirability of actual replacement.

(c) Determining replacement costs. The replacement costs of species of fishes that have been taken, injured, removed, harmfully altered, damaged, or destroyed shall be determined as follows. The weight of each undersized fish shall be adjusted to the average weight of a fish on the minimum legal size established by the Marine Fisheries Commission for that species. The replacement cost shall be calculated based on the greater of either:

- (1) the cost of propagating and rearing the species in a hatchery and the cost of transporting them to areas of suitable habitat; or
- (2) the average annual ex-vessel value of fish species per pound.  
The cost of propagating, rearing and transporting the fish and the average annual ex-vessel value of fish species per pound shall be taken from the Division of Marine Fisheries annual statistical report for the calendar year next preceding the year in which the offense was committed. When the cost of propagating, rearing or transporting a particular species is not available, replacement costs shall be calculated based upon the average annual ex-vessel value of the species. When

neither the cost of propagating, rearing or transporting a particular species, nor the average annual ex-vessel value of the species is available, replacement costs shall be determined according to the following factors:

- (A) whether the species is classified as endangered or threatened;
- (B) the relative frequency of occurrence of the species in the state;
- (C) the extent of existing habitat suitable for the species within the state;
- (D) the dependency of the species on unique habitat requirements;
- (E) the cost of improving and maintaining suitable habitat for the species;
- (F) the cost of capturing the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (G) the availability of the species and the cost of acquisition for restocking purposes;
- (H) the cost of those species which, when released, have a probability of survival in the wild;
- (I) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild.

(d) Replacement costs will be assessed for the following fish:

- (1) Alewife (River Herring);
- (2) Amberjacks;
- (3) Anglerfish (Goosefish);
- (4) Bluefish;
- (5) Bonito;
- (6) Butterfish;
- (7) Carp;
- (8) Catfishes;
- (9) Cobia;
- (10) Croaker, Atlantic;
- (11) Cutlassfish, Atlantic;
- (12) Dolphinfish;
- (13) Drum, Black;
- (14) Drum, Red (Channel Bass);
- (15) Eels;
- (16) Flounders;
- (17) Garfish;
- (18) Gizzard Shad;
- (19) Groupers;
- (20) Grunts;
- (21) Hakes;
- (22) Harvestfish;

- (23) Herring, Thread;
- (24) Hickory Shad;
- (25) Hogfish;
- (26) Jacks;
- (27) Kingfishes (Sea Mullet);
- (28) Mackerel, Atlantic;
- (29) Mackerel, King;
- (30) Mackerel, Spanish;
- (31) Menhaden, Atlantic;
- (32) Mullets;
- (33) Perch, White;
- (34) Pigfish;
- (35) Pompano;
- (36) Porgies;
- (37) Scup;
- (38) Sea Basses;
- (39) Seatrout, Spotted;
- (40) Shad (White);
- (41) Sharks;
- (42) Sharks, Dogfish;
- (43) Sheepshead;
- (44) Skippers;
- (45) Snappers;
- (46) Spadefish, Atlantic;
- (47) Spot;
- (48) Striped Bass;
- (49) Shellfishes (Puffers);
- (50) Swordfish;
- (51) Tilefish;
- (52) Triggerfish;
- (53) Tuna;
- (54) Wahoo;
- (55) Weakfish (Grey Trout);
- (56) Whiting;
- (57) Wreckfish;
- (58) Unclassified Fish;
- (59) Brown Shrimp;
- (60) Pink Shrimp;
- (61) Rock Shrimp;
- (62) White Shrimp;
- (63) Unclassified Shrimp;
- (64) Clam, Hard;
- (65) Conchs;
- (66) Crabs, Blue, Hard;
- (67) Crabs, Blue, Soft;
- (68) Octopus;
- (69) Oyster, Fall;
- (70) Scallop, Bay;
- (71) Scallop, Calico;
- (72) Scallop, Sea;
- (73) Squid;
- (74) Unclassified Shellfish.

(e) Cost of Investigations:

- (1) Factors to be Considered. Upon any investigation required as provided by

G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of marine and estuarine resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:

- (A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;
- (B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state's contribution to social security taxes and to the applicable retirement system;
- (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;
- (D) the cost of all necessary transportation;
- (E) the use or rental of boats and motors, when required;
- (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or contaminated by reason of completing the investigation;
- (G) the cost of necessary telephonic communications;
- (H) any other expense directly related to and necessitated by the investigation.
- (2) Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual cost of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:
  - (A) subsistence: the per diem amount for meals, reasonable gratuities, and lodging away from home, not to

exceed the then current maximum per diem for state employees;

(B) transportation: total mileage by motor vehicle multiplied by:

(i) the then current rate per mile for travel by state-owned vehicle; or

(ii) the then current rate per mile for travel by privately owned vehicle, as applicable;

(C) boat and motor: ten dollars (\$10.00) per hour;

(D) uniform and clothing cleaning and repair: actual cost;

(E) telephonic communications: actual cost;

(F) other expenses: actual cost.

*Statutory Authority G.S. 113-134; 113-267; 143B-289.4.*

#### **.0016 CORAL AND LIVE ROCK**

(a) It is unlawful to harvest or possess aboard a vessel coral or live rock as defined in 15A NCAC 3I .0001 (24) and (25).

(b) Live rock and coral shall be returned immediately to the waters where taken.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

### **SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES**

#### **SECTION .0100 - NET RULES, GENERAL**

##### **.0106 CHANNEL NETS**

(a) It is unlawful to use a channel net:

- (1) Until the Fisheries Director specifies by proclamation, time periods and areas for the use of channel nets and other fixed nets for shrimping.
- (2) Without yellow light reflective tape on the top portion of each staff or stake and on any buoys located at either end of the net.
- (3) With any portion of the set including boats, anchors, cables, ropes or nets within 50 feet of the center line of the Intracoastal Waterway Channel.
- (4) ~~In the middle third of any navigation channel marked by Corps of Engineers and/or U.S. Coast Guard. With any portion of the net including buoys, within any navigational channel marked~~

by State or Federal agencies.

(5) Unless attended by the fisherman who shall be no more than 50 yards from the net at all times.

(b) It is unlawful to use or possess aboard a vessel any channel net with a corkline exceeding 40 yards.

(c) It is unlawful to leave any channel net, channel net buoy, or channel net stakes in coastal fishing waters from December 1 through March 1.

(d) It is unlawful to use floats or buoys of metallic material for marking a channel net set.

(e) From March 2 through November 30, cables used in a channel net operation shall, when not attached to the net, be connected together and any attached buoy shall be connected by non-metal line.

(f) It is unlawful to leave channel net buoys in coastal fishing waters without yellow light reflective tape on each buoy and without the owner's identification being clearly printed on each buoy. Such identification must include one of the following:

- (1) Owner's N.C. motorboat registration number; or
- (2) Owner's U.S. vessel documentation name; or
- (3) Owner's last name and initials.

(g) It is unlawful to use any channel nets, anchors, lines, or buoys in such a manner as to constitute a hazard to navigation.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

#### **SECTION .0400 - FISHING GEAR**

##### **.0401 FISHING GEAR**

(a) The Fisheries Director may, by proclamation, close the areas described in Paragraph (b) of this Rule to the use of specific fishing gear.

(b) It is unlawful to use fishing gear as specified by proclamation at the time and dates specified in the proclamation between the Friday before Easter through December 31 in the following areas when such areas have been closed by proclamation:

- (1) All or part of the Atlantic Ocean, up to one-half mile from the beach;
- (2) Up to one-half mile in all directions of Oregon Inlet;
- (3) Up to one-half mile in all directions of Hatteras Inlet;
- (4) Up to one-half mile in all directions of Ocracoke Inlet;

- (5) Up to one-half mile of the Cape Lookout Rock Jetty;
- (6) Up to one-half mile in all directions of fishing piers open to the public;
- (7) Up to one-half mile in all directions of State Parks;
- (8) Up to one-half mile of marinas as defined by the Coastal Resources Commission.

(c) The Fisheries Director shall specify in the proclamation the boundaries of the closure through the use of maps, legal descriptions, prominent landmarks or other permanent type markers.

(d) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized by this Rule.

(e) This Rule will be in effect until July 1, 1995 1996.

*Statutory Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.4.*

### SUBCHAPTER 3M - FINFISH

#### SECTION .0500 - OTHER FINFISH

##### .0504 TROUT

(a) Spotted seatrout (speckled trout). It is unlawful to possess spotted seatrout less than 12 inches in length.

(b) Weakfish (gray trout). The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish:

- (1) Specify areas,
- (2) Specify seasons,
- (3) Specify quantity,
- (4) Specify means/methods,
- (5) Specify size, ~~but~~ :
  - (A) But not greater than 12 inches for weakfish taken by any method other than hook and line;
  - (B) But not greater than 14 inches for weakfish taken by hook and line.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

##### .0513 RIVER HERRING AND SHAD

It is unlawful to take blueback herring, alewife, American shad and hickory shad by any method from April 15 through January 1.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

### SUBCHAPTER 3O - LICENSES, LEASES, AND FRANCHISES

#### SECTION .0100 - LICENSES

##### .0110 VESSEL LICENSE TRANSFER

(a) A currently valid vessel license may be transferred from one vessel to another vessel purchased by the owner upon the surrender of the license receipt and decal from the originally licensed vessel to the license agent and purchase of a vessel license for the new vessel at full cost. All other requirements for purchasing a vessel license apply to this transaction.

(b) Upon transfer of ownership of a vessel bearing a current valid vessel license, a vessel license may be transferred from the previous owner to the new owner by completing the ownership transfer section on the gold colored license receipt. Proof that vessel ownership has been transferred to the new owner is required. Proof may include a notarized bill of sale or a vessel registration transfer or documentation transfer.

*Statutory Authority G.S. 113-134; 113-153.1; 143B-289.4; 1993 (Regular Session 1994), c. 576, s. 3.*

#### SECTION .0200 - LEASES AND FRANCHISES

##### .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

(a) All areas of the public bottoms underlying coastal fishing waters shall:

- (1) Meet the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish purposes:
  - (A) The lease area must not contain a natural shellfish bed which is defined as ten bushels or more of shellfish per acre.
  - (B) The lease area must not be closer than 100 feet to a developed shoreline. In an area bordered by undeveloped shoreline, no minimum setback is required. When the area to be leased borders the applicant's property or borders the property of riparian owners who have consented in a notarized statement, the Secretary may reduce the distance from shore

required by this Rule.

- (C) Unless the applicant can affirmatively establish a necessity for greater acreage through the management plan that is attached to the application and other evidence submitted to the Secretary, the lease area shall not be less than one-half acre and shall not exceed:

- (i) 10 acres for oyster culture;
- (ii) 5 acres for clam culture; or
- (iii) 5 acres for any other species.

This Section shall not be applied to reduce any holdings as of July 1, 1983.

- (2) Produce and market 25 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 25 bushels of cultch or seed shellfish per acre per year ~~as determined by Division biologists~~ to meet commercial production by planting effort. Planting effort will be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after March 1, 1994.

- (A) Only shellfish planted, produced or marketed according to the definitions in 15A NCAC 3I .0001 (26), (27) and (28) shall be submitted on production/utilization forms for shellfish leases and franchises.

- (B) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish can be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises can be credited as planting effort on only one lease or franchise.

- (C) Production and marketing information and planting effort information are compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet either the production requirement or the planting effort requirement within the dates set forth to be judged in compliance with these standards.

- (D) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors will be used:

- (i) 300 oysters, 400 clams, or 400 scallops equal one bushel;
- (ii) 40 pounds of scallop, 60 pounds of oyster, 75 pounds of clam and 90 pounds of fossil stone equal one bushel.

- (E) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained will be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

- (F) All bushel measurements will be in U.S. Standard Bushels.

(b) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

(c) Water columns superjacent to duly recognized perpetual franchises shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

(d) Water column leases must produce and market 100 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year as determined by Division biologists to meet commercial production by planting effort. Planting effort will be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after March 1, 1994. The rules for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (a) of this Rule.

*Statutory Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.4.*

## .0205 LEASE RENEWAL

(a) Lease renewal applications will be provided to lessees as follows:

- (1) For shellfish bottom leases, renewal applications will be provided in January of the year of expiration.

- (2) For water column leases, renewal applications will be provided at least 90 days prior to expiration dates.

(b) Lease renewal applications shall be accompanied by management plans meeting the requirements of 15A NCAC 3O .0202(b). A filing fee of fifty dollars (\$50.00) shall accompany each renewal application for shellfish bottom leases.

(c) A survey for renewal leases will be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.

(d) When it is determined, after due notice to the lessee, and after opportunity for the lessee to be heard, that the lessee has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom or water column lease. The lessee may appeal the Secretary's decision by initiating a contested case as outlined in 15A NCAC 3P .0002.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing prior to renewal. For the purposes of this ~~Paragraph~~ lease renewal determinations, an area will be considered closed to shellfishing shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal for four or more consecutive years prior to renewal upon recommendation by the State Health Director, except shellfish leases in areas which have been closed for four or more years and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.

(f) If the Secretary declines to renew a lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, may issue a renewal lease for all or part of the area previously leased to the lessee that contains conditions necessary to conform the renewal lease to the minimum requirements of this Section for new leases.

*Statutory Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.4.*

## .0208 CANCELLATION

(a) In addition to the grounds established by G.S. 113-202, the Secretary will begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish at the following rates:

- (1) For shellfish bottom leases and franchises, 25 bushels per acre per year.
- (2) For water column leases, 100 bushels per acre per year.

These production and marketing rates will be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates will be averaged over the first five year period for initial leases and over the most recent three year period thereafter. Three year averages for production and marketing rates will be computed irrespective of changes of ownership of the shellfish lease or franchise.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.

(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 3P .0002.

(e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 3P .0002.

*Statutory Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.4.*

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**Notice** is hereby given that the Marine Fisheries Commission has rescheduled the hearing date for the hearing to be heard in Wilmington that was noticed in Register, Issue 11 on September 1, 1994 (9:11 NCR 820-825) for the adoption of rules cited as 15A NCAC 30 .0301 - .0310. All other scheduled hearings throughout the State published in the notice on September 1, 1994 remain the same as published.

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

The public hearing published for November 10, 1994 has been rescheduled and will be conducted at 7:00 p.m. on November 17, 1994 at the University of North Carolina, Morton Hall, Randall Street, Lot G, Wilmington, North Carolina.

**Reason for Proposed Action:**

**15A NCAC 30 .0301 - APPEALS PANEL MEMBERS AND CHAIR;** allows for designees in place of Chair of Marine Fisheries Commission and Director of the Division of Marine Fisheries. Requires appointment of such designees within specified timeframe. Sets up procedures for attendance and requires quorum.

**15A NCAC 30 .0302 - APPEALS PANEL MEETINGS;** schedules meetings for set dates. Outlines methods of presentations for petitioners.

**15A NCAC 30 .0303 - APPEAL PETITION AND OTHER EVIDENCE;** outlines criteria for contents in petitions, where to submit petitions, time limit for Division of Marine Fisheries to make recommendation and time limit for responding to such recommendation.

**15A NCAC 30 .0304 - CONSIDERATION OF APPEAL PETITIONS;** outlines timeframe for considering petitions, information to be considered in the petition, and how to settle votes that are tied.

**15A NCAC 30 .0305 - EMERGENCY LICENSES;** outlines criteria for issuance of 30 days emergency license.

**15A NCAC 30 .0306 - HARDSHIP LICENSES;** outlines criteria for issuance of a hardship license.

**15A NCAC 30 .0307 - APPEALS PANEL FINAL DECISION;** outlines procedures for issuance or denials of an approved emergency or hardship license.

**15A NCAC 30 .0308 - OFFICIAL RECORD;** outlines what shall be the official record of the decision.

**15A NCAC 30 .0309 - REASONS FOR REVOCATION;** sets forth reasons for revoking emergency or hardship licenses.

**15A NCAC 30 .0310 - TEMPORARY EMERGENCY VESSEL CRAB LICENSE;** outlines procedures and reasons for issuance of emergency vessel crab licenses.

**Comment Procedures:** Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 10:00 a.m., December 1, 1994. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings.

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10F .0319 and .0332.

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

The public hearing will be conducted at 10:00 a.m. on October 20, 1994 at the Archdale Building, 512 N. Salisbury Street, 3rd Floor Conference Room, Raleigh, NC 27604-1188.

**Reason for Proposed Action:**

**15A NCAC 10F .0319 -** To establish a no-wake zone on Conaby Creek beginning at the N.C. 45 Bridge and continuing eastward 1000 feet on Conaby Creek.

**15A NCAC 10F .0332 -** To establish a no-wake zone on Lake Hickory 50 yards from the southeast end of the marina at Rink Dam and extending to Rink Dam in Alexander County.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record hearing will be open for receipt of written comments from

10/2/94 to 11/3/94. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

#### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

##### .0319 WASHINGTON COUNTY

(a) Regulated Area Areas. This Rule applies to the following waters and portions of waters: ~~that portion of Mackey's Creek which lies between a point 150 yards upstream from the center of SR 1321, where said road dead ends on the eastern shore of the creek, to a point 150 yards downstream from the center of SR 1321.~~

- (1) that portion of Mackey's Creek which lies between a point 150 yards upstream from the center of SR 1321, where said road dead ends on the eastern shore of the creek, to a point 150 yards downstream from the center of SR 1321.
- (2) that portion of Conaby Creek beginning at the N.C. 45 Bridge and continuing eastward north northeast 1000 feet.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed in the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Washington County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

##### .0332 ALEXANDER COUNTY

(a) Regulated Area. This Rule applies only to those waters of Lake Hickory set out in this Rule which are located in Alexander County: the waters beginning 50 yards from the southeast end of the marina and ending at Rink Dam.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed ~~within 50 yards of Taylorsville Beach Marina or~~ within 50 yards of any public boat launching ramp

~~or~~ while on the waters of ~~the any~~ regulated area areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Alexander County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable.

Statutory Authority G.S. 75A-3; 75A-15.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 13A .0011 and .0012.*

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

*The public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.*

*Reason for Proposed Action: To incorporate by reference federal rules which were promulgated between May 24, 1993 and June 30, 1994 which are needed to remain in compliance with EPA authorization requirements. Delete Paragraph (c) of 15A NCAC 13A .0011 provisions which were replaced in 15A NCAC 13A .0018. Amend 15A NCAC 13A .0012 to include 40 CFR 268.37 Waste Specific Provisions.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments*

will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

## CHAPTER 13 - SOLID WASTE MANAGEMENT

### SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

#### .0011 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES - PART 266

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal", have been incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.30 through 266.35 (Subpart D), "Hazardous Waste Burned for Energy Recovery", have been incorporated by reference including subsequent amendments and editions.

