

The **NORTH CAROLINA REGISTER**

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PROPOSED RULES

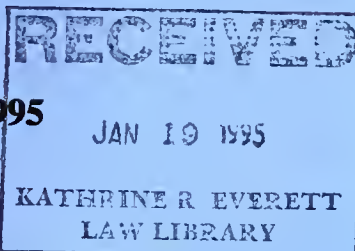
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ISSUE DATE: **January 17, 1995**



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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

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

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

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

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

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of fact 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 request that it will remain with its initial position. The Codifier, thereafter, enters 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 may 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 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 ten dollars and 50 cents (\$2.50) for 10 pages or less, plus fifty 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

(November 1994 - September 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
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
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10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

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 day of the next calendar month.*

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

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

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

The public hearing will be conducted at 1:00 p.m. on February 16, 1995 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To adopt as permanent rules the temporary rules adopted effective January 1, 1995 for the 1995 State Medical Facilities Plan.

Comment Procedures: Written comments must be submitted no later than February 16, 1995 to Mr. Jackie R. Sheppard, APA Coordinator, Division of Facility Services, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342.

Editor's Note: These Rules were filed as temporary rules effective January 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3001 CERTIFICATE OF NEED REVIEW CATEGORIES

The agency has established ~~42~~ 9 categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency may require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The ~~42~~ 9 categories of facilities and services are:

- (1) Category A. ~~Proposals, except those proposals included in Categories B through F and Categories H through L,~~ for acute health service facilities, except those proposals included in Categories B through H, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (2) Category B. ~~Proposals for long-term nursing facility beds which are reviewed against the State Medical Facilities Plan. and new continuing care facilities applying for exemption under 10 NCAC 3R .3050 (b)(2).~~
- (3) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.
- (4) Category D. Proposals for new or expanded end-stage renal disease treatment facilities; and relocations of existing dialysis stations to another county.
- (5) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.
- (6) Category F. ~~Proposals for new or expanded ambulatory surgical facilities except those proposals~~

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

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

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1994: 1995.

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

County	HSA	CON Beginning Review Date
Brunswick	V	April 1, 1994
Pender	V	April 1, 1994
Greene	VI	April 1, 1994
Lincoln	III	September 1, 1994
Alexander	I	February 1, 1995
Caldwell	I	April 1, 1995

County	HSA	CON Beginning Review Date
<u>Graham</u>	<u>I</u>	<u>April 1, 1995</u>
<u>Transylvania</u>	<u>I</u>	<u>August 1, 1995</u>
<u>Randolph</u>	<u>II</u>	<u>August 1, 1995</u>
<u>Moore</u>	<u>V</u>	<u>May 1, 1995</u>
<u>Craven</u>	<u>VI</u>	<u>March 1, 1995</u>
<u>Camden</u>	<u>VI</u>	<u>September 1, 1995</u>
<u>Carteret</u>	<u>VI</u>	<u>September 1, 1995</u>
<u>Jones</u>	<u>VI</u>	<u>March 1, 1995</u>
<u>Hyde</u>	<u>VI</u>	<u>May 1, 1995</u>
<u>Gates</u>	<u>VI</u>	<u>December 1, 1995</u>
<u>Perquimans</u>	<u>VI</u>	<u>December 1, 1995</u>

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

Counties	HSA	CON Beginning Review Date
Buncombe, Madison, Mitchell, Yancey	<u>I</u>	June 1, 1994 <u>October 1, 1995</u>
<u>Alleghany, Ashe, Avery, Watauga, Wilkes</u>	<u>I</u>	<u>October 1, 1995</u>
<u>Caldwell, Burke, Alexander, McDowell</u>	<u>I</u>	<u>October 1, 1995</u>
<u>Rutherford, Polk</u>	<u>I</u>	<u>October 1, 1995</u>
<u>Forsyth, Stokes</u>	<u>II</u>	<u>October 1, 1995</u>
<u>Guilford</u>	<u>II</u>	<u>October 1, 1995</u>
<u>Davidson</u>	<u>II</u>	<u>October 1, 1995</u>
Gaston, Lincoln	<u>III</u>	November 1, 1994 <u>October 1, 1995</u>
Rowan, Iredell, Davie	III	May 1, 1994
<u>Stanly, Cabarrus, Union</u>	<u>III</u>	<u>October 1, 1995</u>
Orange, Person, Chatham	<u>IV</u>	May 1, 1994 <u>November 1, 1995</u>
Halifax	VI	December 1, 1994
<u>Robeson, Bladen, Scotland, Columbus</u>	<u>V</u>	<u>November 1, 1995</u>
<u>Cumberland</u>	<u>V</u>	<u>November 1, 1995</u>
<u>New Hanover, Brunswick, Pender</u>	<u>V</u>	<u>November 1, 1995</u>
<u>Edgecombe, Nash</u>	<u>VI</u>	<u>November 1, 1995</u>

Counties	HSA	CON Beginning Review Date
Pitt	VI	December 1, 1994 <u>November 1, 1995</u>
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	June 1, 1994
<u>Hertford, Bertie, Gates, Northampton</u>	<u>VI</u>	<u>November 1, 1995</u>
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	June 1, 1994 <u>November 1, 1995</u>

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

County	HSA	CON Beginning Review Date
Iredell	II	July 1, 1994
Mecklenburg	II	February 1, 1994
Durham	IV	February 1, 1994
Cumberland	V	February 1, 1994
<u>Cleveland</u>	<u>I</u>	<u>April 1, 1995</u>

- (5) Category F. Subcategory Home Health Agencies or Offices.