~~(c) 40 CFR 266.40 through 266.44 (Subpart E), "Used Oil Burned for Energy Recovery", have been incorporated by reference including subsequent amendments and editions.~~

(c) ~~(d)~~ 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery", has been incorporated by reference including subsequent amendments and editions.

~~(d)~~ ~~(e)~~ 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed", has been incorporated by reference including subsequent amendments and editions.

~~(e)~~ ~~(f)~~ 40 CFR 266.100 through 266.122 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces", have been incorporated by reference including subsequent amendments and editions.

~~(f)~~ ~~(g)~~ Appendices to 40 CFR Part 266 have been incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c); 150B-21.6.

#### .0012 LAND DISPOSAL RESTRICTIONS - PART 268

(a) 40 CFR 268.1 through 268.14 (Subpart A), "General", have been incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 268.30 through ~~268.36~~ 268.37 (Subpart C), "Prohibitions on Land Disposal", have been incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 268.40 through 268.46 (Subpart D), "Treatment Standards", have been incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 268.50 (Subpart E), "Prohibitions on Storage", has been incorporated by reference including subsequent amendments and editions.

(e) Appendices to 40 CFR Part 268 have been incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c); 150B-21.6.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .2801, .2803 - .2804, .2806 - .2810, .2812 - .2824, .2826 - .2830, .2833 and .2834.*

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

*The public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.*

*Reason for Proposed Action: The Child Day Care Rules as promulgated in 1991, were a completely rewritten set of rules. Some rules have been unclear or are now inconsistent with the Division of Child Development name and rules. The amendments seek to clarify portions of the rule that appeared unclear, to standardize terms with those used in other rules of the Section and the*

Division of Child Development to develop rules for infant and toddler feeding areas within child care rooms.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18A - SANITATION

#### SECTION .2800 - SANITATION OF CHILD DAY CARE FACILITIES

##### .2801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or technical specifications, to effectively accommodate and support the

planned, current, or projected workloads for a specified operational area.

- (2) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food service Equipment equipment and utensils which meet and are installed in accordance with National Sanitation Foundation (NSF) ~~or equivalent~~ standards or equal shall be considered as approved. The NSF standards are hereby ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(e), including any subsequent amendments and editions.~~ This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from the National Sanitation Foundation, P.O. Box 13014, Ann Arbor, Michigan, 48113-0140 at a cost of three hundred twenty-five dollars (\$325.00).
- (3) ~~"Child Day Care Section" means the Child Day Care Section of the North Carolina Department of Human Resources.~~
- (3) (4) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (4) (5) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body; or indirectly, via substances or inanimate objects, such as contaminated drinking glasses, toys or water; or via vectors, such as flies, mosquitoes, ticks, or other insects.
- (5) (6) "Department" or "DEHNR" means the N.C. Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (6) "Division of Child Development" means the Division of Child Development of the N.C. Department of Human Resources.
- (7) "Eating and Cooking Utensils" means and includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (8) "Environmental Health Specialist" means

- a person authorized to represent the Department.
- (9) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
- (11) "Hygroscopic Food" means food which readily takes up and retains moisture, such as bean sprouts.
- (12) "Impervious" means that which will not allow entrance or passage, such as an airtight plastic container that will not allow the entrance of moisture or vermin.
- (13) "Potable Water" means water from an approved source which is suitable for drinking.
- (14) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated food of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (15) "Putrescible Materials" means materials likely to rot or putrefy, such as fruit, vegetables, meats, dairy products, or similar items.
- (16) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (17) "Sanitize" means the approved bactericidal treatment by a process which ~~provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.~~ meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

- (18) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (19) "Single-Service Articles" means tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers which are designed, fabricated and intended by the manufacturer for one-time use.
- (20) "Single-Use Articles" means bulk food containers and utensils intended by manufacturer to be used once and discarded. The term includes items such as formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include "single-service articles" as defined in this Section.

*Statutory Authority G.S. 110-91.*

## 2803 INSPECTIONS AND REPORTS

(a) Unannounced inspections of child day care facilities shall be made by an Environmental Health Specialist at least ~~twice a year beginning January 1, 1992.~~ once each six months. ~~Prior to that date, each facility shall be inspected at least annually.~~ An original and two copies of the Sanitation Standards Evaluation Form for Day Care Facilities shall be completed by the Environmental Health Specialist. The original shall be submitted to the ~~Child Day Care Section~~ Division of Child Development by the Environmental Health Specialist. The facility operator and the Environmental Health Specialist shall each retain a copy.

(b) ~~If conditions found at the environmental health specialist determines that conditions found at the~~ facility at the time of any inspection are dangerous to the health of the children, the Environmental Health Specialist shall notify the ~~Child Day Care Section~~ Division of Child Development within 24 hours by verbal contact. The original of the inspection report documenting the dangerous conditions shall be sent to the ~~Child Day Care Section~~ Division of Child Development within two working days following the inspection.

(c) An Environmental Health Specialist may conduct an inspection of any child day care facility as frequently as necessary in order to ensure

compliance with applicable sanitation standards.

*Statutory Authority G.S. 110-91.*

#### **.2804 FOOD SUPPLIES**

(a) Food shall be in good condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited.

(b) Milk products that are used shall be Grade "A" pasteurized fluid milk and fluid milk products or evaporated milk. The term "milk products" means those products as defined in 15A NCAC 18A .1207 .1200. Copies of 15A NCAC 18A .1207 .1200 may be obtained from the Environmental Health Services Section, Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Unless prescribed by a physician, dry milk and dry milk products may be used only for cooking purposes, including cooked pudding desserts and flavored hot beverages.

(c) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker - packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the State or foreign shellfish control agency. After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.

(d) Raw eggs or products containing raw eggs shall not be consumed, including raw cookie dough, cake batter, brownie mix, milkshakes, ice cream and other food products. A pasteurized egg product may be used as a substitute for raw eggs.

(e) Formula, mother's milk, and other bottled beverages ~~juice~~ sent from home shall be fully prepared, dated, and identified for the appropriate child at the child's home. All formula, mother's milk, and other bottled beverages shall be returned

to the child's home or discarded at the end of each day. Formula ~~and juice~~ provided by the child day care facility shall be commercially pre-packaged, ready-to-feed, fully prepared, and packaged in single-use service items containers. ~~Further~~ However, formula that does not meet these requirements ~~and juice~~ may be provided by the child day care facility as prescribed by the child's physician or instructed by parent or guardian in writing. Bottles and other drinking utensils provided by the child day care facility shall be sanitized in accordance with this Section. ~~All unused formula, mother's milk, and juice sent from home shall be discarded at the end of each day.~~ Formula and other beverages ~~juice~~, which require refrigeration, baby food, after opening ~~and recovering~~, and mother's milk shall be identified for the appropriate child and shall be refrigerated at 45°F (7°C) or below. Commercially prepared baby foods shall be served from a serving dish rather than the food jar. Open jars of baby food shall be covered, dated, refrigerated, and used within 48 hours. However, baby food may be served directly from the jar to one child if unused portions of the food are discarded after each feeding.

(f) Facilities receiving prepared, ready-to-eat meals from outside sources shall use only catered meals obtained from a food handling establishment permitted or inspected by ~~the~~ a health department. During transportation, food shall meet the requirements of these Rules relating to food protection and storage.

(g) All bag lunches containing potentially hazardous foods shall be refrigerated in accordance with this Section.

*Statutory Authority G.S. 110-91.*

#### **.2806 FOOD STORAGE**

(a) Food products shall be stored in approved, clean, tightly covered, storage containers once the original package is opened. Container covers shall be impervious and nonabsorbent.

(b) Foods not stored in the product container or package in which it was obtained, shall be stored in a tightly covered, approved food storage container identifying the food by common name.

(c) Food shall be stored above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area.

(d) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection

sprinkler heads that may be required by law. Food shall not be stored in toilet or laundry rooms, hallways, or other areas where there is a potential for contamination.

(e) ~~Food not subject to further washing or cooking before serving shall be stored in a manner that protects it from cross-contamination.~~ All food shall be stored in a manner to protect it from dust, insects, drip, splash and other contamination.

(f) Packaged food such as milk or other fluid containers may be stored in undrained ice as long as any individual units are not submerged in water. Wrapped sandwiches shall not be stored in direct contact with ice.

(g) Refrigerated storage:

- (1) Refrigeration equipment shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each refrigerator shall be provided with a numerically scaled indicating thermometer, accurate to  $\pm 3^{\circ}\text{F}$ , ( $\pm 1.5^{\circ}\text{C}$ ) located to measure the air temperature in the warmest part of the refrigerator and located to be easily readable. Recording thermometers, accurate to  $\pm 3^{\circ}\text{F}$  ( $\pm 1.5^{\circ}\text{C}$ ), may be used in lieu of indicating thermometers;
- (2) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of  $45^{\circ}\text{F}$  or below. ~~Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods~~ Cooling of potentially hazardous foods shall be initiated upon completion of preparation or a period of hot storage. Methods such as shallow pans, agitation, quick chilling or water circulation external to the food containers shall be used to cool large quantities of potentially hazardous food. Potentially hazardous food to be transported cold shall be prechilled and held at a temperature of  $45^{\circ}\text{F}$  ( $7^{\circ}\text{C}$ ) or below;

- (3) Ice used for cooling stored food and food containers shall not be used for human consumption.

(h) Hot storage:

- (1) Hot food storage equipment shall be provided in such number and of such capacity to assure the maintenance of

food at the required temperature during storage. Each hot food unit shall be provided with a numerically scaled indicating thermometer, accurate to  $\pm 3^{\circ}\text{F}$  ( $\pm 1.5^{\circ}\text{C}$ ), located to measure the air temperature in the coolest part of the unit and located to be easily readable. Recording thermometers, accurate to  $\pm 3^{\circ}\text{F}$  ( $\pm 1.5^{\circ}\text{C}$ ), may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a metal stem-type numerically scaled indicating product thermometer shall be available and used to check internal food temperature;

- (2) The internal temperature of potentially hazardous foods requiring hot storage shall be  $140^{\circ}\text{F}$  ( $60^{\circ}\text{C}$ ) or above except during necessary periods of preparation and service. Potentially hazardous food to be transported hot shall be held at a temperature of  $140^{\circ}\text{F}$  ( $60^{\circ}\text{C}$ ) or above.

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## .2807 FOOD PREPARATION

(a) Food shall be prepared with the least possible manual contact, with appropriate utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use in order to prevent cross-contamination.

(b) Whenever there is a change in processing from raw to ready-to-eat foods, the new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized.

(c) Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

(d) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least  $140^{\circ}\text{F}$  ( $60^{\circ}\text{C}$ ), except that:

- (1) Poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least  $165^{\circ}\text{F}$  ( $74^{\circ}\text{C}$ ) with no interruption of the cooking process;
- (2) Pork and any food containing pork shall be cooked to heat all parts of the food to at least  $165^{\circ}\text{F}$  ( $74^{\circ}\text{C}$ ) with no interruption in the cooking process;

- (3) Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155°F (68°C);

- (4) Rare roast beef shall be cooked to an internal temperature of at least 130°F (54°C) with no interruption in the cooking process.

(e) Raw animal products cooked in a microwave oven shall be rotated during cooking to compensate for uneven heat distribution and shall be heated an additional 25°F (13.9°C) to compensate for short-cooking times.

(f) Potentially hazardous foods that have been cooked and then refrigerated, if served above 45°F (7°C), shall be reheated ~~rapidly~~ to an internal temperature of 165°F (74°C) or higher before being served or before being placed in a hot food storage unit except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 140°F (60°C). Steam tables, warmers, and similar hot food holding units are prohibited for the rapid reheating of potentially hazardous foods. Potentially hazardous foods reheated in a microwave oven shall be heated an additional 25°F (13.9°C).

(g) Metal stem-type numerically scaled indicating product thermometers, accurate to  $\pm 2^\circ \text{F}$  ( $\pm 1^\circ \text{C}$ ), shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

(h) Potentially hazardous foods shall be thawed:

- (1) In refrigerated units at a temperature not to exceed 45°F (7°C);
- (2) Under potable running water of a temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) In a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- (4) As part of the conventional cooking process.

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## **.2808 FOOD SERVICE**

(a) Milk and milk products for drinking purposes may be served from a commercially filled

container of not more than one gallon capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser.

(b) Ice, if purchased, shall be purchased from an approved source and kept clean. Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored to in a way that protects protect them from dust, drip, splash and other contamination. Ice storage bins shall be drained through an air gap.

(c) Employees preparing food shall have used antibacterial soap, dips, or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Rule .2828 of this Section. ~~Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food or stored clean and dry.~~

~~(d) Open jars of baby food shall be covered, dated, refrigerated, and used within 48 hours.~~

(d)(e) Once served, portions of leftover food shall not be served again. However, packaged food, that is not potentially hazardous and has not been opened and is still in sound condition, may be re-served.

(e) Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food or stored clean and dry.

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## **.2809 FOOD SERVICE EQUIPMENT AND UTENSILS**

(a) Material and Construction:

- (1) Materials used in the construction of utensils and equipment shall, under normal use conditions, be durable; corrosion-resistant; nonabsorbent; non-toxic; of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods; finished to have a smooth, easily cleanable surface; and resistant to pitting, chipping, cracking, scratching, scoring, distortion, and decomposition;

- (2) Solder shall be comprised of approved, non-toxic; corrosion-resistant materials;
- (3) Wood and wicker shall not be used as food-contact surfaces, except hard maple or an equivalent nonabsorbent wood may be used for cutting boards, cutting blocks or bakers' tables;
- (4) Galvanized metal shall not be used for utensils which have general utility or for utensils or food-contact equipment which contacts beverages or moist or hygroscopic food;
- (5) Linens shall not be used as food-contact surfaces, except that clean linen may be used in contact with bread and rolls;
- (6) Single-use and single-service articles shall be fabricated from approved, clean materials;
- (7) Reuse of single-service and single-use articles is prohibited;
- (8) Equipment, utensils, and single-service articles that impart odors, color or taste, or contribute to the contamination of food shall not be used.

(b) Design and Fabrication:

- (1) Equipment and utensils shall be designed and fabricated to be durable and sufficiently strong to resist denting and buckling under normal-use conditions;
- (2) Product thermometers and thermometer probes shall be of metal stem-type construction;
- (3) Multi-use food-contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and similar imperfections; free of sharp internal angles, corners and crevices; finished to have smooth welds and joints; and accessible for cleaning and inspection without being disassembled, by disassembling without the use of tools or by easy disassembling with the use of only simple tools such as mallets, screw drivers or wrenches which are kept near the equipment;
- (4) Water filters or any other water conditioning devices shall be designed to be disassembled to provide for periodic cleaning or replacement of the active element;
- (5) Nonfood-contact surfaces shall be nonabsorbent, cleanable, and free of unnecessary ledges, projections, and crevices that obstruct cleaning;

- (6) Interior surfaces of nonfood-contact equipment shall be designed and fabricated to allow easy cleaning and to facilitate maintenance operations;
- (7) Filters and other grease extracting equipment shall be readily accessible for filter replacement and cleaning.

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**.2810 SPECIFICATIONS FOR KITCHENS, BASED ON NUMBER OF CHILDREN**

(a) Day Care Facilities Licensed for or serving food to 6 – 24 to 29 Children:

- (1) Domestic kitchen equipment may be used. Domestic kitchen equipment shall include at least a two-compartment sink, ~~and dishwasher,~~ refrigeration equipment, and adequate cooking equipment. Day care facilities using ~~only single-service articles~~ multi-use utensils shall also provide at least a two-compartment sink; a dishwasher. In lieu of a dishwasher and two-compartment sink, a three-compartment sink may be used.
- (2) A separate lavatory for handwashing is required in ~~the kitchen food preparation areas.~~ If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. ~~This~~ These handwashing lavatories shall be used only by food service personnel; and
- ~~(3) After each use, all multi-use tableware and food contact surfaces of equipment and utensils shall be washed and rinsed in a dishwasher or three-compartment sink. Sanitization shall then take place in the sink by immersion for at least one minute in clean, hot water at least 170°F or at least two minutes in a clean solution containing:~~
  - ~~(A) At least 50 parts per million of available chlorine at a temperature of at least 75°F (24°C);~~
  - ~~(B) At least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or~~
  - ~~(C) At least 200 parts per million of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in~~

~~water having a hardness value at least equal to that of the water being used.~~

(b) Day Care Facilities Licensed for or serving food to 25 30 or More Children:

(1) Kitchen equipment requirements shall include the following:

(A) ~~Commercial kitchen~~ Only approved food service equipment shall be used, meeting NSF (National Sanitation Foundation) standards. If equipment is not National Sanitation Foundation listed, the owner or operator shall submit documentation to the Department that demonstrates that the equipment is at least equivalent to National Sanitation Foundation standards. The Department shall determine if the equipment is at least or equivalent to National Sanitation Foundation Standards shall be required in day care facilities licensed for 25 or more children;

(B) ~~Commercial kitchen~~ Food service equipment shall include: at least a three-compartment sink with drainboards, refrigeration equipment, and cooking equipment.

(i) Where meals are prepared, at least a three-compartment sink with drainboards, refrigeration equipment, and cooking equipment;

(ii) Where no meals are prepared and only single-service articles are used, refrigeration equipment and at least a domestic two-compartment sink of adequate size to clean and sanitize the largest utensil shall be required. When a domestic sink is used, adequate space for air-drying sanitized utensils shall be provided.

(2) A separate food preparation sink with drainboard shall be provided for the washing and processing of foods except where plan review shows that volume and preparation frequency do not require separate facilities.

(3) A separate lavatory for handwashing is required in ~~the kitchen~~ food preparation areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. This These handwashing lavatories shall be used

only by food service personnel.