County	HSA	CON Beginning Review Date
<u>Watauga</u>	<u>I</u>	<u>October 1, 1995</u>
<u>Forsyth</u>	<u>II</u>	<u>June 1, 1995</u>
<u>Stokes</u>	<u>II</u>	<u>October 1, 1995</u>
<u>Orange</u>	<u>IV</u>	<u>November 1, 1995</u>
<u>Wake</u>	<u>IV</u>	<u>July 1, 1995</u>
<u>Bertie</u>	<u>VI</u>	<u>July 1, 1995</u>
<u>Onslow</u>	<u>VI</u>	<u>November 1, 1995</u>

- (6) ~~(5) If a need has been identified for any health service or facility in 10 NCAC 3R .3030, applications~~ Applications for certificates of need for ~~those services~~ will be reviewed pursuant to the following review schedule, unless another schedule has been specified in Items (1) - (4) (5) of this Rule or it has been determined in 10 NCAC 3R .3030 that there is no need for the health service or facility proposed by the applicant.

PROPOSED RULES

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

CON Beginning Review Date	HSA I, II, III	HSA IV, V, VI
<u>January 1</u>	=	=
<u>February 1</u>	<u>A, B, G, I</u>	<u>G</u>
<u>March 1</u>	=	<u>A, B, E, I</u>
<u>April 1</u>	<u>B, E, H, I</u>	=
<u>May 1</u>	=	<u>B, H, I</u>
<u>June 1</u>	<u>A, D, I, F</u>	<u>D</u>
<u>July 1</u>	=	<u>A, I, F</u>
<u>August 1</u>	<u>B, E, I</u>	=
<u>September 1</u>	=	<u>B, E, I</u>
<u>October 1</u>	<u>A, C, F, I</u>	=
<u>November 1</u>	=	<u>A, C, F, I</u>
<u>December 1</u>	<u>D, H, I</u>	<u>B, D, H, I</u>

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

.3030 FACILITY AND SERVICE NEED DETERMINATIONS

Facility and service need determinations are shown in Items (1) - (16) of this Rule. The need determinations shall be revised continuously throughout 1994 1995 pursuant to 10 NCAC 3R .3040.

(1) Category A. Acute Health Service Facilities.

It is determined that there is no need for additional acute care beds and no reviews are scheduled.

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

- (a) It is determined that the counties listed below need additional Long-Term Nursing Facility Beds as specified. There is no need for additional Long-Term Nursing Facility Beds in other counties and no other reviews are scheduled.

County	HSA	Number of Nursing Beds Needed
<u>Brunswick</u>	<u>V</u>	<u>40</u>
<u>Pender</u>	<u>V</u>	<u>20</u>
<u>Greene</u>	<u>VI</u>	<u>10</u>
<u>Lincoln</u>	<u>III</u>	<u>30</u>
<u>Alexander</u>	<u>I</u>	<u>20</u>
<u>Caldwell</u>	<u>I</u>	<u>60</u>
<u>Transylvania</u>	<u>I</u>	<u>30</u>
<u>Randolph</u>	<u>II</u>	<u>70</u>
<u>Moore</u>	<u>V</u>	<u>70</u>
<u>Craven</u>	<u>VI</u>	<u>50</u>
<u>Camden</u>	<u>VI</u>	<u>10</u>
<u>Carteret</u>	<u>VI</u>	<u>50</u>

- (b) It is presumed that operation of a new long-term nursing facility with a capacity of only 10 beds (as contrasted with an addition to an existing facility, or conversion of hospital or home for the aged beds) is not financially feasible under usual circumstances. Camden County lacks such facilities for expansion or conversion. Nevertheless, the need determination shown in this Plan provides an opportunity for development of this capacity within Camden County if special measures for assuring financial feasibility (such as philanthropic, religious, fraternal or public body financial assistance) can be demonstrated. Applications to develop Camden County's need determination in a contiguous county shall also be considered. Any such application shall confirm that admission priority shall be given to patients from Camden County, up to the number of beds in the need determination, and conditions attached to the award of any resulting certificate of need shall stipulate how this admission preference is to be assured. It is the intent of this provision that consideration of any proposed alternative site shall give due regard to the convenience of its use by citizens of Camden County, as applicable. Convenience includes the extent to which visits to patients are likely to be facilitated by usual patterns of citizen travel associated with obtaining goods and services and employment. Any county's bed surplus or deficit is deemed irrelevant to its selection as an alternative location for the transfer of this capacity.

(3) Category C.

- (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
- (b) Intermediate Care Facilities for Mentally Retarded Beds. It is determined that the counties listed below need additional Intermediate Care Facility for Mentally Retarded (ICF/MR) Beds as specified. There is no need for additional ICF/MR Beds in other counties and no other reviews are scheduled.

Counties	HSA	Need Determination	
		<u>Child</u>	<u>Adult</u>
Buncombe, Madison, Mitchell, Yancey	I	0 6	6 1
<u>Alleghany, Ashe, Avery, Watauga, Wilkes</u>	I	0	1
<u>Caldwell, Burke, Alexander, McDowell</u>	I	6	0
<u>Rutherford, Polk</u>	I	6	0
<u>Forsyth, Stokes</u>	II	6	6
<u>Guilford</u>	II	0	8
<u>Davidson</u>	II	12	2
Gaston, Lincoln	III	0	6 18
<u>Stanly, Cabarrus, Union</u>	III	0	7
Rowan, Iredell, Davie	III	12	0
Orange, Person, Chatham	IV	6 0	0 7
Halifax	IV	12	0
<u>Robeson, Bladen, Scotland, Columbus</u>	V	0	6
<u>Cumberland</u>	V	0	8
<u>New Hanover, Brunswick, Pender</u>	V	6	0
<u>Edgecombe, Nash</u>	VI	0	6
Pitt	VI	12 0	0 6
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	6	6
<u>Hertford, Bertie, Gates, Northampton</u>	VI	0	6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	0 6	18 0

- (c) Chemical Dependency Treatment Beds. It is determined that there is no need for additional chemical dependency treatment beds and no reviews are scheduled.
- (4) Category D. End Stage Renal Disease Treatment Facilities. Need for end-stage renal dialysis facilities or stations is determined as is provided in 10 NCAC 3R .3032.
- (5) Category E. ~~Inpatient Rehabilitation Facility Beds.~~
- (a) Inpatient Rehabilitation Facility Beds. It is determined that there is no need for additional rehabilitation beds and no reviews are scheduled.
- (b) ~~(6) Category F. Ambulatory Surgery Operating Rooms.~~ It is determined that there is need for two additional ambulatory surgery operating rooms in Cleveland County. There is no need for additional ambulatory surgery operating rooms in other counties and no other reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section 1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility.
- (6) ~~(7) Category H F.~~

PROPOSED RULES

- (a) New Home Health Agencies or Offices. It is determined that the counties listed below need additional Home Health Agencies or Offices as specified. There is no need for additional Home Health Agencies or Offices in other counties and no other reviews are scheduled.

County	HSA	Number of Agencies or Offices Needed
<u>Iredell</u>	III	4
<u>Mecklenburg</u>	III	2
<u>Durham</u>	IV	4
<u>Cumberland</u>	V	4
<u>Watauga</u>	I	1
<u>Forsyth</u>	II	1
<u>Stokes</u>	II	1
<u>Orange</u>	IV	1
<u>Wake</u>	IV	3
<u>Bertie</u>	VI	1
<u>Onslow</u>	VI	1

- (b) New Hospice Home Care Programs. It is determined that there is no need for additional Hospice Home Care Programs and no reviews are scheduled.

- (c) New Hospice Inpatient Beds.

- (i) Single Counties. Single counties with a projected deficit of six or more beds are allocated beds based on the projected deficit. It has been determined that Forsyth County has a need for fourteen Hospice Inpatient Beds. There is no need for additional single county Hospice Inpatient Bed facilities and no other reviews are scheduled.
- (ii) Contiguous Counties. It has been determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	HSA	Hospice Inpatient Bed Deficit
<u>Alexander</u>	I	1
<u>Ashe</u>	I	1
<u>Avery</u>	I	1
<u>Rutherford</u>	I	2
<u>Transylvania</u>	I	1
<u>Wilkes</u>	I	1

PROPOSED RULES

<u>County</u>	<u>HSA</u>	<u>Hospice Inpatient Bed Deficit</u>
<u>Alamance</u>	<u>II</u>	<u>4</u>
<u>Davidson</u>	<u>II</u>	<u>2</u>
<u>Rockingham</u>	<u>II</u>	<u>2</u>
<u>Stokes</u>	<u>II</u>	<u>1</u>
<u>Surry</u>	<u>II</u>	<u>2</u>
<u>Cabarrus</u>	<u>III</u>	<u>1</u>
<u>Gaston</u>	<u>III</u>	<u>3</u>
<u>Iredell</u>	<u>III</u>	<u>1</u>
<u>Lincoln</u>	<u>III</u>	<u>1</u>
<u>Rowan</u>	<u>III</u>	<u>2</u>
<u>Stanly</u>	<u>III</u>	<u>1</u>
<u>Union</u>	<u>III</u>	<u>1</u>
<u>Chatham</u>	<u>IV</u>	<u>1</u>
<u>Durham</u>	<u>IV</u>	<u>2</u>
<u>Johnston</u>	<u>IV</u>	<u>1</u>
<u>Wake</u>	<u>IV</u>	<u>5</u>
<u>Bladen</u>	<u>V</u>	<u>1</u>
<u>Brunswick</u>	<u>V</u>	<u>1</u>
<u>Columbus</u>	<u>V</u>	<u>2</u>
<u>Cumberland</u>	<u>V</u>	<u>1</u>
<u>Moore</u>	<u>V</u>	<u>1</u>
<u>Pender</u>	<u>V</u>	<u>1</u>
<u>Richmond</u>	<u>V</u>	<u>1</u>
<u>Robeson</u>	<u>V</u>	<u>1</u>
<u>Scotland</u>	<u>V</u>	<u>1</u>
<u>Bertie</u>	<u>VI</u>	<u>1</u>
<u>Craven</u>	<u>VI</u>	<u>1</u>
<u>Duplin</u>	<u>VI</u>	<u>2</u>
<u>Edgecombe</u>	<u>VI</u>	<u>1</u>
<u>Hertford</u>	<u>VI</u>	<u>1</u>
<u>Nash</u>	<u>VI</u>	<u>1</u>
<u>Northampton</u>	<u>VI</u>	<u>1</u>
<u>Onslow</u>	<u>VI</u>	<u>1</u>

<u>County</u>	<u>HSA</u>	<u>Hospice Inpatient Bed Deficit</u>
<u>Pitt</u>	<u>VI</u>	<u>1</u>
<u>Wilson</u>	<u>VI</u>	<u>1</u>

(7) Category G. Psychiatric/Substance Abuse Demonstration Project.