(4) ~~Day care facilities using single-service utensils and not preparing food other than simple snacks, shall provide at least a two-compartment sink with drainboards, refrigeration equipment, and a separate handwashing lavatory.~~

(c) If baby food is prepared or stored in the infant or toddler area, an infant/toddler food service area shall be provided. The infant/toddler food service area shall be used exclusively for the storage of infant bottles, warming of bottles, storage of fully prepared baby foods in their containers and the mixing of dry cereals. The food preparation counters, bottle warming equipment, food and food contact surfaces shall not be within reach of children. If only infant bottles are stored and warmed or baby food is fed directly from individual jars in the infant/toddler food service area, only an adequate refrigerator and bottle warming equipment shall be required. If fully prepared baby foods are portioned or dry cereals are mixed, the infant/toddler food service area shall contain at least an adequate refrigerator, bottle warming equipment, an easily cleanable counter top and a handwashing lavatory. This handwashing lavatory shall be used only for infant/toddler food service activities. Domestic food service equipment may be used in infant/toddler food service areas regardless of day care facility size.

(1) All equipment shall be cleaned at least daily. Warming equipment shall be cleaned and sanitized as required in Rule .2812 or .2813 of this Section.

(2) After each use, all multi-use eating and drinking utensils shall be cleaned and sanitized in the day care facility kitchen.

(3) Single-service items shall be handled as required in Rule .2814 of this Section.

(4) Counter, shelf or cabinet space shall be provided for food storage. All dry cereal shall be stored in closed, labeled containers. Food supplies shall be stored in accordance with this Section.

(e)(d) Equipment that was installed in a day care facility prior to the effective date of these Rules July 1, 1991 and that does not meet all the design and fabrication requirements of this Section shall be deemed acceptable if it is in good repair, capable of being maintained in a sanitary condition, accordance with the rules of this Section and the food-contact surfaces are nontoxic. This shall not apply to equipment required in Paragraph

(c) of this Rule. Replacement equipment and new equipment acquired after July 1, 1991 the effective date of these Rules shall meet the requirements of Paragraphs (a), (b) and (c) of this Section Rule. Licensed facilities in operation prior to January 1, 1995, that increase the number licensed for or that increase the number of children to whom they serve food, shall comply with all the rules of this Section. Upon change of ownership, or the closing of the operation and the issuance of a new license, the day care facility shall comply with all the rules of this Section.

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## .2812 MANUAL CLEANING AND SANITIZING

(a) ~~For manual washing, rinsing, and sanitizing of utensils and equipment, at least a three-compartment sink with drainboards shall be provided and used. Sink shall be large enough to accommodate all food service utensils involved; and each compartment shall be provided with hot and cold water. Day care facilities licensed for or serving food to 30 or more children, shall provide and use a three-compartment sink with drainboards if utensils and equipment are manually cleaned and sanitized.~~

(b) Day care facilities licensed for or serving food to 6 to 29 children may use a domestic dishwasher for washing and rinsing of multi-use utensils and equipment. Utensils and equipment shall then be sanitized in the sink as required in Subparagraph (e)(4) of this Rule. Sink compartments shall be large enough to submerge the largest items to be washed and each compartment shall be supplied with hot and cold running water.

(c) ~~(b)~~ Drainboards of adequate size shall be provided for proper handling of soiled utensils prior to washing and cleaned utensils following sanitizing.

(d) ~~(e)~~ Equipment and utensils shall be pre-flushed or prescraped and, when necessary, pre-soaked to remove gross food particles and soil.

(e) ~~(d)~~ Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:

- (1) Sinks shall be cleaned prior to use.
- (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.
- (3) Equipment and utensils shall be rinsed free of detergent and abrasives with

clean water in the second compartment.

(4) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by:

- (A) Immersion for at least one minute in clean, hot water at a temperature of at least 170°F (77°C); or
- (B) Immersion for at least two minutes in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75°F (24°C); or
- (C) Immersion for at least two minutes in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or
- (D) Immersion for at least two minutes in a clean solution containing at least 200 parts per million of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

(f) ~~(e)~~ For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer shall be used. When spray-on or wipe-on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.

(g) ~~(f)~~ When hot water is used for sanitizing, the following facilities shall be provided and used:

- (1) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and
- (2) A numerically scaled indicating thermometer, accurate to  $\pm 3^{\circ}$  F ( $\pm 1.5^{\circ}$  C), convenient to the sink for frequent checks of water temperature; and
- (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(h) ~~(g)~~ A suitable testing method or equipment shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum

prescribed strengths.

(i) ~~(h)~~ After sanitization, all equipment and utensils shall be air dried.

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### **.2813 MECHANICAL CLEANING AND SANITIZING**

(a) If mechanical dishwashing equipment is used, such equipment shall be constructed and operated in accordance with National Sanitation Foundation Standards or equal except as noted in Rule .2810(a)(1) of this Section.

(b) Machine or water line mounted numerically scaled indicating thermometers, accurate to  $\pm 3^{\circ}\text{F}$  ( $\pm 1.5^{\circ}\text{C}$ ), shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) An adequate drainboard for the proper handling of soiled utensils prior to washing and adequate space for the proper handling of cleaned utensils following sanitization shall be provided.

(d) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

(e) Machines using chemicals for sanitization may be used provided that a suitable testing method or equipment shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

(f) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(g) After sanitization, all equipment and utensils shall be air dried.

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### **.2814 FOOD SERVICE EQUIPMENT AND UTENSIL STORAGE**

(a) Cleaned and sanitized equipment and utensils shall be handled in a way that protects ~~them~~ the food-contact surfaces from hand contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates, and similar items shall be handled without contact with

inside surfaces or surfaces that contact the user's mouth.

(b) Cleaned and sanitized utensils and equipment shall be stored above the floor in a clean, dry location in a way that protects them from dust, insects, drip, splash and other contamination and facilitates floor cleaning. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(c) Single-service ~~utensils~~ articles shall be purchased only in sanitary clean containers, shall be stored in a clean, dry container until used, and shall be handled in ~~a sanitary manner.~~ accordance with the rules of this Section.

*Statutory Authority G.S. 110-91.*

### **.2815 WATER SUPPLY**

(a) Running water under pressure shall be provided in sufficient quantities to meet the needs of cooking, cleaning, drinking, toilets, and outside uses without producing water pressure lower than 20 psi.

(b) ~~When a private water supply is used, it shall be located, constructed, maintained and operated in accordance with the Rules Governing the Protection of Private Water Supplies. The water supply shall meet the requirements of 15A NCAC 18C or 15A NCAC 18A .1700 Protection of Water Supplies.~~ Samples of water shall be collected by the Environmental Health Specialist and submitted to a state certified laboratory for bacteriological analysis annually. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Environmental Health Specialist.

(c) No cross-connections with an unapproved water supply shall exist. If potential back-flow conditions exist, an approved back-flow prevention device shall be provided.

(d) Water heating equipment that is sufficient to meet the maximum expected requirements of the child day care facility shall be provided. Capacity and recovery rates of hot water heating equipment shall be based on number and size of sinks, capacity of dishwashing machines, capacity of laundering machines, diaper changing facilities, and other food service and cleaning needs. Hot and cold water under pressure shall be easily accessible to all rooms where food is processed or handled, rooms in which utensils or equipment are washed, and other areas where water is required

for cleaning and sanitizing, including lavatories and diaper changing areas.

(e) Hot water heating equipment shall provide hot water at a minimum temperature of 130°F (54°C) at the point of use when hot water is not used for sanitizing. When hot water is used for sanitizing, a minimum temperature of 140°F (60°C) shall be provided at the point of use. ~~However, hot water to those areas accessible to children, including lavatories serving diaper changing areas, shall be no less than 90°F and shall not exceed 110°F.~~ Running water at lavatories other than in food preparation or dishwashing areas, shall be no less than 90°F and shall not exceed 110°F (44°C).

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### **.2816 DRINKING WATER FACILITIES**

(a) Drinking fountains of an approved type or individual drinking utensils shall constitute approved drinking water facilities.

(b) Drinking fountains, if provided, shall be of sanitary angle-jet design ~~properly regulated~~ and kept clean. The pressure shall be regulated so that the individual's mouth does not come in contact with the nozzle and so that water does not splash on the floor.

(c) All multi-use utensils used for drinking purposes shall be easily cleanable and ~~thoroughly~~ cleaned and sanitized after each use. ~~Disposable utensils~~ Single-service articles used for drinking water shall be stored and handled so as not to become contaminated by insects, splash, dust, and other contamination.

(d) Baby bottles shall be properly labeled ~~identifying the appropriate child with the child's name.~~ Drinking water in baby bottles shall be stored and handled in such a manner as to be protected against contamination.

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### **.2817 TOILETS**

(a) All toilet fixtures and toilet rooms shall be located to comply with the requirements of these Rules. All toilet fixtures shall be easily cleanable, and in good repair, ~~and kept free of storage.~~ Toilet fixtures shall be child-sized, ~~or properly adapted adult toilets or potty chairs for young toddlers.~~

(b) Toilet fixtures shall be cleaned and sanitized ~~as needed~~ when soiled and at least on a daily basis. A solution of 100 ppm chlorine solution or other equivalent methods approved by the

Environmental Health Specialist shall be used for sanitizing.

(c) If potty chairs are used, a spray rinse toilet or utility sink shall be located in a toilet room for the purpose of cleaning potty chairs. ~~After cleaning, potty chairs shall be sanitized with 100 ppm chlorine solution or by other methods approved by the Environmental Health Specialist.~~ Potty chairs shall be emptied, rinsed, cleaned and sanitized when soiled or at least on a daily basis, with 100 ppm chlorine solution or equivalent method approved by the Environmental Health Specialist.

(d) The diaper changing area shall be located ~~in close proximity to~~ near a toilet room or flush-rimmed sink.

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### **.2818 LAVATORIES**

(a) Lavatories shall be sized and located to comply with the appropriate handwashing requirements of these Rules, easily cleanable, in good repair, and kept free of storage. Lavatories shall be mounted at an appropriate height to accommodate the children, or otherwise made accessible.

(b) All lavatories shall be equipped with hot and cold running water through mixing faucets except that automatic mixing faucets or pre-mixing devices which provide water at the temperature specified in Rule .2815(e) of this Section may be provided.

(c) Lavatories shall be cleaned and sanitized as needed and at least on a daily basis. A solution of 100 ppm chlorine or other approved methods shall be used for sanitizing.

(d) Soap and disposable towels shall be provided at every handwash lavatory area.

~~(e) Separate lavatories shall be provided for use by staff in kitchens and other food preparation areas or dishwashing areas.~~

~~(f)~~ (e) Handwash signs shall be posted at each employee handwashing lavatory.

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### **.2819 DIAPERING AND DIAPER CHANGING FACILITIES**

(a) Infants and toddlers shall be diapered at areas designated exclusively for diapering.

(b) Diapering surfaces shall be smooth, nonabsorbent, easily cleanable ~~and of tight construction~~ and shall be approved by the Environmental Health Specialist.

(c) Diapering surfaces shall be kept free of storage and shall be cleaned with a mild solution of water and detergent and sanitized after each changing. A solution of 100 ppm chlorine or equivalent methods approved by the Environmental Health Specialist shall be used for sanitizing. A suitable testing method or kit shall be available; ~~convenient~~, and regularly used to insure compliance with the minimum prescribed strength. This sanitizer shall be ~~made fresh daily and~~ used from a labeled hand pump spray bottle.

(d) Each diaper changing area in a facility licensed for 13 or more children shall include a handwash lavatory for caregivers. For a facility licensed for less than 13 children, a handwash lavatory shall be ~~conveniently located to~~ in or near diaper changing areas.

(e) The use of disposable ~~latex~~ gloves by caregivers during the diaper changing process is required if the worker has cuts or sores on hands or chapped hands. Gloves shall be discarded after use with each child.

(f) Caregivers may dispose of feces in diapers in the toilet, but shall not rinse soiled cloth diapers, or training pants or clothes. Soiled cloth diapers, training pants or clothes shall be sent to a diaper service or placed in a tightly closed plastic bag or other equivalent container approved by the Environmental Health Specialist and sent daily to the child's home to be laundered.

(g) Pre-moistened towelettes or damp paper towels shall be used for cleaning children during the changing process. Soiled paper or towelettes shall be discarded after use with each child and shall be disposed of in a covered plastic-lined receptacle.

(h) Soiled disposable diapers shall be placed in a cleanable, plastic-lined, covered container and removed to an exterior garbage area ~~on a frequent, regular basis at least daily.~~

(i) Caregivers shall wash their hands vigorously for at least ~~15 seconds with soap and running tempered water~~ after each diaper change in accordance with Rule .2828 of this Section at the lavatory designated for that purpose.

(j) The child's hands shall be washed in the lavatory, or with single-use, pre-moistened towelettes after each diaper change.

(k) ~~A sign instructing caregivers in proper methods of diaper changing, handwashing and area clean up shall be posted at each diaper changing area~~ Instructions providing information to care givers in proper methods of diaper-changing and handwashing shall be posted in each diaper changing area.

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## .2820 STORAGE

(a) Rooms or spaces shall be provided for the storage of equipment, furniture, toys, clothes, beds, cots, mats, and supplies and shall be kept clean. Shelving or other storage, constructed in a manner to facilitate cleaning, shall be provided for orderly storage of supplies, including mats and toys.

(b) All corrosive agents, insecticides, rodenticides, herbicides, bleaches, detergents, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispensing can, and any substance which may be hazardous to a child if ingested, inhaled, or handled shall be stored in a locked storage room or ~~locked cabinet,~~ locked with a combination lock or key. ~~Keys shall be kept out of the reach of a child~~ The key shall not be stored in the lock.

(c) A properly mixed sanitizing solution approved by the Environmental Health Specialist that is kept in the infant and toddler diaper changing areas shall not be required to be stored in a locked storage room or locked cabinet. In these areas, this sanitizer shall be clearly labeled and shall not be accessible to infants and toddlers.

(d) Medications shall be stored in a separate locked cabinet or other locked container. Medications which require refrigeration shall be stored in a locked box or locked container in a designated area for such storage in a refrigerator which is not accessible to children.

(e) Individual cubicles, lockers, or coat hooks shall be provided for storage of coats, hats, or similar items. Coat hooks not in individual cubicles or lockers, shall be spaced at least 12 inches apart. Individual toothbrushes or combs used by children shall be stored in ~~a sanitary manner~~ individual toothbrush or comb cases.

Statutory Authority G.S. 110-91.

## .2821 BEDS, COTS, MATS, AND LINENS

(a) All beds, cribs, cots, and mats shall be in good repair; properly stored to protect them from splash, drip and other contamination, stored, cleaned regularly and sanitized between users.

(b) Individual cribs, portable cribs, or play pens used for sleeping shall be easily cleanable, ~~of tight construction~~ and equipped with a mattress made of waterproof, washable material at least two inches thick. The mattress shall fit snugly so that an adult can fit no more than two fingers between the

mattress and the crib, portable crib or play pen.

(c) All beds, cots or mats shall be assigned and labeled for each individual child, and equipped with individual linens. All linen shall be kept clean and in good repair.

(d) Mats shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side or by a an equivalent method approved by the Environmental Health Specialist.

(e) When in use ~~Beds~~ beds, cribs, cots, mats and playpens shall be placed at least 18 inches apart or separated by partitions which prevent children from physical contact when in use.

(f) Linen shall be stored with the individual mat or cot until laundered or stored individually for each child in a designated area if taken off the mats or cots. Linen shall be laundered a minimum of one time per week, or more often ~~as needed~~ if soiled. Linen used for more than one child shall be laundered between users. Linen used in infant rooms shall be changed and laundered ~~as needed~~ when soiled and at least on a daily basis. Linens shall be large enough to cover the sleeping surface.

*Statutory Authority G.S. 110-91.*

## **.2822 FURNITURE AND TOYS**

(a) Furniture shall be of easily cleanable construction, and shall be kept clean and in good repair.

(b) Equipment and toys provided by the facility shall be of easily cleanable construction, and shall be kept clean and in good repair. In infant and toddler rooms, mouth-contact surfaces shall be sanitized at least daily and more frequently if necessary.

(c) Toys, furniture, cribs, or other items accessible to children, shall be free of peeling, flaking, or chalking paint.

(d) Water play activity centers shall be filled just prior to use of the center. Water must be dumped at least daily or more often if visibly soiled. The water activity unit, including toys, shall be cleaned and sanitized at least daily or more often if soiled. Wading pools are not water play activity centers and are regulated under 15A NCAC 18A .2500.

*Statutory Authority G.S. 110-91.*

## **.2823 PERSONNEL**

(a) Employees shall ~~maintain a high degree of personal cleanliness and conform to hygienic~~

~~practices while on duty wear clean outer clothing and shall be clean as to their person and methods of foodhandling.~~ Employees shall keep their fingernails clean and trimmed. ~~Fingernail polish shall not be worn by food service personnel.~~

~~(b) Employees shall wear clean outer clothing.~~

(e) ~~(b)~~ Hair nets, caps, or ~~other effective~~ similar hair restraints shall be worn by employees engaged in the preparation of food. Hair spray or barrettes ~~are~~ is not considered an effective hair restraint.

(d) ~~(c)~~ Tobacco use in any form is prohibited in the food preparation area, in any part of the day care facility accessible to the children, and in the playground area.

(e) ~~(d)~~ Persons with a communicable disease or a communicable condition shall be excluded from situations in which transmission can be reasonably expected to occur, in accordance with Communicable Disease Control Measures (15A NCAC 19A .0200). Any person with boils, sores, burns, infected wounds or other potentially draining lesions on the face, neck, hands, lower arms or other exposed skin shall properly bandage affected area to eliminate exposure to drainage. If exposure to drainage cannot be eliminated or proper handwashing cannot be maintained, then the employee shall be excluded from the facility while the condition exists.

(f) ~~(e)~~ Volunteer personnel shall adhere to the same requirements in these Rules as employees.

*Statutory Authority G.S. 110-91.*

## **.2824 FLOORS**

(a) Floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, and laundry areas shall be constructed of nonabsorbent, easily cleanable, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic. ~~All floors shall be kept clean and maintained in good repair.~~

(b) Floors and floor coverings of all sleeping and play areas shall be constructed of easily cleanable, durable materials.

(c) ~~(b)~~ Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable, ~~such as 100 percent Olefin fiber carpet and backing, and shall be kept clean and maintained in good repair.~~ Carpeting is prohibited in food preparation areas, equipment, and utensil-washing areas, food storage areas, laundry areas, and toilet rooms.

(d) Floors in areas accessible to children, shall be free of peeling, flaking or chalking paint.

(c) All floors shall be kept clean and maintained in good repair.

*Statutory Authority G.S. 110-91.*

## **.2826 LIGHTING AND THERMAL ENVIRONMENT**

(a) All rooms and enclosed areas shall be well lighted by natural or artificial means. Lighting shall be capable of illumination to at least 50 foot-candles at work surfaces. At least 10 foot-candles of light, at 30 inches above the floor, shall be provided in all other areas, including storage rooms. Light fixtures in all areas shall be kept clean and in good repair. ~~Properly~~ Completely shielded bulbs or shatterproof bulbs shall be used in food preparation, storage, and serving areas and in all rooms used by children.

(b) All rooms used by children shall be heated, cooled, and ventilated to maintain a temperature between 65°F (19°C) and 85°F (30°C). Ventilation may be in the form of operable windows which are screened or by means of mechanical ventilation to the outside. Windows and window treatments shall be kept clean and in good repair. All ventilation equipment, including heating and cooling vents, fans, and all special ventilation equipment which is required for kitchens and toilet rooms, shall be kept clean and in good repair.

*Statutory Authority G.S. 110-91.*

## **.2827 COMMUNICABLE DISEASES AND CONDITIONS**

(a) Any child who becomes ill at the facility and is suspected of having a communicable disease or communicable condition shall be separated from the other children until the child leaves the facility.

(b) Each facility shall include a designated area for a child who becomes ill. When in use, such area ~~space~~ shall be equipped with a bed, ~~or~~ cot or mat and a vomitus receptacle. All materials shall be sanitized after each use. Linens and disposables shall be changed after each use.

(c) If the area is not a separate room, it shall be separated from space used by other children by a partition, screen or other means approved by the Environmental Health Specialist. It shall be ~~in close proximity to~~ in or near a toilet and lavatory, and where health and sanitation measures can be carried out without interrupting activities of other children and staff.

*Statutory Authority G.S. 110-91.*

## **.2828 HANDWASHING**

(a) Employees shall be instructed that handwashing is the single most important line of defense in preventing the transmission of disease-causing organisms. Employees shall wash hands upon reporting for work; before handling food, feeding infants or children, handling clean utensils or equipment; after toileting, handling of body fluids (e.g. saliva, nasal secretions, vomitus, feces, urine, blood, secretions from sores, pustulant discharge); after diaper changing; and after handling soiled items such as garbage, mops, cloths, and clothing.

(b) Children shall wash hands after each visit to the toilet and before eating meals or snacks and before water activity play.

(c) Proper handwashing procedures shall include:

- (1) Using soap and tempered running water;
- (2) Rubbing hands vigorously with soap and tempered water for 15 seconds;
- (3) Washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails, and between fingers;
- (4) Rinsing well for 10 seconds;
- (5) Drying hands with a paper towel or mechanical dryer;
- (6) Turning off faucet with paper towel.

*Statutory Authority G.S. 110-91.*

## **.2829 WASTEWATER**

All ~~sewage~~ wastewater shall be disposed of in a publically-owned wastewater treatment (POWT) system or by an approved sanitary-sewage properly operating on-site wastewater system.

*Statutory Authority G.S. 110-91.*

## **.2830 SOLID WASTES**

(a) Solid wastes containing food scraps or other putrescible materials shall, prior to disposal, be kept in durable, rust-resistant, nonabsorbent, water-tight, rodent-proof, and easily cleanable containers such as standard garbage cans which shall be covered with tight lids when filled or stored or not in continuous use. Refuse including scrap paper, cardboard boxes and similar items shall be stored in containers, rooms or designated areas approved by the Environmental Health Specialist.

(b) Facilities shall be provided for the washing and storage of all garbage cans and mops for day

care facilities licensed for 13 or more children. Cleaning facilities shall include combination faucet, hot and cold running water, threaded nozzle, and curbed impervious pad sloped to drain into an approved sanitary sewage system. Other cleaning facilities approved prior to the effective date of these Rules July 1, 1991 shall be deemed approved if in good repair and functioning properly. Cleaning facilities replaced after the effective date of these Rules July 1, 1991 shall meet the requirements of this Section.

(c) Where containerized systems are used for garbage storage, facilities shall be provided for the cleaning of such systems. A contract for off-site cleaning shall constitute compliance with this Section.

(d) Solid wastes shall be disposed of ~~with sufficient frequency and in such a manner so~~ as to prevent insect breeding and public health nuisances.

*Statutory Authority G.S. 110-91.*

### **.2833 SWIMMING AND WADING POOLS**

(a) Swimming and wading pools shall be designed, constructed, operated and maintained in accordance with the N.C. Rules Governing Swimming Pools, 15A NCAC 18A .2500. Copies of these Rules may be obtained from the Environmental Health Services Section, Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

(b) Unfiltered and nondisinfected containments of water shall not be utilized for water recreation activities. Swimming and wading pools, if present, shall be permanent structural features of the facility.

*Statutory Authority G.S. 110-91.*

### **.2834 COMPLIANCE**

(a) The Environmental Health Specialist shall indicate on the Sanitation Standards Evaluation Form for Child Day Care Facilities whether the facility is superior, approved, provisional, or disapproved. The classification shall be posted in the facility in a conspicuous place designated by the Environmental Health Specialist. The superior, approved, provisional, or disapproved classification of a child day care facility is based on the facility's compliance with the standards for construction and operation found in this Section.

(b) The degree of the facility's compliance is indicated by the total demerit-point score which is

shown on the Sanitation Standards Evaluation Form that the Environmental Health Specialist completes.

- (1) ~~Prior to the issuance of an initial license, the facility shall comply with all items of this Section as determined by the Environmental Health Specialist.~~ For the purpose of issuing a license to a new operator, a Sanitation Standards Evaluation Form for Child Day Care Facilities, shall be forwarded to the Division of Child Development only when the facility can be granted a superior classification.
- (2) A facility shall be classified as superior if the total demerit score is not more than 15 and no 6-demerit-point item is violated;
- (3) A facility shall be classified as approved if the total demerit score is more than 15 and not more than 30, and no 6-demerit-point item is violated;
- (4) A facility shall be classified as provisional if any 6-demerit-point item is violated, or if the total demerit-point score is more than 30 but not more than 45. This provisional period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Environmental Health Specialist may allow a longer provisional period;
- (5) A facility shall be classified as disapproved if the demerit score is 46 or more, or if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Environmental Health Specialist;
- (6) If the ~~7-day~~ provisional status is ~~extended, or upon reinspection additional demerits are found period exceeds seven days~~, or the facility is disapproved, the ~~Child Day Care Section~~ Division of Child Development shall be notified immediately by forwarding a copy of the inspection report to the ~~Child Day Care Section~~ Division of Child Development. The Environmental Health Specialist shall notify the ~~Child Day Care Section~~ Division of Child Development in accordance with Rule .2803 of this Section.
- (7) The classification card shall not be

removed by anyone, except by or upon the instruction of the Environmental Health Specialist.

Statutory Authority G.S. 110-91.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 19C .0601 - .0603, .0605 - .0607 and adopt 19C .0609 - .0610.

**T**he proposed effective date of this action is January 1, 1995.

**T**he public hearing will be conducted at 1:30 p.m. on October 20, 1994 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

#### **Reason for Proposed Action:**

**15A NCAC 19C .0601** - The definition of the Management Consultant accreditation category has been deleted and the definition of the Supervising Air Monitor accreditation category has been added. The Supervising Air Monitor directs, coordinates and approves all activities of air monitors working under his supervision.

**15A NCAC 19C .0602** - The Management Consultant's accreditation requirements have been deleted and Supervising Air Monitor's accreditation requirements have been added. With the addition of the new category of Supervising Air Monitor, the Air Monitor's accreditation requirements were also revised.

**15A NCAC 19C .0603** - Amends training course approval procedures for clarification due to statutory requirement of fees for training course approval.

**15A NCAC 19C .0605** - Clarifies what the contractor needs to maintain on site during removal activities for availability for review by the Program.

**15A NCAC 19C .0606** - Amended to include the applicable fees for initial and renewal training course approvals.

**15A NCAC 19C .0607** - Amended to include the supervising air monitor for final visual inspections of permitted asbestos removals.

**15A NCAC 19C .0609** - Proposed adoption to

include and clarify the Health Commission's adoption of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions. NESHAP for renovations and demolitions was originally under the control of the Environmental Management Commission.

**15A NCAC 19C .0610** - Proposed for adoption in order to clarify that the local air pollution programs certified as of October 1, 1994, pursuant to G.S. 143-215.112 to enforce the asbestos NESHAP for renovations and demolitions, will continue to enforce the asbestos NESHAP so long as certification is maintained.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by November 2, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

On July 6, 1994, the General Assembly ratified House Bill 650, which amended G.S. 130A, Article 19 to conform with recent federal requirements. These statutory amendments become effective

October 1, 1994.

Therefore, to ensure adherence to federal regulations, temporary rules are needed in order to have rules covering these requirements as soon as possible after October 1, 1994.

The Commission for Health Services will hold its regularly scheduled meeting on November 3, 1994 beginning at 1:00 pm, at the Four Seasons Holiday Inn, 3121 High Point Road, Greensboro, NC. The above-captioned rules are on the agenda to be adopted as temporary rules with an effective date of November 8, 1994.

## CHAPTER 19 - HEALTH: EPIDEMIOLOGY

### SUBCHAPTER 19C - OCCUPATIONAL HEALTH

#### SECTION .0600 - ASBESTOS HAZARD MANAGEMENT PROGRAM

##### .0601 GENERAL

(a) The definitions contained in G.S. 130A-444 and the following definitions shall apply throughout this Section:

- (1) "Abatement Designer" means a person who is directly responsible for planning all phases of an asbestos abatement design from abatement site preparation through complete disassembly of all abatement area barriers. In addition to meeting the accreditation requirements of Rule .0602(c)(5) of this Section, the abatement designer may be subject to the licensure requirements for a Registered Architect as defined in G.S. 83A or a Professional Engineer as defined in G.S. 89C.
- (2) "Abatement Project Monitoring Plan" means a written project-specific plan for conducting visual inspections and ambient and clearance air sampling.
- (3) "Air Monitor" means a person who implements the abatement project monitoring plan, collects ambient and clearance air samples, performs visual inspections, or monitors and evaluates asbestos abatement projects.
- (4) "Asbestos Abatement Design" means a written or graphic plan prepared by an accredited abatement designer specifying how an asbestos abatement project will be performed, and includes,

but is not limited to, scope of work and technical specifications. The asbestos abatement designer's signature and accreditation number shall be on all such abatement designs.

- (5) "Completion Date" means the date on which all activities on a permitted asbestos removal requiring the use of accredited workers and supervisors are complete, including the complete disassembly of all removal area barriers.
- (6) "Emergency Renovation Operation" as defined in 40 CFR Part 61.141.
- (7) "Inspector" means a person who examines buildings or structures for the presence of asbestos containing materials, collects bulk samples or conducts physical assessments of the asbestos containing materials.
- (8) "Installation" means any building or structure or group of buildings or structures at a single site under the control of the same owner or operator.
- ~~(9) "Management Consultant" means a person who performs only administration or oversight services before, during or after asbestos abatement activities.~~
- ~~(9)~~ (10) "Management Planner" means a person who interprets inspection reports, conducts hazard assessments of asbestos containing materials or prepares written management plans.
- ~~(10)~~ (11) "Nonscheduled Asbestos Removal" means an asbestos removal required by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- ~~(11)~~ (12) "Program" means the Asbestos Hazard Management Branch within the NC Department of Environment, Health, and Natural Resources.
- ~~(12)~~ (13) "Public Area" means as defined in G.S. 130A-444(7). Any area to which access by the general public is usually prohibited, or is usually limited to access by escort only, shall not constitute a "public area."
- ~~(13)~~ (14) "Regulated Asbestos Containing Material" as defined in 40 CFR Part 61.141.
- ~~(14)~~ (15) "Start Date" means the date on

which activities on a permitted asbestos removal project requiring the use of accredited workers and supervisors begin, including removal area isolation and preparation or any other activity which may disturb asbestos containing materials.

(15) ~~(16)~~ "Supervising Air Monitor" means a person who, in addition to performing the duties of an air monitor, prepares a written abatement project monitoring plan and implements the plan or ensures that the plan is implemented by an air monitor working under his supervision. The supervising air monitor directs, coordinates and approves all activities of air monitors working under his supervision.

(16) ~~(17)~~ "Supervisor" means a person who is a 'competent person' as defined in ~~29 CFR 1926.58(b)~~ 29 CFR 1926.1101(b) and adopted by 13 NCAC 7F .0201 and amendments or recodifications as adopted by the North Carolina Department of Labor, and who is an 'on-site representative' as defined in 40 CFR Part 61.145(c)(8), and who performs the duties specified therein.

(17) ~~(18)~~ "Under the direct supervision" means working under the immediate guidance of an accredited individual who is responsible for all activities performed.

(18) ~~(19)~~ "Worker" means a person who performs asbestos abatement under the direct supervision of an accredited supervisor.

(19) ~~(20)~~ "Working day" means Monday through Friday. Holidays falling on any of these days are included in the definition.

(b) Asbestos management activities conducted pursuant to this Section shall comply with "AHERA" as defined in G.S. 130A-444(1) and 40 CFR Part 763, Subpart E and Appendices, as applicable. 40 CFR Part 763, Subpart E is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, 441 North Harrington Street, Raleigh, North Carolina 27603. Copies may be obtained from the Government Printing Office by writing to the

Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00).

*Statutory Authority G.S. 130A-5(3); 130A-451; P.L. 99-519.*

#### .0602 ACCREDITATION

(a) No person shall perform asbestos management activities until that person has been accredited by the Program in the appropriate accreditation category, except as provided for in G.S. 130A-447, (b) and (c).

(b) An applicant for accreditation shall meet the provisions of the "EPA Model Contractor Accreditation Plan" contained in 40 CFR Part 763, Subpart E, Appendix C and successfully complete applicable training courses approved by the Program pursuant to Rule .0603 of this Section.

(c) In addition to the requirements in Paragraph (b) of this Rule, an applicant, other than for the worker category, shall meet the following:

- (1) an applicant for initial accreditation shall have successfully completed an approved initial training course for the specific discipline within the 12 months immediately preceding application. If initial training was completed more than 12 months prior to application, the applicant shall have successfully completed an approved refresher training course for the specific discipline at least every 24 months from the date of completion of initial training to the date of application;
- (2) an inspector shall have:
  - (A) a high school diploma or equivalent; and
  - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited inspector, or equivalent experience;
- (3) a management planner shall have a high school diploma or equivalent and shall be an accredited inspector;
- (4) a supervisor shall have:
  - (A) a high school diploma or equivalent; except that this requirement shall not apply to supervisors that were accredited on November 1, 1989; and
  - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited supervisor, or equivalent experience;

- (5) an abatement designer shall have:
- (A) a high school diploma or equivalent; and
  - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited abatement designer, or equivalent experience;

(6) an air monitor shall work only under an accredited supervising air monitor or meet the provisions of Part (c)(7)(C) of this Rule. In addition, all air monitors shall meet the following requirements:

- (A) Education and Work Experience:
  - (i) a high school diploma or equivalent;
  - (ii) three months of asbestos air monitoring experience as, or under the direct supervision of, an accredited air monitor or equivalent within 12 months prior to applying for accreditation;
- (B) Training Requirements:
  - (i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 equivalent and meet the initial and refresher training requirements of this Rule for supervisors; ~~a~~ a Program approved project monitor refresher course may be substituted for the supervisor refresher course; or
  - (ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher course;
  - (iii) air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for air monitors set forth in this Paragraph;

~~(C) Professional Status:~~

- ~~(i) An air monitor accredited on or after February 1, 1991, or an air monitor accredited prior to that date who has not continuously maintained accreditation, shall be a Certified Industrial Hygienist or work only under a Certified Industrial Hygienist who is an accredited air monitor, who~~

~~serves as the supervising air monitor; or~~

- ~~(ii) An air monitor accredited prior to February 1, 1991, who has continuously maintained accreditation shall be a Certified Industrial Hygienist, Professional Engineer, or Registered Architect, or work only under a Certified Industrial Hygienist, Professional Engineer, or Registered Architect who is accredited as an air monitor, and who serves as a supervising air monitor.~~

(7) a supervising air monitor shall meet the following requirements:

(A) Education and Work Experience:

- (i) a high school diploma or equivalent;
- (ii) three months of asbestos air monitoring experience as, or under the direct supervision of, an accredited air monitor or equivalent within 12 months prior to applying for accreditation;

(B) Training Requirements:

- (i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 equivalent and meet the initial and refresher training requirements of this Rule for supervisors; a Program approved project monitor refresher course may be substituted for the supervisor refresher course; or
- (ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher course;
- (iii) supervising air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for supervising air monitors set forth in this Paragraph;

(C) Professional Status:

- (i) a supervising air monitor who was accredited as an air monitor on or after February 1, 1991, or an air monitor accredited prior to that date who has not continuously maintained accreditation, shall be

- (ii) a Certified Industrial Hygienist;  
a supervising air monitor who was  
accredited as an air monitor prior  
to February 1, 1991, who has  
continuously maintained  
accreditation shall be a Certified  
Industrial Hygienist, Professional  
Engineer, or Registered Architect;

(D) Air monitors with a valid  
accreditation on January 1, 1995  
supervising other accredited air  
monitors shall be deemed to be  
accredited supervising air monitors  
for the duration of their existing air  
monitor accreditation.

(d) To obtain accreditation, the applicant shall submit, or cause to be submitted, to the Program:

- (1) a completed application on a form provided by the Program with the following information:
  - (A) full name and social security number of applicant;
  - (B) address, including city, state, zip code, and telephone number;
  - (C) date of birth, sex, height, and weight;
  - (D) discipline applied for;
  - (E) name, address, and telephone number of employer;
  - (F) training agency attended;
  - (G) name of training course completed;
  - (H) dates of course attended;
- (2) two current 1 1/4 inch x 1 1/4 inch color photographs of the applicant with applicant's name and social security number printed on the back;
- (3) confirmation of completion of an approved initial or refresher training course from the training agency; the confirmation shall be in the form of an original certificate of completion of the approved training course bearing the training agency's official seal, or an original letter from the training agency confirming completion of the course on training agency letterhead, or an original letter from the training agency listing names of persons who have successfully completed the training course, with the applicant's name included, on the training agency letterhead;
- (4) when education is a requirement, a copy of the diploma or other written documentation;
- (5) when experience is a requirement, work

history documenting asbestos related experience, including employer name, address and phone number; positions held; and dates when the positions were held; and

- (6) when applicants for initial air monitor accreditation are working under ~~a~~ an accredited supervising air monitor pursuant to Subparagraph (c)(6) of this Rule, the accredited supervising air monitor shall submit an original, signed letter acknowledging responsibility for the applicant's air monitoring activities. The applicant shall ensure that a new letter is submitted to the Program any time the information in the letter currently on file is no longer accurate.