- (a) It is determined that no more than fifty beds, in a free-standing facility, are needed for a demonstration of the effectiveness and economy of the treatment, in the same facility and therapeutic milieu, of persons with addictions and persons with psychiatric disorders such as are evidenced by compulsive behaviors.
- (b) Such a demonstration shall incorporate the concept of closed groups; that is, "classes" of patients entering and leaving treatment concurrently, so as to facilitate the recovery-inducing aspects of the interaction of members of therapeutic groups. The treatment proposed to be offered in the demonstration also shall integrate a cognitively-based therapeutic program with a 12-step recovery model.
- (c) Persons proposing to meet this need must provide, in their applications for a certificate of need, evidence of their experience, ability and commitment not only to provide services as described above, but to demonstrate the applicability of these and other innovations to the broader therapeutic community. Such qualifications should be evidenced by the following:
 - (i) A written agreement with a university-affiliated professional to design and oversee periodic or continuing determinations of the effectiveness of treatment provided in the demonstration, and the publication of the results.
 - (ii) A written agreement with a university-affiliated professional from an academic medical center that establishes the willingness and intent of such professional to engage in a clinical relationship with the demonstration facility.
 - (iii) Assurances that at least ten percent of the patients of the demonstration facility will be persons who require, and who are provided, free care.
 - (iv) A commitment to provide to the Certificate of Need Section annual reports of the average per diem and per discharge patient charges, the total number of patients served, and the number of free care patients. Such reports will be due thirty days following the first, second and third anniversary dates of the licensure of the facility.
- (d) The number of beds for which a certificate of need is granted will not be counted in the State Medical Facility Plan's inventory of psychiatric or substance abuse beds in the mental health area or region in which the facility is to be located, or in any other area or region of the state.
- (e) It is intended that this demonstration will be exempt from state regulations which require that substance abuse and psychiatric patients be treated in separate accommodations, and from all other criteria and standards which are inconsistent with the unique character of the demonstration facility. Staff of the Division of Facility Services are asked to ascertain the measures needed to accomplish this intent and to implement them or recommend them to the Secretary of Human Resources.

(8) Category J H.

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

acquire additional cardiac angioplasty equipment if utilization of cardiac angioplasty equipment used by the health service facility exceeds 80% of capacity.

(d) ~~(11) Category J. Cardiac Catheterization Equipment.~~ It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for a certificate of need to acquire additional cardiac catheterization equipment if utilization of cardiac catheterization equipment used by the health service facility exceeds 80% of capacity. Mobile cardiac catheterization equipment and services shall only be approved for development on hospital sites.

(e) ~~(12) Category J. Solid organ transplant services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3).~~ It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.

(f) ~~(13) Category J. Bone Marrow Transplantation Services.~~ It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.

(g) ~~(14) Category J. Gamma Knife Equipment.~~ It is determined that there is no need for gamma knife equipment and no reviews are scheduled.

(h) ~~(15) Category J. Positron Emission Tomography Scanner.~~ It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.

~~(16) Category L.~~

~~(a) New Hospice Home Care Programs.~~

County	HSA	Number of New Hospice Home Care Programs Needed
Cumberland	V	1
Robeson	V	1
Hyde	VI	1
Onslow	VI	1
Wayne	VI	1

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

County	HSA	Number of New Hospice Inpatient Beds Needed
Forsyth	H	8
Wake	IV	7

~~(c) New Hospice Inpatient Beds (Contiguous Counties).~~ It has been determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more

beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the immediately surrounding North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	HSA	Hospice Inpatient Bed Deficit
Alexander	I	1
Ashe	I	1
Avery	I	1
Burke	I	1
Madison	I	1
Polk	I	1
Rutherford	I	2
Transylvania	I	1
Watauga	I	1
Wilkes	I	1
Yancey	I	1
Alamance	H	5
Caswell	H	1
Davidson	H	2
Guilford	H	1
Rockingham	H	3
Stokes	H	1
Surry	H	2
Cabarrus	HH	2
Gaston	HH	4
Iredell	HH	3
Mecklenburg	HH	4
Rowan	HH	3
Stanly	HH	1
Union	HH	2
Chatham	IV	2
Durham	IV	3

County	HSA	Hospice Inpatient Bed Deficit
Johnston	IV	1
Lee	IV	1
Bladen	V	1
Brunswick	V	2
Columbus	V	2
Harnett	V	1
Moore	V	2
Pender	V	1
Richmond	V	1
Scotland	V	1
Bertie	VI	2
Duplin	VI	1
Greene	VI	2
Hertford	VI	2
Nash	VI	1
Northampton	VI	1
Onslow	VI	1
Pitt	VI	1
Wilson	VI	1

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

.3032 DIALYSIS STATION NEED DETERMINATION

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

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

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

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

- (1) County Need.
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of ~~1989~~ 1990 to the end of ~~1993~~ 1994 is multiplied by the county's ~~1993~~ 1994 year end total number of patients in the ~~MFPS Semiannual Dialysis Report (SDR)~~, and the product is

added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total ~~1994~~ 1995 patients.

- (B) The percent of each county's total patients who were home dialysis patients at the end of ~~1993~~ 1994 is multiplied by the county's projected total ~~1994~~ 1995 patients, and the product is subtracted from the county's projected total ~~1994~~ 1995 patients. The remainder is the county's projected ~~1994~~ 1995 in-center dialysis patients.
- (C) The projected number of each county's ~~1994~~ 1995 in-center patients is divided by 3.2. The quotient is the projection of the county's ~~1994~~ 1995 in-center dialysis stations.
- (D) From each county's projected number of ~~1994~~ 1995 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's ~~1994~~ 1995 station need projection.
- (E) If a county's ~~1994~~ 1995 station need projection is ten or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the ~~1994~~ 1995 county station need determination is the same as the ~~1994~~ 1995 station need projection. If a county's 1995 station need projection is less than ten, the county's 1995 station need determination is zero.
- (2) Facility Need. A dialysis facility located in a county whose unmet need in the reference Semiannual Dialysis Report (SDR) is less than ten stations is determined to need additional stations to the extent that:
 - (A) Its utilization, reported in the SDR, is greater than 3.2 patients per station.
 - (B) Such need, calculated as follows, is reported in an application for a certificate of need:
 - (i) The facility's number of in-center hemodialysis patients reported in the previous SDR (SDR₁) is subtracted from the number of in-center hemodialysis patients reported in the current SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for 1 year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate.
 - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
 - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current SDR until the end of calendar ~~1994~~ 1995.
 - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current SDR and that product is added to such reported number of in-center patients.
 - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the current SDR. The remainder is the number of stations needed.
 - (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of ten stations.
- (c) The schedule for publication of the ~~Medical Facilities Planning Section's~~ North Carolina Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications based on each issue of this report in ~~1994~~ 1995 shall be as follows:

Date for Period Ending	Receipt of SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Dates
Dec. 31, 1993	Feb. 28, 1994	March 19, 1994	May 16, 1994	June 1, 1994
June 30, 1994	Aug. 31, 1994	Sept. 20, 1994	Nov. 15, 1994	Dec. 1, 1994
<u>Dec. 31, 1994</u>	<u>Feb. 28, 1995</u>	<u>March 20, 1995</u>	<u>May 16, 1995</u>	<u>June 1, 1995</u>
<u>June 30, 1995</u>	<u>Aug. 31, 1995</u>	<u>Sept. 20, 1995</u>	<u>Nov. 15, 1995</u>	<u>Dec. 1, 1995</u>

- (d) An application for a certificate of need pursuant to this Rule shall be accepted only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.
- (e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.
- (f) Home patients will not be included in determination of need for new stations.

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

.3040 REALLOCATIONS AND ADJUSTMENTS

(a) REALLOCATIONS.

- (1) Reallocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated.
- (2) Beds or services which are reallocated once in accordance with this policy shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.
- (3) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision has been appealed shall not be reallocated until the appeal is resolved.
 - (A) Appeals Resolved Prior to September 17: If an appeal is resolved in the calendar year prior to September 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next amendment to 10 NCAC 3R .3030.
 - (B) Appeals Resolved On Or After September 17: If the appeal is resolved on or after September 17 in the calendar year, the beds or services shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be given by the Certificate of Need Section no less than 45 days prior to the due date for receipt of new applications.
- (4) Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.
- (5) Withdrawals and Relinquishments. A need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
 - (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,
 - (B) the date on which an appeal of the withdrawal is finally resolved against the holder, or
 - (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be given no less than 45 days prior to the due date for submittal of the new applications.
- (6) Need Determinations for which No Applications are Received.
 - (A) Services or Beds with Scheduled Review in the Calendar Year on or Before October 1: Need determinations, or portions of such need, for services or beds in this category include long-term nursing care beds, home health agencies or offices, hospice home care programs, hospice inpatient beds, and beds in intermediate care facilities for the mentally retarded (ICF/MR) with the exception of ICF/MR need determinations with a scheduled review that begins after October 1. The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual amendment to 10 NCAC 3R .3030.
 - (B) Services or Beds with Scheduled Review in the Calendar Year After October 1: Need determinations for services or beds in this category include acute care beds, ~~rehabilitation beds,~~ ~~ambulatory surgery operating rooms, medical technology,~~ psychiatric beds, substance abuse beds, ICF/MR beds, bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air

ambulance equipment, cardiac angioplastic equipment, cardiac catheterization equipment, heart-lung bypass machine, gamma knife, lithotriptors, magnetic resonance imaging scanner, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers and oncology treatment centers for which review commences after October 1. A need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category G I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be given by the Certificate of Need Section no less than 45 days prior to the due date for submittal of new applications.

(7) Need Determinations not Awarded because Application Disapproved.

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

(b) CHANGES IN NEED DETERMINATIONS.

- (1) The need determinations in 10 NCAC 3R .3030 and .3032 shall be revised continuously throughout ~~1994~~ 1995 to reflect all changes in the inventories of:

- (A) the health services listed at G.S. 131E-176 (16)(f);
- (B) health service facilities;
- (C) health service facility beds;
- (D) dialysis stations;
- (E) the equipment listed at G.S. 131E-176 (16)(f1); and
- (F) mobile medical equipment.

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .3030 or .3032 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.

- (2) Inventories shall be updated to reflect:

- (A) decertification of home health agencies or offices and dialysis stations;
- (B) delicensure of health service facilities and health service facility beds;
- (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16)(f1) and (s);
- (D) elimination or reduction of a health service as listed at G.S. 131E-176(16)(f);
- (E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
- (F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
- (G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.

- (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .3030 or .3032 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

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

.3050 POLICIES

(a) ACUTE CARE FACILITIES AND SERVICES

- (1) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards

- found in 10 NCAC 3C .1510 - Bed Capacity.
- (2) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in 10 NCAC 3R .3050(a)(4) are assumed to have underutilized space. Any such hospital proposing new construction must clearly demonstrate that it is more cost-effective than conversion of existing space.
 - (3) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .3030. The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
 - (A) Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.
 - (B) Houses extensive basic medical science and clinical research programs, patients and equipment.
 - (C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.
 - (D) Exemption from the provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:
 - (i) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
 - (ii) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
 - (iii) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.
 - (4) Reconversion to Acute Care. Facilities redistributing beds from acute care bed capacity to rehabilitation or psychiatric use shall obtain a certificate of need to convert this capacity back to acute care. Application for such reconversion to acute care of beds converted to psychiatry or rehabilitation shall be evaluated against the hospital's utilization in relation to target occupancies used in determining need shown in 10 NCAC 3R .3030 without regard to the acute care bed need shown in the Rule. These target occupancies are:

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

- (5) Multi-Specialty Ambulatory Surgery. After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to "multi-specialty programs" over "specialty programs" in areas where need is demonstrated in 10 NCAC 3R .3030. A multi-specialty ambulatory surgical program means a program providing services in at least three of the following areas; gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedics, urology, and oral surgery. An ambulatory surgical facility shall provide at least two designated operating rooms with general anesthesia capabilities, and at least one designated recovery room.
 - (6) Distribution of Inpatient Rehabilitation Beds. After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to proposals that make rehabilitation services more accessible to patients and their families or are part of a comprehensive regional rehabilitation network.
- (b) LONG-TERM CARE FACILITIES AND SERVICES.