(e) All accreditations shall expire at the end of the 12th month following completion of required initial or refresher training. Work performed after the 12th month and prior to reaccreditation shall constitute a violation of this Rule. To be reaccredited, an applicant shall have successfully completed the required refresher training course within 24 months after the initial or refresher training course. An applicant for reaccreditation shall also submit information specified in Subparagraphs (d)(1)-(d)(6) of this Rule. If a person fails to obtain the required training within 12 calendar months after the expiration date of accreditation, that person may be accredited only by meeting the requirements of Paragraphs (b), (c), and (d) of this Rule.

(f) All accredited persons shall be assigned an accreditation number and issued a photo-identification card by the Program.

(g) In accordance with G.S. 130A-23, the Program may revoke accreditation or reaccreditation for any violation of G.S. 130A, Article 19 or the rules in this Section, or upon finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue accreditation or reaccreditation. The Program may also revoke accreditation or reaccreditation upon a finding that the accredited person has violated any requirement referenced in Rule .0605(e) of this Section. A person whose accreditation is revoked because of fraudulent misrepresentations or because of violations that create a significant public health hazard shall not reapply for accreditation before six months after the revocation and shall repeat the initial training course and other requirements as set out in Paragraphs (b), (c), and (d) of this Rule.

*Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.*

**.0603 APPROVAL OF TRAINING COURSES**

(a) Pursuant to Rule .0602 of this Section, applicants for accreditation and reaccreditation are required to successfully complete training courses approved by the Program. Training courses:

- (1) Meeting the requirements of 40 CFR Part 763, Subpart E, Appendix C and approved for a specific training provider by the Environmental Protection Agency or by a state with an Environmental Protection Agency-approved accreditation program, or by a state that has a written reciprocating agreement with the Program and meeting the requirements under Paragraph (g) of this Rule shall be deemed approved by the Program unless approval is suspended or revoked in accordance with Paragraph (i) of this Rule;
- (2) Required under 40 CFR Part 763, Subpart E, Appendix C and having no prior Program approval as specified in Subparagraph (a)(1) of this Rule shall meet the requirements of 40 CFR Part 763, Subpart E, Appendix C, I and III, and Paragraphs (b)-(f) of this Rule;
- (3) Recommended under 40 CFR Part 763, Subpart E, Appendix C shall meet the requirements of Paragraphs (b)-(f) of this Rule; or
- (4) Other than those covered in Subparagraphs (1)-(3) of this Paragraph required for North Carolina accreditation purposes shall meet the requirements of Paragraphs (c)-(f) of this Rule.

(b) Refresher training courses shall review and discuss changes in the Federal and State regulations, developments in the state-of-the-art procedures, and key aspects of the initial courses outlined under 40 CFR Part 763, Subpart E, Appendix C.

(c) At the completion of the refresher training courses in all disciplines, the training provider shall administer a written closed book examination, approved by the Program. The requirements for the examination shall consist of a minimum of 25 multiple choice questions. For successful completion of the course the applicant shall pass the exam with a minimum score of 70 percent.

(d) Training courses shall be evaluated for approval by the Program for course administration, course length, curriculum, training methods, instructors' qualifications, instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. The evaluation will be conducted using 40 CFR Part 763, Subpart E, Appendix C or NIOSH 582 curriculum, as applicable, which are hereby incorporated by reference, including any subsequent amendments and editions. These documents are available for inspection at the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, 441 North Harrington Street, Raleigh, North Carolina 27603. Copies of 40 CFR Part 763, Subpart E, Appendix C may be obtained by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00). Copies of the NIOSH 582 curriculum may be obtained by writing the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, P.O. Box 27687, Raleigh, NC 27611, at a cost of thirty-five dollars (\$35.00).

(e) Training course providers shall submit the following for evaluation and approval by the Program:

- (1) a completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
  - (A) name, address, and telephone number of the training provider, and name and signature of the contact person;
  - (B) course title, location and the language in which the course is to be taught;
  - (C) a student manual and an instructor manual for each course and a content checklist that identifies and locates sections of the manual where required topics are covered;
  - (D) course agenda;
  - (E) a copy or description of all audio/visual materials used;
  - (F) a description of each hands-on training activity;
  - (G) a copy of a sample exam;
  - (H) a sample certificate with the following information; and
    - (i) Name and social security number of student;
    - (ii) Training course title specifying

- initial or refresher;
- (iii) Inclusive dates of course and applicable examination;
- (iv) Statement that the student completed the course and passed any examination required;
- (v) Unique certificate number as required;
- (vi) For courses covered under 40 CFR Part 763, Subpart E, Appendix C, certificate expiration date that is one year after the date the course was completed and the applicable examination passed;
- (vii) Printed name and signature of the training course administrator and printed name of the principal instructor;
- (viii) Name, address, and phone number of the training provider;
- (ix) Training course location; and
- (x) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II of the Toxic Substances Control Act;

(1) a list of training currently being provided.

(2) A list of instructors and their qualifications in accordance with Rule .0608 of this Section.

(f) Contingent approval shall be granted by the Program if the application and supporting documentation meet the criteria of Rule .0603(d) and (e) of this Section, except for technical accuracy of instruction, and instructor effectiveness and course administration. Full approval shall be granted for a one year period by the Program to a course with contingent approval after successful completion of an on-site audit of the course conducted in North Carolina. The on-site audit shall include, but not be limited to, an evaluation of the following:

- (1) instructor effectiveness;
- (2) technical accuracy;
- (3) course administration; and
- (4) course content.

(g) Training course providers shall perform the following in order to maintain approval:

- (1) Issue a certificate of training meeting the requirements of Part (e)(1)(H) of this Rule to any student who completes the required training and passes the applicable examination.

(2) Submit to the Program written notice of intention to conduct a training course for North Carolina asbestos accreditation purposes if the course is to be taught in North Carolina or if requested by the Program. Notices for training courses, except asbestos worker, shall be postmarked 10 working days before the training course begins. Notices for asbestos worker training courses shall be postmarked five working days before the training course begins. If the training course is cancelled, the training course provider shall notify the Program at least 24 hours before the scheduled start date. Notification shall be made using a form provided by the Program and shall include the following:

- (A) Training provider name, address, phone number and contact person;
- (B) Training course title;
- (C) Inclusive dates of course and applicable exam;
- (D) Start and completion times;
- (E) Identify whether the course is public offering, contract training, or for the training provider's employees;
- (F) Location and directions to course facility; and
- (G) Language in which the course is taught.

(3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, curriculum, training methods, training manual or materials, instructors, examination, training certificate, training course administrator or contact person. The changes must be approved by the Program in order for the course to be acceptable for accreditation purposes.

(4) Submit to the Program information and documentation for any course approved under Subparagraph (a)(1)-(3) of this Rule if requested by the Program.

(5) Ensure that all instructors meet the requirements of Rule .0608 of this Section.

(6) Ensure that all training courses covered under this Rule meet the following requirements:

- (A) All training courses shall have a maximum of 40 students;

- (B) A day of training shall include at least six and one-half hours of direct instruction, including classroom, hands-on training or field trips;
  - (C) Regular employment and instruction time shall not exceed 12 hours in a 24 hour period;
  - (D) A training course shall be completed within a two-week period;
  - (E) All instructors and students shall be fluent in the language in which the course is being taught;
  - (F) An interpreter shall not be used;
  - (G) Upgrading worker accreditation to that of supervisor by completing only one day of initial training is not permitted. Separate initial training as a supervisor is required;
  - (H) A single instructor is allowed only for a worker course. Other initial disciplines shall have a minimum of two instructors;
  - (I) Instructor ratio for hands-on shall be no more than 10 students per instructor;
  - (J) All course materials shall be in the language in which the course is being taught;
  - (K) Each training course shall be discipline specific; and
  - (L) Students shall be allowed to take an examination no more than twice for each course. After two failures, the student shall retake the full course before being allowed to retest.
- (7) Verify, by photo identification, the identity of any student requesting training.
- (8) For each course approved or deemed approved by the Program under Paragraph (a) of this Rule and taught in North Carolina, the training provider shall submit a completed renewal application on a form provided by the Program. Effective January 1, 1995, a renewal application shall be submitted prior to the next course offering and annually thereafter. If an annual training course renewal lapses, the provider shall submit a renewal application prior to offering the course again in North Carolina.
- (h) Training course providers shall permit Program representatives to attend, evaluate and monitor any training course, take the course

examination and have access to records of training courses without charge or hindrance to the Program for the purpose of evaluating compliance with 40 CFR Part 763, Subpart E, Appendix C and these Rules. The Program shall perform periodic and unannounced on-site audits of training courses.

(i) In accordance with G.S. 130A-23, the Program may suspend or revoke approval for a training course for violation of this Rule and shall suspend or revoke approval upon suspension or revocation of approval by the Environmental Protection Agency or by any state with an Environmental Protection Agency-approved accreditation program.

*Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.*

#### **.0605 ASBESTOS CONTAINING MATERIALS REMOVAL PERMITS**

(a) No person shall remove more than 35 cubic feet (1 cubic meter), 160 square feet (15 square meters) or 260 linear feet (80 linear meters) of regulated asbestos containing material, without a permit issued by the Program. This permitting requirement is applicable to:

- (1) individual removals that exceed the threshold amounts addressed in this Paragraph;
- (2) nonscheduled asbestos removals conducted at an installation that exceed the threshold amounts addressed in this Paragraph in a calendar year of January 1 through December 31.

Other asbestos abatement activities are exempt from the permit requirements of G.S. 130A-449.

(b) All applications shall be made on a form provided or approved by the Program. The application submittal shall include at least all of the information specified under the notification requirements of 40 CFR Part 61.145(b), Subpart M. Applications for asbestos containing material removal permits shall adhere to the following schedule.

- (1) Applications for individual asbestos removals shall be postmarked or received by the Program at least 10 working days prior to the scheduled removal start date. For emergency renovation operations involving asbestos removal, the 10 working days notice shall be waived. An application for a permit for the emergency renovation operation shall be

postmarked or received by the Program as early as possible before, but not later than, the following working day. Permit applications for emergency renovation operations shall be accompanied by a letter from the owner or his representative explaining the cause of the emergency;

- (2) Applications for nonscheduled asbestos removals shall be postmarked or received by the Program at least 10 working days before the start of the calendar year and shall expire on or before the last day of the same calendar year. Reports of the amount of regulated asbestos containing material removed shall be made at least quarterly to the Program.

(c) Application for revision to an issued asbestos removal permit shall be made by the applicant in writing on a form provided by the Program and shall be received by the Program in accordance with the following:

- (1) Revision to a start date for a project that will begin after the start date stated in the approved permit shall be received on or before the previously stated start date or previously revised start date;
- (2) Revision to a start date for a project that will begin before the start date stated in the approved permit shall be received at least 10 working days before the new start date;
- (3) Revision to a completion date that will be extended beyond the completion date stated in the approved permit shall be received by the original or previously revised completion date;
- (4) Revision to a completion date that will be earlier than the completion date stated in the approved permit shall be received by the new completion date; and
- (5) Revisions to permits other than start or completion dates shall be submitted to the Program prior to initiating the activity which the revision addresses.

(d) ~~Copies of the~~ The following shall be maintained on site during removal activities and be immediately available for review by the Program:

- (1) the removal permit issued by the Program and all revisions with the Program's confirmation of receipt;
- (2) applicable asbestos abatement design; and project monitoring plan; and

- (3) photo identification cards issued by the Program for all accredited personnel performing ~~removal~~ asbestos management activities.

(e) All permitted removal activities shall be conducted in accordance with 40 CFR Parts 61 and 763, Subpart E, where applicable. Notwithstanding permit suspension or revocation if the removal activities are in violation of Department of Labor rules found at Chapter 7, Title 13 of the North Carolina Administrative Code, Department of Transportation rules found at Title 19A, of the North Carolina Administrative Code, or Solid Waste Management rules found at Chapter 13, Title 15A of the North Carolina Administrative Code, as determined by the agencies administering those Rules, respectively.

(f) All permitted removals shall be conducted under the direct supervision of an accredited supervisor. The supervisor shall be on-site at all times when removal activities are being performed.

(g) An asbestos abatement design shall be prepared by an accredited abatement designer for each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters) or 656 cubic feet (18 cubic meters), of regulated asbestos containing materials conducted in public areas.

(h) In accordance with G.S. 130A-23, the Program may suspend or revoke the permit for any violation of G.S. 130A, Article 19 or any of the rules of this Section. The Program may also revoke the permit upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

*Statutory Authority G.S. 130A-5(3); 130A-449; P.L. 99-519.*

#### **.0606 FEES**

(a) The fee required by G.S. 130A-450 shall be submitted with an application for the asbestos containing material removal permit. The fees shall be as follows:

- (1) Fees for the removal of floor tiles, ~~and~~ cementitious asbestos containing wallboard or panels and asbestos containing roofing material shall be one percent of the contract price or ten cents (\$0.10) per square foot, whichever is greater;
- (2) Fees for the removal of ceiling tiles shall be one percent of the contract price or ten cents (\$0.10) per square

- foot; whichever is greater;
- (3) Fees for the removal of surfacing material, thermal system insulation and other asbestos containing materials shall be one percent of the contract price or twenty cents (\$0.20) per square or linear foot; whichever is greater;
- (4) Fees for demolition shall be a maximum of three hundred dollars (\$300.00). Demolition, for the purposes of this Rule only, means the act of razing a building or structure, or portion thereof, to the ground. Removal of regulated asbestos containing material from any undemolished portion of a building or structure shall be permitted as an individual asbestos removal; and
- (5) An owner of any single family dwelling in which the owner resides or will reside after the asbestos removal is complete is exempt from permit fees.

A permit shall not be issued until the required fee is paid.

(b) The fee required by G.S. 130A-448(a) shall be submitted with an application for accreditation or reaccreditation. The amount of the fee shall be one hundred dollars (\$100.00) for each category, except that the fee for persons applying for accreditation or reaccreditation as workers shall be twenty-five dollars (\$25.00). However, if a person applies for accreditation or reaccreditation in more than one category per calendar year, the amount of the fee shall be one hundred dollars (\$100.00) for accreditation or reaccreditation in the first category and seventy-five (\$75.00) for accreditation or reaccreditation in each remaining category, except for workers. A person shall not be accredited or reaccredited until the required fee is paid.

(c) The fees required by G.S. 130A-448(b) shall be submitted with the application for each initial course approval and each renewal course approval. The amount of the fee shall be one thousand five hundred dollars (\$1,500.00) for each initial course approval and two hundred fifty dollars (\$250.00) for each renewal course approval.

*Statutory Authority G.S. 130A-5(3); 130A-448(a); 130A-448(b); 130A-450; P.L. 99-519.*

## **.0607 ASBESTOS EXPOSURE**

### **STANDARD FOR PUBLIC AREAS**

(a) The maximum allowable ambient asbestos level in the air for public areas shall be:

- (1) 0.01 fibers per cubic centimeter as analyzed by phase contrast microscopy, or
- (2) arithmetic mean of less than or equal to 70 structures per millimeter square as analyzed by transmission electron microscopy, or
- (3) a Z-Test result that is less than or equal to 1.65 as analyzed by transmission electron microscopy.

(b) For individually permitted asbestos removals, ambient air sampling shall be conducted in public areas adjacent to the work area. Initial sampling shall be conducted on the day that regulated asbestos containing material removal begins. The sampling shall continue on a daily basis unless, or until, the supervising air monitor specifies differently. Potential public asbestos exposure shall be considered when determining the frequency and location of the sampling.

(c) Clearance air sampling shall be conducted in accordance with Paragraphs (d) and (e) of this Rule for all permitted asbestos removal projects conducted in public areas. Clearance air samples shall be analyzed by:

- (1) transmission electron microscopy and comply with the levels specified under Subparagraph (a)(2) or (a)(3) of this Rule for each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters), or 656 cubic feet (18 cubic meters) of regulated asbestos containing material; or
- (2) transmission electron microscopy or phase contrast microscopy and comply with the levels specified in Paragraph (a) for all other permitted asbestos removals.

(d) Phase contrast microscopy and transmission electron microscopy sampling and analysis methods shall be conducted in accordance with 40 CFR Part 763, Subpart E.

(e) Sample analysis for phase contrast microscopy or transmission electron microscopy samples shall be performed by a laboratory meeting the requirements of P.L. 99-519 and 40 CFR 763 and accompanying appendices. Laboratories performing phase contrast microscopy analysis pursuant to this Rule shall have a rating of proficient by the American Industrial Hygiene Association's Proficiency Analytical Testing Program. Persons performing phase contrast microscopy analysis shall have successfully completed a NIOSH 582 or a NIOSH 582

equivalent training course. Persons performing phase contrast microscopy analysis at the asbestos removal location shall be proficient in the American Industrial Hygiene Association's Asbestos Analysts Registry Program.

(f) A final visual inspection shall be conducted by an accredited air monitor or an accredited supervising air monitor for all permitted asbestos removal removals projects conducted in public areas. This visual inspection shall be conducted prior to clearance air sampling. The final visual inspection shall assure that all asbestos containing residue, dust, and debris and asbestos contaminated equipment has been removed.

(g) Any person performing ambient or clearance air sampling or visual inspection during an asbestos removal as specified under Paragraphs (b), (c), and (f) of this Rule shall be retained by the building owner. Neither the The accredited supervising air monitor nor accredited air monitor shall ~~not~~ be employed by the contractor hired to conduct the asbestos removal except that:

- (1) this restriction in no way applies to personal samples taken to evaluate worker exposure as required by Occupational Safety and Health Act; and
- (2) this restriction shall not apply when the contractor and air monitor have disclosed their association to the building owner and the building owner approves this association in writing.

(h) For air sampling and visual inspections conducted under Paragraphs (b), (c), and (f) of this Rule, the supervising air monitor shall:

- (1) Prepare, prior to the removal start date, an abatement project monitoring plan which takes into consideration at least the abatement project scope of work, building use, occupant locations and their potential for exposure to airborne asbestos fibers, type of asbestos containing material, and the asbestos abatement design, including work practices and engineering controls. The plan shall include air sampling procedures, air sample locations and air sampling frequency. This sampling plan may be amended by the supervising air monitor as needed. This requirement shall apply to each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters), or 656 cubic feet (18 cubic meters) of

- regulated asbestos containing materials;
- (2) Ensure that ambient air sampling results shall be available on-site:
  - (A) within 24 hours of sample collection and analysis by phase contrast microscopy;
  - (B) within 48 hours of sample collection and analysis by transmission electron microscopy;
- (3) Personally inspect any individually permitted asbestos removal project:
  - (A) that exceeds 10 working days in length, but does not exceed 30 working days, at least once; or
  - (B) that exceeds 30 working days in length, at least once in the first 30 working days and at least once every 30 working days thereafter;
- (4) Prepare a written, signed and dated report documenting all site visits made to the removal, final visual inspection, and all ambient and clearance air sampling conducted. This report shall be supplied by the supervising air monitor to the building owner. The building owner shall supply a copy of the report to the Program upon request.

Statutory Authority G.S. 130A-5(3); 130A-446; P.L. 99-519.

#### .0609 ASBESTOS NESHAP FOR RENOVATIONS AND DEMOLITIONS

(a) "Each owner or operator of a renovation or demolition activity," as defined in 40 CFR 61.141, shall comply with all applicable requirements of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions as found in 40 CFR Part 61, Subparts A and M. 40 CFR Part 61, Subparts A and M are hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, 441 North Harrington Street, Raleigh, North Carolina. Copies may be obtained free of charge by writing the Asbestos Hazard Management Branch, P.O. Box 27687, Raleigh, North Carolina 27611.

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

except that such asbestos NESHAP documents pertaining to renovations and demolitions within local air pollution program jurisdictions shall be submitted to the local program.

Statutory Authority G.S. 130A-451.

**.0610 LOCAL AIR POLLUTION PROGRAMS**

The Department shall authorize local air pollution programs certified as of October 1, 1994, pursuant to G.S. 143-215.112 to enforce the asbestos NESHAP for renovations and demolitions so long as the local program maintains its certification pursuant to G.S. 143-215.112.

Statutory Authority G.S. 130A-452.

**TITLE 21 - OCCUPATIONAL LICENSING BOARD**

**CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21 NCAC 14F .0007; 14G .0003; 14I .0103; 14J .0202 and .0205; adopt 14I .0401 - .0402.*

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

*The public hearing will be conducted at 8:00 a.m. on October 18, 1994 at the Grove Towers, 5th Floor, 1110 Navaho Drive, Raleigh, N.C. 27609.*

**Reason for Proposed Action:**

**21 NCAC 14F .0007, 14G .0003, 14I .0103, 14J .0202 & .0205** - To bring rules up to date.

**21 NCAC 14I .0401 - .0402** - To enact rules for a Board policy.

**Comment Procedures:** *The record shall be open for 30 days to receive written comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners through November 2, 1994 to be considered as part of the hearing record. Comments should be addressed to Dee Williams, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609.*

*Requests to speak must be in writing and received prior to the hearing. Speaking time is 5 minutes.*

**SUBCHAPTER 14F - RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SALONS**

**.0007 DIMENSIONS OF BEAUTY SALON**

A beauty salon shall maintain at least five feet of space between each styling chair from the center to the center of each chair, and shall have at least two feet of space from each chair to the wall of the salon, front and back. This dimension requirement does not apply to a non-styling shampoo area.

Statutory Authority G.S. 88-23.

**SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS**

**.0003 SPACE REQUIREMENTS**

(a) The Cosmetic Art Board will issue letters of approval only to cosmetology schools that have at least ~~3,000~~ 2180 square feet of inside floor space for 20 stations or 3240 square feet of inside floor space for 30 stations located within the same building. As an exception, a school may have a recitation room located in an adjacent building or another building within 500 feet of the main cosmetology building.

(b) Cosmetology schools approved with ~~3,000~~ 2180 square feet of inside floor space may enroll no more than ~~60~~ 50 students at one time, and for each student enrolled in addition to ~~60~~ 50 students, 50 square feet of inside floor space must be provided. Cosmetology schools approved with 3240 square feet of inside floor space may enroll no more than 60 students at one time, and for each student enrolled in addition 60 students, 50 square feet of inside floor space must be provided. For purpose of this Rule, the day and night classes shall be counted as separate enrollments.

(c) In addition each cosmetology school must have 30 hairdressing stations, arranged to accommodate not less than 30 students and arranged so that the course of study and training in cosmetology, as prescribed by the Board, may be given. All stations must be numbered numerically.

(d) Cosmetology schools must also have a beginner department containing sufficient space to comfortably accommodate at least ten students and having at least 40 inches between mannequins.

(e) The Board will issue letter of approval only

to manicurist schools that have at least 1,000 square feet of inside floor space located within the same building.

(f) Manicurist schools with 1,000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided.

(g) In addition, manicurist schools must have ten manicurist tables and chairs a minimum of two feet apart, side to side, arranged to comfortably accommodate ten students.

*Statutory Authority G.S. 88-23.*

## SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

### SECTION .0100 - RECORD KEEPING

#### .0103 INSPECTION REPORTS AND REPORTS OF STUDENTS HOURS

(a) In addition to such other reports as may be required by the Board, cosmetic art schools shall report to the Board or its authorized agent, upon inspection of the cosmetic art school and at other times upon specific request, the names of all students currently enrolled and the hours completed by each.

(b) The owner or manager of the cosmetic art school shall read each inspection report made of the school by an authorized agent of the Board to determine that the information on the inspection report is correct and shall sign the report. If any part of the information on the report is incorrect, it shall be corrected by the authorized agent of the Board or an exception to the report signed by the owner or manager shall be attached to the report.

~~(c) All cosmetic art schools shall send a report of all hours earned by each student during the preceding month to the Board by the 15th of each month covering the hours earned.~~

~~(d) Reports shall be mailed in on forms approved by the Board.~~

(c) ~~(e)~~ The Board shall be notified by letter prior to demonstrators, lecturers or observers being in the school.

*Statutory Authority G.S. 88-23; 88-30.*

## SECTION .0400 - LICENSURE OF INDIVIDUALS WHO HAVE BEEN CONVICTED OF A FELONY

### .0401 APPLICATION FOR LICENSURE

## BY INDIVIDUALS WHO HAVE BEEN CONVICTED OF A FELONY

(a) In addition to other requirements, any applicant who has been convicted of a felony shall supply the following:

- (1) A statement of the facts of the crime accompanied by a certified copy of the indictment (or, in the absence of an indictment, a copy of the "information" that initiated the formal judicial process), the judgment and the commitment order for each felony for which there has been a conviction.
- (2) A listing of each place of residence for the applicant since the date of conviction. The applicant shall give the specific address by city or town, county, and state, and the specific dates for each residency.
- (3) A copy of the applicant's restoration of rights certificate, if applicable.
- (4) At least three letters attesting to the applicant's character from individuals unrelated by blood or marriage. If available, one of these letters must be from someone familiar with the applicant's cosmetology training and experience, one from the applicant's probation or parole officer, and one from the applicant's vocational rehabilitation officer. If letters from persons in these positions are unavailable, the applicant shall submit an explanatory statement as to why they are unavailable.
- (5) The names and addresses of at least three other unrelated persons who have known the applicant for three or more years.
- (6) The name and address of the applicant's current or last employer.
- (7) A brief summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service.
- (8) Records of any cosmetology or manicurist school disciplinary actions.
- (9) A description of any pending criminal charges with a copy of the indictment or, if there is not yet an indictment, the arrest warrant for each pending charge.
- (10) Any other information which in the opinion of the applicant would be useful or pertinent to the consideration by the

Board of the applicant's request.

(b) If a conviction was for an offense involving habitual drug or alcohol abuse, the applicant shall also provide verifiable evidence showing that he or she is drug/alcohol free. Examples of evidence which will be considered are:

- (1) enrollment in an on-going licensed treatment program.
- (2) drug analysis test results, and
- (3) certification of completion of a licensed treatment program.

(c) The Board will not issue any license to an applicant for licensure who has been convicted of a felony and is still incarcerated at the time of the application.

(d) No applicant who has been convicted of a felony can be scheduled for an examination before the Board can review the application.

*Statutory Authority G.S. 88-23.*

**.0402 REQUESTS FOR PREAPPLICATION REVIEW OF FELONY CONVICTIONS**

(a) An individual who intends to begin a course of study at a cosmetic art school or is currently attending cosmetic art school may apply to the Board at any time for a preapplication review of the individual's felony conviction or convictions. The Board will allow only one such request per individual per type of license.

(b) To obtain a preapplication review, the individual seeking review shall write a letter to the Board specifically asking for a preapplication review and explaining the individual's reason for the request, including the name of the school the individual attends or intends to attend and the license the individual intends to seek. The individual shall also provide the information required by 21 NCAC 14I .0401. In reviewing the material submitted, the Board shall determine whether, as of the date of the request, the felony conviction or convictions are or are not sufficient to cause the Board to deny an application for a license and shall notify the individual in writing of its determination.

(c) A determination that as of the date of the request, the felony conviction or convictions are sufficient to cause the Board to deny an application for a license:

- (1) shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license;
- (2) is not binding on the Board with respect to any future application from the

individual reviewed; and

(3) is not a final agency decision.

(d) A copy of the information submitted by the individual shall be sent by the Board to the school the individual attends or intends to attend.

(e) An individual who has obtained a determination that the individual's felony conviction or convictions would not be held sufficient to cause the Board to deny an application for a license shall update the information required by 21 NCAC 14I .0401 in any subsequent application for a license. If such an individual applies for the license specified in the preapplication review request within two years of the request and the information submitted with the application shows no change since the preapplication review, the application will not need additional review by the Board at a Board meeting.

*Statutory Authority G.S. 88-23.*

**SUBCHAPTER 14J - COSMETOLOGY CURRICULUM**

**SECTION .0200 - ADVANCED DEPARTMENT**

**.0202 PRACTICAL WORK FOR ADVANCED STUDENTS**

(a) The hours earned in the advanced department must be devoted to study and live model performance completions.

(b) Work in this department may be done on the public. Students with less than 300 hours credit must not work in this department and are not allowed to work on the public.

~~(c) A list of names of students eligible for work on the public must be arranged alphabetically and patron work must be assigned to each student in turn.~~

~~(d) Appointment books cannot be used nor requests granted for any one student.~~

(c) ~~(e)~~ All work done by students on the public must be checked by the cosmetology teacher as the work is being performed and after the service has been completed so that the teacher may point out errors to the student in order that they may be corrected.

*Statutory Authority G.S. 88-23.*

**.0205 LIVE MODEL PERFORMANCE REQUIREMENTS**

(a) The following live model performance completions must be done by each student in the

advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions will not be allowed. Credit for a performance can only be given to one student. These performances can only be done on live models:

- (1) hair and scalp treatments--30 hours -- 15 performance completions;
- (2) hairstyling and shampooing--194 hours -- 150 performance completions;
- (3) tinting and bleaching--50 hours -- 6 performance completions;
- (4) frosting and streaking--20 hours -- 4 performance completions;
- (5) temporary rinses--10 hours -- 20 performance completions;
- (6) semi permanent rinses--5 hours -- 4 performance completions;
- (7) cold permanent waving--150 hours -- 20 performance completions;
- (8) marcelling, croquignole and permanent relaxing--35 hours--15 performances completions;
- (9) facials, massages, packs, eyebrow arching--10 hours -- 10 performance completions;
- (10) lash and brow tinting--10 hours -- 4 performance completions;
- (11) manicuring and hand and arm massage--20 hours -- 20 performance completions;
- (12) hair shaping--100 hours -- 25 performance completions;
- (13) wig care and styling--4 hours -- 2 performance completions; and
- (14) marcel curling iron and blow dryers--10 hours--10 performances completions.

(b) Certification of these live model performance completions will be required along with the application for the examination.

Statutory Authority G.S. 88-23.

## TITLE 24 - INDEPENDENT AGENCIES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Health Plan Purchasing Alliance Board intends to adopt rules cited as 24 NCAC 5 .0201 - .0207 and .0401 - .0419.*

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

*The public hearing will be conducted at 10:00 a.m. on November 2, 1994 at the Insurance Building, 112 Cox Avenue, 2nd Floor, Raleigh, NC.*

*Reason for Proposed Action: To adopt rules to implement the provisions in Article 66 of Chapter 143 of the General Statutes as they relate to health plan alliances in participating small employers.*

*Comment Procedures: Any person may comment either orally or in writing at the hearing. All other comments must be submitted to the Board no later than November 2, 1994. Written comments should be directed to Robert F. Joyce, 112 E. Hargett Street, Suite 101, Raleigh, NC 27601.*

## CHAPTER 5 - STATE HEALTH PLAN PURCHASING ALLIANCE BOARD

### SECTION .0200 - ALLIANCES

#### .0201 PURPOSE

These Rules implement the provisions specified in G.S. 143, Article 66, the Health Care Purchasing Act, as they relate to health plan purchasing alliances.

Statutory Authority G.S. 143-66; (G.S. 143-621 and following.)

#### .0202 ESTABLISHMENT OF ALLIANCE MARKET AREAS

(a) Pursuant to authorization under G.S. 143-626(1), the Board shall establish market areas for regional alliances according to the following criteria:

- (1) The proposed market area contain approximately 600,000 residents or more in population within its standard metropolitan area plus adjoining regions.
- (2) The small business community has demonstrated support for inclusion in the proposed market area.

(b) The Board may choose to establish boundaries for a market area after receiving a formal proposal from a community sponsor to form an alliance in a particular region. The Board may also choose to establish boundaries for a market area before receiving such formal proposals from community sponsors.

(c) The Board's establishment of market areas is

for administrative and organizational purposes only and shall not be construed to impose any geographical restrictions or limitations on the provision of health insurance or health care to small businesses, their employees or dependents or any other persons.

Statutory Authority G.S. 143-626.

**.0203 CERTIFICATION, RECERTIFICATION AND DECERTIFICATION**

(a) Certification of Alliance Status. Before beginning operation, an alliance formed by a community sponsor shall complete and submit a certificate of approval to the Board. The certificate shall include Form #SHPPA-2-1A, incorporated herein by reference, and the following items:

- (1) Confirmation of the Board's approval of the alliance's community sponsor.
- (2) A current certificate of status as a non-profit corporation, issued by the Secretary of State's office.
- (3) Articles of incorporation, which shall include the following provisions:
  - (A) Corporate purposes that are consistent with and limited to the purposes of G.S. 143, Article 66.
  - (B) Corporate powers that prohibit engaging, either directly or through related or affiliated entities, in activities inconsistent with the purposes of G.S. 143, Article 66.
- (4) A notarized statement from each director on Form #SHPPA-2-1B, incorporated herein by reference, setting forth the director's name, occupation, by whom appointed, and certifying that the director is in compliance with the financial interest restrictions of G.S. 143-625(i) and (j), that the director has reviewed the Board's regulations as well as North Carolina statutory law regarding alliances and the small employer market and understands his or her obligation to comply with them, and that the Alliance Board will require its executive director and all executive personnel to do the same.
- (5) Bylaws of the alliance, certified by the custodian of records to be a true and accurate copy of bylaws currently in effect. Bylaws shall address topics including but not limited to:
  - (A) Conditions of alliance membership

which are consistent with G.S. 143, Article 66.

- (B) Board of Directors, including manner of election by member small employers, following the appointment of the initial directors; removal and replacement; legal duties and responsibilities; notice of meetings; approval of qualified independent third party contracts, board action without a meeting and telephone meetings.
- (C) Conflict of interest rules for directors, which shall require:
  - (i) That no director may be employed by, affiliated with, an agent of, or otherwise a representative of any health care provider or carrier,
  - (ii) That no director may hold securities in health care businesses in amounts exceeding those permitted under G.S. 143-625(j),
  - (iii) Disclosure to the Alliance Board of any potential or apparent conflicts of interest, and
  - (iv) Abstention from discussions and voting relating to any contracts with parties who are, or may appear to be, related or affiliated parties.
- (D) Prohibition against application of alliance assets to the benefit of any entity in a manner inconsistent with the North Carolina Not For Profit Corporation Act.
- (E) Maintenance and inspection of corporate books and records and alliance contracts, which authorizes access by the board upon reasonable written notice.
- (F) Effective date of operation.
- (G) Grievance procedures to be used in resolving disputes between member small employers and the alliance and disputes between an AHC and the alliance.
- (6) A schedule identifying anticipated sources of revenue to finance alliance operations.
  - (b) Recertification of Alliance Status. On July 1 of each year after initial certification, the alliance shall complete and submit a recertification approval to the Board. The recertification shall include Form #SHPPA-2-2A, incorporated herein by reference, and the following items:
    - (1) A current certificate of status as a non-

profit corporation, issued by the Secretary of State.

- (2) A notarized statement on Form #SHPPA-2-2B, from any director who has not previously submitted such a statement setting forth the information set forth in Subparagraph (a)(4) of this Rule.
  - (3) An annual program and financial report, which shall encompass a summary of the quarterly data submitted pursuant to Rule .0204(a) of this Section; a description of the alliance's accounting procedures or any changes thereto that did not appear in a previous recertification; a list of the type and resolution of member small employer and AHC grievances not listed in a previous recertification; and an annual financial report consisting of the approved operating budget, including a projected statement of expenses and revenue for the current fiscal year, and independent audited financial statements of the prior fiscal year's financial operations.
  - (4) Copies of all alliance marketing materials made available to member small employers.
  - (5) a record demonstrating the alliance's compliance with the member services plan approved by the Board pursuant to Rule .0206 of this Section.
  - (6) Any other material changes not appearing in a previous recertification.
- (c) Decertification Procedure.

- (1) The Board may decertify an alliance if it finds that the alliance has materially violated the provisions of G.S. 143, Article 66, rules adopted by the Board, or provisions of the alliance's own bylaws, or the member services plan approved by the board pursuant to Rule .0206 of this Section.
- (2) The Board shall adhere to the following process regarding an alliance's violation:
  - (A) It shall advise any alliance in writing of any such material deficiency by certified mail, return receipt requested
  - (B) Within 10 working days of receiving notice of the deficiency, the alliance shall inform the Board in writing of all actions being taken to correct the deficiency and shall further notify the

Board as soon as the deficiency has been corrected.