- (1) Provision of Hospital-Based Long-Term Nursing Care. A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and other relevant rules, to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .3030 if the hospital:
 - (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, ~~1994~~ 1995; and
 - (B) on January 1, ~~1994~~ 1995, had a licensed acute care bed capacity of 150 beds or less.

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

"Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Determination of the patient's need for hospital-based long-term nursing care shall be made in accordance with existing criteria and procedures for determining need for long-term nursing care administered by the Division of Medical Assistance and the Medicare program. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

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

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

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

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

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

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

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

- (2) Plan Exemption for Continuing Care Facilities.
 - (A) Qualified continuing care facilities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .3030. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:
 - (i) Will only be developed concurrently with, or subsequent to construction on the same site, of facilities for both of the following levels of care:
 - (I) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms within a suitable structure;
 - (II) domiciliary care (home for the aged) beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.
 - (ii) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and regulations) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract. Financial consideration paid by persons purchasing a continuing care contract shall be equitable between persons entering at the "independent living" and "domiciliary" levels of care.
 - (iii) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
 - (iv) Will not be certified for participation in the Medicaid program.
 - (B) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1985 SMFP are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983, or Chapter 445, Session Laws 1985 shall not be amended except by law.
- (3) Development of Home Health Services. After applying other required criteria, when superiority among two or more competing home health agency or office certificate of need applications is uncertain, favorable consideration shall be given to proposals which:
 - (A) provide an expanded scope of services (including nursing, physical therapy, speech therapy, and home health aide service);
 - (B) provide the widest range of treatments within a given service; and
 - (C) have the ability to offer services on a seven days per week basis as required to meet patient needs.
- (4) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body,

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

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

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

- (5) Availability of Dialysis Care. After applying other required criteria, when superiority among two or more competing dialysis facility or station certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing to provide or arrange for:

- (A) home training and backup for patients suitable for home dialysis in the ESRD dialysis facility or in a facility that is a reasonable distance from the patient's residence;
- (B) ESRD dialysis service availability at times that do not interfere with ESRD patients' work schedules;
- (C) services in rural, remote areas.

- (6) ~~Need for an Additional Home Health Agency Office Within an Existing Home Health Service Area. When an existing home health agency is serving 150 home health patients or more on an annual basis (as documented on the agency's most recent license renewal application or as documented and certified by the agency for a 12 month period to the satisfaction of the Division of Facility Services) in a county in its authorized service area as defined in 10 NCAC 3R .0320 in which the agency has no home health office, the agency shall be allowed to apply for a CON to open a home health agency office within that county. Such application must document to the satisfaction of the Certificate of Need Section that the additional home health agency office will provide improved client service at a lower cost. The additional home health agency office shall only be allowed to provide services within the agency's authorized service area. No applications shall be received under this provision for additional home health agency offices in counties outside of a home health agency's authorized service area or for any county within the service area where the agency already has one or more home health agency offices or where the agency is not serving at least 150 home health patients on an annual basis. This Rule shall allow no expansion of home health services outside of the agency's service area as defined by 10 NCAC 3R .0320. Determination of Need for Additional Nursing Beds in Single Provider Counties. When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to no more than 80 nursing beds without regard to the nursing bed need determination for that county as listed in 10 NCAC 3R .3030.~~

(c) MENTAL HEALTH FACILITIES AND SERVICES.

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

operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Human Resources, and the person submitting the proposal.

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 30 .0104, .0305, .0306, .0308, .0405, .0503 - .0506, .0607 - .0608, .0705 and repeal rules cited as 10 NCAC 30 .0105, .0307, .0309 - .0310, .0403 - .0404, .0507, .0605 - .0606, .0609 - .0610.

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

The public hearing will be conducted at 10:00 a.m. on February 22, 1995 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Action: To adopt as permanent rules the temporary rule amendments related to the Charitable Solicitation Program which became effective January 1, 1995. The rules are being amended and repealed as a result of the rewrite of the Charitable Solicitation Act (SB 940 ratified July 15, 1994).

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342, up to and including February 22, 1995.

Editor's Note: These Rules were filed as temporary rules effective January 1, 1995 for a period of 180 days or until the permanent rules become effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 30 - THE SOLICITATION
LICENSING PROGRAM

SECTION .0100 - GENERAL
INFORMATION

.0104 DEFINITIONS

(a) Terms defined in G.S. ~~131C-3~~ 131F-2 shall have the same meaning for the purpose of these Rules And Regulations rules as they do in the statute.

(b) "The Act" means ~~the an Act to rewrite the~~ Charitable Solicitation ~~Licensure~~ Act, G.S. ~~131C-1~~ 131F-1 *et. seq.*

(c) "Advertising material" means printed requests for contributions but does not include tapes, records, films, slides, trailers, or other similar nonprinted items.

(d) "Audit or finance committee" means a group of three or more persons who serve on the organization's governing board and of which the majority are neither officers nor employees of the organization. A chief function of this committee shall be the review of the organization's financial statement.

~~(e) "Charitable organization" means a person who solicits contributions or has contributions solicited in its behalf for charitable purposes.~~

(e) (f) "Compensation" means salaries, wages, fees, commissions, benefits, or any other remuneration or valuable consideration.

~~(g) "Consolidated application" means an application which a parent organization has filed incorporating into the application the information required by G.S. 131C-7 on itself, branches, chapters and affiliates, or an organization, other than a federated fund raising organization, which coordinates the filing of the required application for a group of autonomous organizations that have the same or similar purpose.~~

(f) "Emergency medical service" means an organization which provides services pursuant to Article 56 of Chapter 143 of the North Carolina General Statutes.

(g) (h) "Family" means parent, grandparent, child, brother, sister, grandchild, spouse, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunts, uncles, or cousins. aunt, uncle or cousin.

(i) ~~"Federated fund raising organization (FFRO)" means a federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United~~

~~Fund, United Way, or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.~~

(h) (j) "Fiscal year" means the ~~12-month~~ twelve months period which a charitable organization or sponsor uses as its accounting year.

(i) (k) "Foundation" means an incorporated body which holds a status with the IRS as a foundation and is authorized to receive financial support from, and render financial support to, other persons for charitable purposes.

(j) (l) "Initial application" means the first application filed by a person required to be licensed on or after ~~January 1, 1982.~~ January 1, 1995.

(k) (m) "Instructional unit" means a department or school of or an educational institution.

(l) (n) "IRS" means the U. S. Internal Revenue Service.

~~(o) "Parent organization" means that part of a charitable organization which assists or advises, coordinates, supervises, or exercises control over policy, fund raising, and expenditures for one or more chapters, branches, or affiliates in the state.~~

(m) (p) "Purpose of the organization" means the program services an organization performs.

(n) "Rescue squad" means meeting the eligibility requirements of N.C. Association of Rescue and Emergency Medical Services, Inc. and as defined in G.S. 58-87-5.

(o) (q) "Salaried employee" means a person who has a bona fide an employer-employee relationship; which can be demonstrated by, but not limited to, the following:

- (1) The a withholding from the employee's salary for income taxes;
- (2) The a withholding from the employee's salary for FICA F.I.C.A. taxes; and
- (3) The a granting of employees benefits such as insurance and leave time.

(p) "Solicitor consultant" means a solicitor as defined in G.S. 131F-2(19) except that neither the solicitor consultant nor his employees ever receives, handles, or controls funds raised for a charitable organization or sponsor.

(q) "Volunteer fire department" means certified by the North Carolina Department of Insurance as required by G.S. 58-87-1.

Statutory Authority G.S. 131F-28.

.0105 CONTESTED CASE HEARING
PROCEDURES

~~Contested cases arising pursuant to G.S. Chapter 131C shall be conducted in accordance with G.S. Chapter 150B and 10 NCAC 1B .0200 which are incorporated by reference under G.S. 150B-14(e).~~

Statutory Authority G.S. 131C-12; 150B-14(c).

SECTION .0300 - APPLICATION FOR LICENSURE

.0305 PERSONS SUBJECT TO LICENSURE

(a) Any person subject to licensure under G.S. ~~131C-4 or 131C-6~~ 131F-5, 131F-15, or 131F-16 shall file an application with the ~~department~~ Department on forms approved by the ~~department~~ Department prior to soliciting.

(b) If the ~~department~~ Department identifies a person who has failed to comply with Paragraph (a) of this Rule, then the ~~department~~ Department shall send, by certified mail, to such person all forms relevant to licensure and a notice which advises of the person of the unlawful solicitation.

(c) Upon receipt of an application to solicit charitable funds within in North Carolina, the ~~department~~ Department shall examine each ~~form, document, report, statement, or other all~~ submitted information. The ~~department~~ Department shall retain the right to investigate any application to assure a that true and full disclosure has been made.

(d) ~~At least 65 days prior to the expiration of a license, the department shall send each licensee a termination notice with forms for submitting a renewal application.~~ Any license issued to a charitable organization or a sponsor shall indicate the type of organization as defined by the IRS through its various exempt determination codes as follows:

- (1) 501(c)(1) - Congressional organization or federal credit union
- (2) 501(c)(3) - Charitable organization
- (3) 501(c)(4) - Civic organization
- (4) 501(c)(5) - Labor organization, union
- (5) 501(c)(6) - Business league
- (6) 501(c)(7) - Social club
- (7) 501(c)(8) - Fraternal beneficiary
- (8) 501(c)(10) - Domestic fraternal organization
- (9) 501(c)(19) - Armed forces organization; or, any other designation by the IRS.

(e) A charitable organization or sponsor which elects not to file for IRS Tax Exempt Determination may be licensed as a "Non Tax Exempt Entity" provided it meets all other requirements

for licensure. In addition, the charitable organization or sponsor shall provide disclosure in its solicitations that the charitable organization or sponsor is a non tax exempt entity and that donations are not tax deductible.

(f) ~~(d)~~ At least 65 days prior to the expiration of a license, the ~~department~~ Department shall send each licensee a ~~termination notice with forms for submitting a renewal application form.~~

(g) Any charitable organization or sponsor which fails to file the renewal information by the due date shall be assessed a late filing fee of twenty five dollars (\$25.00) for each month or part of a month after the due date on which the renewal information was due to be filed or after the period of extension granted for the filing.

Statutory Authority G.S. 131F-8; G.S. 131F-28.