- (C) The Board may take other necessary steps consistent with its statutory authority to assure that an alliance's plan to correct the deficiency is sufficient and that the alliance's performance in correcting the deficiency is satisfactory.
  - (D) If the alliance's corrective actions and further plans to correct the deficiency are determined by the Board not to be satisfactory, 60 days following the alliance's receipt of notice of such failure the Board may decertify the alliance, by notice to the alliance of such decertification sent by certified mail, return receipt requested.
- (3) In decertifying an alliance for any reason, the Board shall take necessary actions consistent with its statutory authority, including appointment of a new board of directors for a reconstituted alliance, recommending that another alliance or other alliances assume the powers and duties of the decertified alliance, assumption of the alliance's responsibilities or duties or appointment of a temporary administrator to assure that the alliance's responsibilities continue to be performed.

Statutory Authority G.S. 143-626.

#### **.0204 BOARD MONITORING RESPONSIBILITIES**

(a) Not less than 45 days after the close of each calendar quarter, each alliance shall submit for the Board's review a quarterly report including all the information specified in G.S. 143-626(4).

(b) The Board shall actively monitor the activities of each alliance to assure the following:

- (1) that alliance actions affecting health care market competition are not for private interests;
- (2) that each alliance continues to meet the criteria for certification;
- (3) that each alliance adheres to its bylaws; and
- (4) that alliance actions are consistent with the legislative intent found in G.S. 143-621.

(c) The Board shall annually review the consumer costs and health care quality within each alliance and among all alliances, to assure compliance

with the legislative intent of G.S. 143-621.

*Statutory Authority G.S. 143-626.*

**.0205 MEMBER SERVICES**

(a) Pursuant to the procedure established in Rule .0206 of this Section, members services provided through an alliance shall include:

- (1) development, publication, distribution, collection, and processing of alliance membership application forms;
- (2) verification of small employer membership application forms for completeness and accuracy;
- (3) verification of employer eligibility;
- (4) establishment and maintenance of the alliance membership database;
- (5) marketing strategies to inform small employers of the benefits of alliance membership and the services available through the alliance;
- (6) provision to alliance members upon request of lists of licensed insurance agents or brokers;
- (7) preparation and distribution of AHC comparison sheets;
- (8) acceptance and processing of alliance member inquiries;
- (9) receipt and processing of employee enrollment forms, including verification of employee eligibility and editing of enrollment forms for accuracy and completeness;
- (10) collection and maintenance of alliance member employee census data;
- (11) collection of premium rate quotes;
- (12) verification and monitoring of minimum employee participation and employer contribution requirements;
- (13) confirmation of coverage dates to alliance members;
- (14) transmission of employee enrollment information (including Medicare primary or secondary status) to AHCs;
- (15) billing and collection of premiums and membership fees from alliance members, and those former members continuing coverage;
- (16) payment of premiums to AHCs; and
- (17) all other services included in the member services plan authorized by the Board pursuant to Rule .0206 of this Section.

(b) An alliance shall assume responsibility for collecting premiums from member small employers

and distributing them to participating AHCs. In performing this function, an alliance shall collect both the portions of the premium paid by the employer and enrollee. To finance the cost of uncollected premiums, an alliance may collect a bad debt surcharge on alliance members or mitigate the need for such a surcharge through a prepayment and disenrollment policy approved by the Board.

*Statutory Authority G.S. 143-626; 143-628.*

**.0206 COORDINATION OF MEMBER SERVICES AMONG ALLIANCES**

The Board shall select an administrator to assist all alliances in matters relating to the administration of member services. The selected administrator shall possess developed expertise in alliance administration and its marketing programs shall include involvement with agents and brokers. The Board shall contract with the selected administrator to develop a coordinated administration plan with statewide standards for all alliances.

*Statutory Authority G.S. 143-626; 143-628.*

**.0207 REQUESTS FOR PARTICIPATION BY AHCs**

An alliance's request for AHC participation shall contain at least the following provisions:

- (1) A request to AHCs for the submission of premium rates through qualified health care plans to be offered through the alliance.
- (2) A provision stipulating that an AHC's response will be treated as confidential until the alliance simultaneously opens pursuant to notice all premium rate information submitted by AHCs.
- (3) A provision requiring an AHC and its agents shall not divulge its proposal to other AHCs, their agents, or other consultants and that the AHC will not communicate in any other manner concerning its response with other AHCs offering responses until the alliance's public opening of the AHCs' responses.
- (4) A provision requesting all information necessary for an alliance's member service plan approved by the Board pursuant to Rule .0206 of this Section.
- (5) A provision requiring a notarized statement from an AHC that its submitted premium rates are in compliance with the community rating methodology required

in the small employer market at large and that it will assist in the marketing of its plan or plans to all eligible enrollees of an alliance.

Statutory Authority G.S. 143-628; 143-629.

## SECTION .0400 - SMALL EMPLOYER PARTICIPATION IN ALLIANCES

### .0401 PURPOSE

These Rules implement the provisions specified in G.S. 143, Article 66, the Health Care Purchasing Act, as they relate to participating small employers.

Statutory Authority G.S. 143-626.

### .0402 DEFINITIONS

The definitions in this Rule shall apply to this Section:

- (1) "Community Partner" is a non-profit business organization that operates for the purpose of furthering economic opportunities for small businesses in the alliance market area and that has agreed to work in partnership with the community sponsor to promote its alliance.
- (2) "Disenroll" means termination of coverage in the alliance.
- (3) "Employer monthly payment" means the dollar amount owed each month by the member small employer to the alliance. It includes program participation fees, any required late fees, any required reinstatement fees, any required service fees for agents and brokers, and the sum of individual premiums. Each of these elements shall be listed separately on the employer's monthly bill.
- (4) "Enroll" means acceptance into an alliance.
- (5) "Enrolled employee" means an eligible employee who is enrolled in a qualified health care plan through an alliance.
- (6) "Enrollee" means an eligible employee or dependent of an eligible employee who is enrolled in a qualified health care plan through an alliance.
- (7) "Individual premium" means the dollar amount that a member small employer owes to an alliance for coverage of an enrolled employee and any enrolled dependents. This includes the employer share and any applicable employee share.

(8) "Program participation fee" means the amount that an alliance charges an member small employer to participate in the alliance.

(9) "Qualified small employer" means a small employer that an alliance has determined to be in compliance with the participation requirements of Rule .0404 of this Section.

Statutory Authority G.S. 143-626; 143-628.

### .0403 APPLICATION FOR MEMBERSHIP

(a) An application from a small employer (including self-employed individuals or sole proprietorship) for participation in an alliance shall contain the following:

- (1) The small employer's complete name.
- (2) The small employer's current business address including unit number, street, city, county, state, and zip code.
- (3) The address to which the alliance should send bills for the small employer's monthly payments, if different from Subparagraph (a)(2) of this Rule.
- (4) The small employer's federal tax identification number (or proof of application).
- (5) The small employer's telephone number.
- (6) The name, position and phone number of a designated contact person.
- (7) The industry type of the small employer.
- (8) A copy of the Federal W-4 forms or employer payroll records for all employees.
- (9) The name and address of the small employer's worker's compensation carrier, and the policy number.
- (10) The number of eligible employees employed by the small employer (residents of North Carolina and total) and the number of eligible employees applying for enrollment in the alliance.
- (11) A declaration by the member small employer that the small employer will follow the rules and regulations of the alliance as well as North Carolina statutory law pertaining to alliances and the small employer market.
- (12) Either the agent/broker payment request or the small employer certification specified in Rule .0413(c) of this

Section.

- (13) An indication of which qualified health care plans the small employer plans to make available to eligible employees.
- (14) A check or money order for an amount equal to the initial one month employer monthly payment.
- (15) Any other information approved by the Board pursuant to the member services plan authorized under Rule .0206 of this Chapter.
- (16) An application from a self-employed individual or sole proprietor must also include:

- (A) Proof of being in business for at least 30 days prior to attaining member status.
- (B) Show evidence of taxable income from some current or other business activity in one of the two previous years as indicated on IRS Form 1040, Schedule C or F.

(b) An application from a small employer shall also include the following for each eligible employee who is applying for enrollment:

- (1) The employee's full name.
- (2) The employee's current residence address including house or unit number, street, city, county, state, and zip code.
- (3) The employee's home and work phone numbers.
- (4) The employee's date of birth.
- (5) The employee's gender.
- (6) The employee's social security number.
- (7) The employee's date of employment with the small employer, the number of hours in the employee's normal workweek, and the date, if different from the employment date, that the employee began a normal workweek of at least 30 hours.
- (8) an employee's current or most recent prior medical insurance or health benefits coverage, including coverage under the federal Medicare program.
- (9) The full names, dates of birth, gender, social security numbers, if existing, and relationship of any dependent to be covered and the same kind of medical insurance information for any dependent as specified in Subparagraph (b)(8) of this Rule for employers.
- (10) The qualified health care plan of an Accountable Health Carrier that is covering the enrollees (the employee

and their dependents).

- (11) A declaration by the eligible employee stating the following:
  - (A) The employee will follow the rules and regulations of the alliance.
  - (B) The employee has reviewed the services and coverage offered under and the premium rates applicable to the qualified health care plan(s) which the employee's employer has selected.
  - (C) The employee resides in the service area of his/her selected AHC.
  - (D) The employee will abide by the rules, utilization review process, and dispute resolution process of the selected accountable health carrier which he or she has selected.
  - (E) The employee meets the requirements to be an eligible employee.

(c) An alliance shall deem an application lacking any of the pertinent information required in Paragraphs (a) and (b) of this Rule as incomplete and shall return the application to the small employer. The alliance shall include a notice explaining what specific information in the application is incomplete.

*Statutory Authority G.S. 143-626.*

**.0404 PARTICIPATION REQUIREMENTS**

(a) The qualified small employer shall participate in the alliance for the market area where its principal place of business is located. If an otherwise eligible employee resides in another market area where an alliance has been established, the employees may choose a qualified health care plan sponsored by an AHC participating in the alliance in the employer's area of residence. If an otherwise eligible employee resides in another market area without an alliance, the employee may participate in the alliance where an employer's principal place of business is located if an accountable health carrier offers through that alliance a qualified health care plan which serves the employee's area of residence. Application for such coverage shall be coordinated through the alliance in the area where this employer's principal place of business is located. Accountable health carriers may also agree to provide otherwise eligible employees residing outside of North Carolina with coverage through the alliance where the employer's principal place of business is located.

(b) An alliance shall require each member small employer to enroll no less than fifty percent and no more than seventy percent of its total eligible

employees. The employee total shall include any employee who participates or is eligible to participate in a qualified health care plan through any alliance, except for any employee who already has qualifying existing coverage. For purposes of this Rule, "qualifying existing coverage" means health coverage that an employee receives under Medicare, Medicaid, or as a dependent under another employer's health insurance or health benefit arrangement which, according to the Department of Insurance, provides coverage equal to or exceeding benefits under the basic health care plan.

(c) An alliance shall require that each member small employer does the following:

- (1) contributes to the payment of each plan covering an enrolled employee in an amount no less than fifty percent of the lowest cost plan selected by the employer for coverage of individuals of the same age and gender and residing in the same county.
- (2) inform all potentially eligible employees of the employer's intention to purchase coverage through the alliance and provide them the opportunity to apply for coverage.
- (3) provide all potentially eligible employees with at least 30 calendar days to decide whether to apply for coverage.
- (4) inform all potentially eligible employees of the amount the employer will contribute toward the purchase of coverage.

*Statutory Authority G.S. 143-626.*

#### **.0405 ANNUAL RENEWAL**

A member small employer must annually provide to the alliance a sworn affidavit reverifying the status of eligible employees and those with qualifying existing coverage as defined in Rule .0404(b) of this Section. This information shall include a listing of all eligible employees as well as a statement that the member small employer continues to meet the legal requirements of membership in an alliance, which verifies the eligibility of enrollees and a listing of all potentially eligible employees.

*Statutory Authority G.S. 143-626.*

#### **.0406 EMPLOYER QUALIFICATION AND EMPLOYEE ENROLLMENT PERIOD**

(a) An alliance may rely upon the application for enrollment to determine qualification of the small

employer and enrollees. The alliance shall make these determinations within 10 working days of receipt of the complete application.

(b) Upon determining that a small employer is not qualified, the alliance will notify in writing the small employer of the reason for disqualification and provide an explanation of the appeal process. The notice shall contain a refund of the small employer's initial payment.

(c) Upon determining that a requested enrollee (employee or dependent) of a qualified small employer is not eligible, the alliance shall notify the small employer and the small employer shall notify the employee. Both notices shall state the reason for the determination of ineligibility and explain the appeal process. The alliance's notice shall include a refund of that portion of the small employer's initial payment for coverage of any enrollee found to be ineligible.

*Statutory Authority G.S. 143-626; 143-628.*

#### **.0407 WAITING PERIOD**

An eligible employee who declines coverage through an alliance or any dependents for whom an eligible employee declines coverage shall be eligible to enroll at the alliance's next open enrollment period.

*Statutory Authority G.S. 143-626.*

#### **.0408 OPEN ENROLLMENT PERIOD**

(a) An alliance shall provide for an annual open enrollment period of at least 30 consecutive days. Such enrollment periods shall occur within 90 days prior to the anniversary date of the member small employer's qualified health care plan. During this period, the following may occur:

- (1) enrollees may be transferred from one qualified health care plan to another may occur;
- (2) eligible employees may choose to enroll themselves and their dependents in the alliance; and
- (3) enrolled employees may choose to enroll their dependents.

(b) Late enrollees may enroll during this period pursuant to conditions established in G.S. 58-50-130.

(c) Upon determining that any enrollee requesting to be enrolled during an open enrollment period of a qualified small employer is ineligible for coverage, an alliance shall notify the member small employer and the member small employer shall notify the employee. Both notices shall state

the reason for the determination of ineligibility and explain the appeal process. The alliance's notice shall include a refund of that portion of the small employer's initial payment for coverage of enrollees found to be ineligible.

(d) For eligible enrollees transferring to a new qualified health care plan during an open enrollment period, the member small employer shall provide the following:

- (1) name;
- (2) address;
- (3) social security number;
- (4) current qualified health care plan;
- (5) new qualified health care plan;
- (6) name and social security number, if available, for enrolled dependents over one year of age;
- (7) a copy of the Federal W-4 forms or employer payroll records for affected employees; and
- (8) any other information approved by the Board pursuant to the member services authorized under Rule .0206 of this Chapter.

(e) For employees enrolling during the open enrollment and who were not eligible employees when the small employee filed an initial application and are enrolling during the open enrollment period, the member small employer shall provide the information required by Rule .0403(b) of this Section and a copy of the Federal W-4 forms or employer payment records for those employees.

*Statutory Authority G.S. 143-628; 143-629.*

#### **.0409 ENROLLMENT ADDITIONS OUTSIDE OPEN ENROLLMENT**

(a) For each eligible employee whom the member small employer seeks to enroll outside the open enrollment period, an alliance shall specify the manner in which a small employer shall provide the alliance with the information required by Rule .0403(b) of this Section and a copy of the Federal W-4 forms or employer payment records for those employees.

(b) For each dependent whom the member small employer seeks to enroll outside the open enrollment period, an alliance shall specify the manner in which a small employer shall provide the information required by Rule .0403(c)(2) of this Section, in a form consistent with the member service plan approved by the Board pursuant to Rule .0206 of this Chapter.

(c) If the employee requesting coverage previ-

ously declined or dropped coverage for the dependent because the dependent had coverage under another employer's group plan, the member small employer shall specifically provide written proof of the dependent's previous coverage and the date of termination of the previous coverage.

(d) A member small employer shall also specifically provide notice of the birth or adoption of a child, or the addition of a stepchild, spouse or foster child, within 30 calendar days after the event to continue coverage of the newborn, adopted child, stepchild, spouse, or foster child as a dependent

(e) If a court has ordered an enrolled eligible employee to enroll the dependent(s) in his or her health benefit plan, a member small employer shall specifically provide a copy of such court order.

(f) Upon determining that any additional requested enrollee is not eligible, the alliance shall notify the small employer and the small employer shall notify the employee. The notice shall include the reason for the determination of ineligibility and an explanation of the appeal process. The alliance's notice shall include a refund of that portion of the small employer's monthly payment covering amounts owed for coverage to persons found to be ineligible.

(g) Late enrollees may not apply pursuant to this Rule.

(h) An alliance shall notify each member small employer and the participating AHCs of the effective dates of coverage, which in the case of an employer first applying to participate in the alliance shall be as of the first day of the month, or in the fifteenth day of the month whichever occurs first after the alliance accepts the employer's application, and shall be as of the first day of the month in all cases with the exception of newborn children born after alliance coverage has taken effect.

(i) Outside of an open enrollment period, an alliance may approve the transfer of an enrollee from one qualified health care plan to another under the following conditions:

- (1) the member small employer so requests in writing because the eligible employee no longer resides in an area served by the accountable health carrier in which the employee is enrolled, or
- (2) the member small employer or the accountable health carrier requests in writing for transfer of an enrollee and establishes sufficient cause for the transfer.

A transfer of enrollment shall take effect within 30

calendar days of approval. Within 10 days of approving a transfer of enrollment, the alliance shall notify in writing the affected member small employer and accountable health carrier of any transfer of enrollment and its effective date.

*Statutory Authority G.S. 143-628; 143-629.*

#### **.0410 DISENROLLMENT OF MEMBER SMALL EMPLOYER**

(a) An alliance shall disenroll a member small employer in the alliance if any of the following occur:

- (1) It is no longer a qualified small employer, except in the case when a member small employer adds employees and exceeds the maximum of 49 employees during the course of coverage through an alliance. An alliance shall allow such an employer to cover all additional employees during the term of that coverage pursuant to G.S. 58-50-110(22).
- (2) It fails to pay the employer monthly payment for the enrollees as set forth in Rules .0416 and .0417 of this Section.
- (3) It requests termination in writing at least 30 calendar days prior to the effective date of the requested termination.
- (4) It has committed a material violation of the statutes or regulations relating to the alliance.

(b) Upon disenrolling a small employer pursuant to Subparagraph (a)(1), (2), or (4) of this Rule, an alliance shall notify the employer and each enrolled employee of the termination. The alliance shall send notices to enrolled employees at their addresses of record. Such notice shall state the reason for termination, the effective date of termination, and the final day of coverage provided through the alliance.

(c) Upon disenrolling a small employer pursuant to Subparagraph (a)(2) of this Rule, an alliance shall send a notice to the employer and to enrolled employees no later than 30 calendar days following the employer monthly payment due date. The notices shall state the requirements necessary for reinstatement under Rule .0418 of this Section.

(d) An employer who is disenrolled pursuant to Subparagraph (a)(1) of this Rule may reapply to the alliance whenever it again meets the requirements to be a qualified small employer.

(e) An employer who is disenrolled pursuant to Subparagraph (a)(3) or (4) of this Rule, or an

employer disenrolled pursuant to Subparagraph (a)(2) of this Rule who does not gain reinstatement pursuant to Rule .0418 of this Section, cannot participate in the alliance for two years after the date of disenrollment.

*Statutory Authority G.S. 143-628; 143-629.*

#### **.0411 DISENROLLMENT OF ENROLLEES**

(a) An alliance shall disenroll any enrollee when any of the following occurs:

- (1) an alliance terminates an enrollee's employer from the alliance.
- (2) the enrollee has committed an act of fraud or misrepresentation to circumvent the statutes or regulations relating to the alliance or the rules of the accountable health carrier covering the enrollee.
- (3) the employee ceases to be an eligible employee of the member small employer. However, the former employee and qualified dependents may continue in the alliance pursuant to the continuation of benefits provisions under Rule .0412 of this Section, Continuation of Benefits.
- (4) a dependent ceases to be a dependent.

(b) An alliance shall disenroll an enrollee pursuant to Subparagraph (a)(1) or (2) of this Rule within 45 calendar days of the alliance's determination to disenroll.

(c) To disenroll enrollees pursuant to Subparagraph (a)(3) or (4) of this Rule, a member small employer shall provide the alliance at least 10 working days prior to the due date of the employer monthly payment with the full names, addresses, dates of birth, gender, and social security numbers of the enrollees and the requested date of disenrollment. The member small employer shall pay the alliance for coverage until the date of disenrollment.

(d) The alliance shall notify a member small employer and the affected accountable health carrier in writing of the disenrollment and its effective date within 10 days of the alliance's determination.

(e) Upon disenrollment pursuant to Subparagraph (a)(2) of this Rule, an enrollee shall not be eligible for re-enrollment in the alliance through the same member small employer for one year from the date of disenrollment.

*Statutory Authority G.S. 143-628; 143-629.*

#### **.0412 CONTINUATION OF BENEFITS**

An alliance shall permit a member small employer with any former enrolled employee who qualifies for continuation of coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 as amended, or under G.S. 143-626, to obtain such coverage through the member small employer's notification in writing of the enrollees' intent to obtain such continuation coverage and the information required in Rule .0411 of this Section and to maintain such coverage in a manner consistent with federal COBRA and/or G.S. 143-626.

*Statutory Authority G.S. 143-636.*

#### **.0413 PAYMENT TO INSURANCE AGENTS AND BROKERS**

(a) The Board shall encourage the use of licensed agents and brokers to assist employers in obtaining coverage through an alliance and to assist alliances in marketing and publicizing the availability to small employers of coverage through an alliance.

(b) Any licensed agent or broker may market and sell any qualified health care plan of any accountable health carrier, including any health maintenance organization (HMO) plan, offered through an alliance unless otherwise limited by contract with a certain carrier or carriers.

(c) A licensed agent or broker who requests a service fee on a small employer's application or renewal shall receive it upon the employer's enrollment unless the small employer truly certifies on the application that an agent or broker did not perform the following:

- (1) assist the small employer in completing the application,
- (2) calculate or determine the cost of the AHC premium rate, the alliance's program participation fee, and the agent or broker's service fee or any other applicable fee for the small employer, and
- (3) assist the small employer in enrolling the eligible employees of the small employer.

(d) The Board shall annually set the amount of the service fee.

(e) An agent or broker shall not be eligible to receive a service fee after the Department of Insurance notifies an alliance that the agent or broker is no longer a licensed agent or broker.

*Statutory Authority G.S. 143-626; 143-628; 143-*

*632.*

#### **.0414 ALLIANCE PARTICIPATION FEE**

An alliance shall establish a standard program participation fee for all member small employers. The revenue from these program participation fees shall pay for the administrative costs of an alliance. Subject to Board approval, an alliance may enter into an agreement allowing a community sponsor or community partner to be responsible for covering a certain portion of the fee for a member small employer which is affiliated with that community sponsor or community partner.

*Statutory Authority G.S. 143-628.*

#### **.0415 NOTIFICATION OF RATE CHANGES**

An alliance shall notify each member small employer of changes in plan rates no later than 30 calendar days prior to the start of the rating period.

*Statutory Authority G.S. 143-629.*

#### **.0416 EMPLOYER MONTHLY PAYMENT PROCEDURES AND REQUIREMENTS**

(a) An alliance shall receive a monthly payment no later than the first of the month preceding the month of coverage.

(b) An alliance will notify a member small employer of the monthly payment due to the alliance, the due date of the employer monthly payment, and the enrollees included in the employer monthly payment at least 15 calendar days in advance of the employer monthly payment due date.

(c) A member small employer's obligation to submit the employer monthly payment required by Paragraph (a) of this Rule is not contingent upon receipt of notice specified in Paragraph (b) of this Rule. If a member small employer does not receive the notice from an alliance described in Paragraph (b) of this Rule, the member small employer shall make a good faith effort to determine the amount of the employer monthly payment and shall submit a payment of that amount to the alliance on or before the due date specified in Paragraph (a) of this Rule.

*Statutory Authority G.S. 143-630.*

#### **.0417 OVERDUE PAYMENTS; LATE FEES; TERMINATION**

(a) An alliance shall consider a member small employer who fails to make full monthly payment

by the 15th of the month preceding the month of coverage overdue on the monthly payment.

(b) Overdue employer monthly payments shall be subject to a late fee equal to five percent of the employer's monthly payment.

(c) On or before the 20th of the month preceding the month of coverage, the alliance shall notify member small employers that payment is overdue, and that, unless the employer remits the overdue payment and the late fee within five days, coverage will terminate as of the end of the month. Such notice shall include a statement that if coverage so terminates, the employer may gain reinstatement if the employer meets the requirements of Rule .0418 of this Section.

*Statutory Authority G.S. 143-630.*

#### **.0418 REINSTATEMENT FOLLOWING TERMINATION FOR NON-PAYMENT**

(a) An alliance may reinstate a small employer terminated pursuant to Rule .0417(c) of this Section without any lapse in coverage upon the small employer's remittance to the alliance no later than 15 calendar days following the issuance of the notice described in Rule .0417(c) of this Section of the following: the employer's monthly payment (including the late fee and a program reinstatement fee equal to 10% of the employer monthly payment) and the subsequent month's employer monthly payment.

(b) If an alliance receives payment from a terminated small employer later than 15 calendar days following the issuance of the notice described in Rule .0417(c) of this Section, the alliance shall return the amount within 20 calendar days of receiving it.

(c) An alliance shall not be reinstate a small employer more than twice in a 12 month period of time.

*Statutory Authority G.S. 143-630.*

#### **.0419 MONTHLY PAYMENTS TO AHCS**

An alliance shall forward payments to the AHC by electronic funds transfer, on or before the first of each month.

*Statutory Authority: G.S. 143-631.*

*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

SEPTEMBER 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
10	Human Resources	19A	Transportation
11	Insurance	21	Occupational Licensing Boards
12	Justice	32	- Medical Examiners
13	Labor	48	- Physical Therapy
15A	Environment, Health, and Natural Resources	65	- Therapeutic Recreation Certification

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10 NCAC 3R .3020		✓				10/01/94	
.3030		✓				10/01/94	
20A .0102		✓		✓		10/01/94	
20B .0203		✓		✓		10/01/94	
.0206		✓		✓		10/01/94	
.0224		✓		✓		10/01/94	
20C .0203		✓		✓		10/01/94	
.0205		✓		✓		10/01/94	
.0316		✓		✓		10/01/94	
.0501	✓			✓		10/01/94	
.0502	✓					10/01/94	
.0601 - .0603	✓			✓		10/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
			.0604 - .0607	✓					10/01/94	
10	NCAC	26I	.0401 - .0403	✓					10/01/94	
			.0404	✓			✓		10/01/94	
			.0405	✓					10/01/94	
	26K		.0006		✓		✓		10/01/94	
	50B		.0102		✓				09/12/94	180 DAYS
			.0102		✓				10/01/94	180 DAYS
			.0408		✓				09/12/94	180 DAYS
			.0408		✓				10/01/94	180 DAYS
11	NCAC	12	.0324		✓		✓		10/01/94	
			.0325		✓				10/01/94	
			.1304		✓		✓		10/01/94	
			.1501 - .1509	✓			✓		10/01/94	
12	NCAC	4E	.0104		✓		✓		10/01/94	
			.0201 - .0202		✓				10/01/94	
			.0303		✓				10/01/94	
			.0402		✓		✓		10/01/94	
	4F		.0201		✓				10/01/94	
			.0401		✓		✓		10/01/94	
	4G		.0102		✓		✓		10/01/94	
	9A		.0103		✓				10/01/94	180 DAYS
	10B		.0103		✓				10/01/94	180 DAYS
13	NCAC	7F	.0101		✓				11/01/94	
			.0201		✓				11/01/94	
			.0301		✓				11/01/94	
			.0501 - .0502		✓				11/01/94	
15A	NCAC	1J	.1301 - .1303	✓					09/08/94	180 DAYS
	2B		.0311					✓		
	3I		.0017	✓					09/26/94	180 DAYS
	10C		.0302		✓				10/01/94	
	10I		.0001		✓		✓		10/01/94	
	10J		.0003		✓		✓		10/01/94	
			.0004		✓				10/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13B .1628					✓		✓		10/01/94	
15A	NCAC	18A	.2508		✓				10/01/94	
.2539				✓					10/01/94	
19A .0101 - .0102					✓		✓		10/01/94	
.0202					✓		✓		10/01/94	
.0203					✓				10/01/94	
.0205					✓		✓		10/01/94	
.0209				✓			✓		10/01/94	
.0401					✓				10/01/94	
19C .0601 - .0607					✓		✓		10/01/94	
.0608				✓			✓		10/01/94	
20D .0234					✓		✓		10/01/94	
.0243					✓				10/01/94	
.0250					✓				10/01/94	
24A .0201					✓		✓		10/01/94	
.0202					✓				10/01/94	
.0203					✓		✓		10/01/94	
.0301					✓		✓		10/01/94	
.0502 - .0503					✓		✓		10/01/94	
19A	NCAC	2D	.0607					✓		
3D .0516										EXPIRED
.0517 - .0550				✓			✓		10/01/94	
21	NCAC	32F	.0003		✓				10/01/94	
48F .0002					✓		✓		10/01/94	
65 .0004					✓				10/01/94	

*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

### Alcoholic Beverage Control Commission

*4 NCAC 2T .0103 - Beer Franchise Law; "Brand" Defined*

*RRC Objection 09/15/94*

### Energy

*4 NCAC 12C .0007- Institutional Conservation Program*

*RRC Objection 06/16/94*

*Rule Returned to Agency*

*07/14/94*

*Agency Filed Rule for Codification Over RRC Objection*

*Eff. 08/16/94*

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Mining: Mineral Resources

*15A NCAC 5B .0013 - Response Deadline to Department's Request(s)*

*RRC Objection 09/15/94*

### Wildlife Resources and Water Safety

*15A NCAC 10I .0001 - Definitions and Procedures*

*RRC Objection 08/18/94*

## JUSTICE

### Criminal Justice Education and Training Standards

*12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers*

*RRC Objection 07/14/94*

## LICENSING BOARDS AND COMMISSIONS

### Therapeutic Recreation Certification

*21 NCAC 65 .0004 - Academic - TRS Examination*

*RRC Objection 08/18/94*

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
<b>COMMERCE</b>				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
<b>CORRECTION</b>				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	
<i>Crime Victims Compensation Commission</i>				
Mae H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
<b>EMPLOYMENT SECURITY COMMISSION</b>				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNHR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNHR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	
<b>Coastal Management</b>				
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378*	Gray	04/07/94	
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017*	Gray	04/07/94	
John R. Hooper v. EHNHR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbaine v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
<b>Environmental Health</b>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNHR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNHR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNHR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	

\* Consolidated Cases.

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Environmental Management</i>				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
<i>Land Resources</i>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930*	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931*	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<i>Solid Waste Management</i>				
Roger Sessoms v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
Bobby Beaton v. EHNR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
<b>HUMAN RESOURCES</b>				
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
<i>Distribution Child Support</i>				
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<b>PUBLIC EDUCATION</b>				
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Janet L. Wilcox v. Carteret County Board of Education	93 EDC 0451	Mann	02/21/94	
Annice Granville, Phillip J. Granville v. Onslow County Bd. of Education	93 EDC 0742	Mann	08/01/94	9:11 NCR 863
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**CHARLIE E. MCDONALD,**  
**Petitioner,**

 $\mathbf{y}_i$ 

**NORTH CAROLINA CRIME VICTIMS  
COMPENSATION COMMISSION,  
Respondent,**

## RECOMMENDED DECISION

This contested case was heard before Beecher R. Gray, administrative law judge, on July 29, 1994 in Rockingham, North Carolina. The parties elected to make oral closing arguments and to forego further written arguments or proposed decisions.

## APPEARANCES

Petitioner: Charlie E. McDonald, appearing pro se

Respondent: Robert T. Hargett, Esq., Assistant Attorney General

## ISSUE

Whether Respondent's denial of Petitioner's application for compensation under the North Carolina Crime Victims Compensation Act on grounds of contributory misconduct by Petitioner's deceased son is proper.

## FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than fifteen (15) days prior to the hearing.
2. Petitioner Charlie E. McDonald is the father of Donald McDonald who was killed by a gunshot wound to the back of the head on January 15, 1993. He was 29 years old. Petitioner is a resident of Rockingham, North Carolina, as was his son at the time of his death.
3. Within two years before Donald McDonald's death, Petitioner learned that his son, the deceased, had a cocaine habit. Petitioner sought assistance for his son at a mental health department. Donald McDonald did not go into an inpatient treatment program at the time because he was serving a prison sentence for larceny. He later did attend some Alcoholics Anonymous meetings.
4. After the deceased got out of prison, his cocaine problem worsened. At one point he became uncontrollable and was taken to the Hamlet Hospital by his family out of fear for his immediate safety and health. The Hospital kept him for two weeks and advised the family that Donald needed inpatient treatment at a specialized facility. The family consulted two facilities about treatment. One facility projected a \$10,000 cost and the other a \$5,000 cost, neither of which the family or Donald could afford.
5. On January 14, 1993, Donald, then living at his parents' home, drove his sister to work before midnight. After dropping his sister off, he picked up three other persons. In the front passenger seat was Terry Covington; in the right rear passenger seat was Ora Lee Brewington; and in the rear seat behind the

driver was Herman Lee Covington.

6. In the early morning hours of January 15, 1993, the deceased Donald McDonald drove the car with the other passengers into an area behind a house on Aberdeen Road, an area frequented by people who want to smoke crack cocaine or other drugs.

7. During the morning of January 15, 1993, the Richmond County Sheriff's Department received a call that two bodies had been found behind a house off Aberdeen Road. Captain Sam Jarrell investigated and determined that the bodies were those of Donald McDonald and Ora Lee Brewington. Donald McDonald had been shot in the back of the head with a .38 caliber handgun. Ora Lee Brewington also had been shot with a .38 caliber handgun. Herman Lee Covington was convicted of second degree murder in the deaths of Donald McDonald and Ora Lee Brewington.

8. Donald McDonald was found slumped over in the driver's seat of the car and photographed by Captain Jarrell. In his left hand was a pipe known to Captain Jarrell to be commonly used to smoke crack cocaine. In the right hand of Donald McDonald was a length of wire, also known to Captain Jarrell as a tool used in conjunction with the pipe for smoking crack cocaine. The contents of the pipe were not analyzed but appeared to Captain Jarrell to be a burned residue of crack cocaine.

9. An autopsy was performed on Donald McDonald, establishing the cause of death as a single gunshot wound to the back of the head. The Autopsy report indicates that the deceased's blood alcohol content at the time of the autopsy corresponded to a 0.03% on the Breathalyzer scale. No chemistry was performed on the body of Donald McDonald.

10. Petitioner filed a claim with Respondent on February 19, 1993. Respondent denied Petitioner's claim on March 21, 1994 on the basis of its finding that Donald McDonald was using illegal drugs at the time of his death and therefore engaged in contributory misconduct under G.S. 15B-11(b). Petitioner filed a petition for a contested case hearing on April 15, 1994.

11. North Carolina General Statute Section 90-90(a)4 (1993) defines cocaine as a schedule II controlled substance.

12. North Carolina General Statute Section 90-95(a)(3) (1993) makes it unlawful to possess a controlled substance outside of certain circumstances not present in this case.

13. North Carolina General Statute Section 90-95(d)(2) (1993) provides that possession of a schedule II controlled substance is punishable as a class I felony.

14. North Carolina General Statute Section 15B-11(a) was amended, effective February 28, 1994, to include the following pertinent provision:

(a) [a]n award of compensation shall be denied if:

. . . .

(6) [t]he victim was participating in a felony or nontraffic misdemeanor at or about the time that the victim's injury occurred.

N.C. Gen. Stat. Section 15B-11(a)(6) N.C. Extra Session 1994, C. 3, p. 5.

15. Donald McDonald was participating in the felony activity of possession of a schedule II controlled substance, cocaine, at or about the time his injury occurred on or about January 15, 1993.

**CONCLUSIONS OF LAW**

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.
2. Donald McDonald's death during the early morning hours of January 15, 1993 was caused by the criminally injurious conduct of Herman Covington who shot Donald McDonald in the back of the head.
3. Even though neither cited by Respondent as a ground for denial nor argued by Respondent in the contested case hearing, G.S. 15B-11(a)(6), as amended by the Extra Session 1994, operates as a bar to recovery of compensation by Petitioner.
4. Respondent's denial of Petitioner's application for crime victims compensation should be affirmed because compensation under the facts in this contested case is barred by G.S. 15B-11(a)(6).

**RECOMMENDED DECISION**

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that the North Carolina Crime Victims Compensation Commission affirm, on the basis of operation of G.S. 15B-11(a)(6), its decision denying crime victims compensation to Petitioner.

**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 Crime Victims Compensation Commission.

This the 2nd day of September, 1994.

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Beecher R. Gray  
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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