.0306 INCOMPLETE APPLICATION

~~An application in which the applicant fails to respond to any question or to submit the proper fee or any required information, including street address, shall be incomplete. The department shall notify the applicant by regular mail of the incompleteness and allow the applicant 15 days from the date of mailing to comply. An applicant, so notified, may request, in writing, an additional 30 days to furnish the requested information. An applicant who fails to respond to any question, to provide any required information, or to submit the proper fee shall not be licensed.~~

Statutory Authority G.S. 131F-28.

.0307 CHARITABLE ORGANIZATIONS

~~An organization may separate its charitable activities from its other activities and report only on the charitable activities if:~~

- (1) ~~the organizations' primary purpose is other than soliciting charitable contributions; or~~
- (2) ~~the charitable contributions solicited by the organization constitute 30 percent or less of its gross receipts during the previous fiscal year.~~

Statutory Authority G.S. 131C-12.

.0308 FEDERATED FUND-RAISING ORGANIZATIONS

(a) ~~A FFRO, Unless unless exempt under G.S. 131C-5(e) 131F-3, any Federated Fund-Raising Organization (FFRO) which solicits for charitable purposes, shall file an application which identifies~~

member agencies of the FFRO. The identification of the member agencies shall include the licensure status of the member agencies, that are exempt from licensing requirements under G.S. 131C-5 and those which are subject to licensing requirements under G.S. 131C-1 et. seq.

(b) If Identification of a member agency is exempt from licensing licensure under G.S. 131F-3, the FFRO requirements shall state include the name of the exempt member agency, the amount allocated by the FFRO to the member agency during the previous fiscal year, and the reasons why the member agency is exempt, based on information submitted by the member agency to the FFRO. This information shall be furnished as a part of the FFRO's application for a license to solicit.

(c) If Identification of a member agency is subject to licensing licensure under the provisions of G.S. 131C-1 et. seq. 131F et. seq. the FFRO shall include the name and address of the organization member agency, the name of the executive in charge, the phone number, and the amount allocated by the FFRO to the member agency during the previous fiscal year. This information shall be furnished as a part of the FFRO's application for a license to solicit.

Statutory Authority G.S. 131F-28.

.0309 ADVERTISING MATERIAL

A person shall file as a part of its application all advertising material which is sent or given to prospective donors; provided that if this number is more than five items, then only the five most frequently used items in this State shall be submitted with the application. A listing of all other material shall be included, with a statement that a copy of these additional items is available in the principal office of the organization.

Statutory Authority G.S. 131C-7; 131C-12.

.0310 SIMILAR NAMES

No person shall use a name, symbol, or statement so closely related to that used by another charitable organization or government agency that its use would tend to confuse or mislead the public.

Statutory Authority G.S. 131C-12.

SECTION .0400 - FEES

.0403 SCHEDULE OF FEES

(a) Each person subject to the licensing provisions of G.S. 131C shall pay an annual license fee at the time the application is submitted.

(b) A charitable organization which raised no more than twenty five thousand dollars (\$25,000) in total contributions during the previous fiscal year and which has no chapters, branches, or affiliates, or is not filing a consolidated application shall pay a fee of twenty five dollars (\$25.00).

(c) A charitable organization which raised more than twenty five thousand dollars (\$25,000) in total contributions in the previous fiscal year but no more than one hundred thousand dollars (\$100,000), has no chapters, branches, or affiliates, and is not filing a consolidated application shall pay a fee of fifty dollars (\$50.00).

(d) A charitable organization which raised more than one hundred thousand dollars (\$100,000) in total contributions, has one or more chapters, branches, or affiliates, or is filing a consolidated application shall pay a fee of one hundred dollars (\$100.00).

(e) A professional fund raising counsel or professional solicitor shall pay a fee of one hundred dollars (\$100.00).

Statutory Authority G.S. 131C-9; 131C-12.

.0404 FEE FOR SOME APPLICANTS

A charitable organization which files an initial application and receives less than a full year license because of establishing its license year shall pay 50 percent of the appropriate fee.

Statutory Authority G.S. 131C-9; 131C-12.

.0405 UNCOLLECTIBLE FEES

If any applicant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, then the department Department shall notify the applicant of the nonpayment, this by certified mail and permit the applicant 15 days to correct the matter. If the matter is not corrected within this period, the department shall give notice of denial or revocation in accordance with G.S. 131C-11(b): full payment of the fee is not received within 15 days of the notice, the Department shall proceed with denial of the application or revocation of the license.

Statutory Authority G.S. 131F-28.

SECTION .0500 - ACCOUNTING AND MANAGEMENT

.0503 FINANCIAL INFORMATION OF CHARITABLE ORGANIZATIONS

(a) ~~A charitable organization shall maintain records in accordance with standards, practices, and generally accepted accounting principles of one of the following methods, and as they may be modified from time to time by the issuing entity or its successor: A charitable organization or sponsor shall maintain financial records.~~

- (1) ~~The "Audit Guide" for the organization's particular field published by the American Institute of Certified Public Accountants;~~
- (2) ~~The "Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations" published by the National Health Council, Inc., the National Assembly of National Voluntary Health and Social Welfare Organizations, Inc., and the United Way of America; or~~
- (3) ~~The "Accounting and Financial Reporting" published by the United Way of America.~~

(b) ~~Any person subject to licensure under G.S. 131C-4 shall maintain accurate fiscal records which shall be retained for a period of at least three years after the period of licensing to which they relate. Such records shall report total support and revenue on a gross basis and record by allocation all expenses which are properly fund raising. Any person subject to licensure under G.S. 131F-5, 131F-15 and 131F-16 shall maintain accurate financial records. The financial records shall include total support and revenue on a gross basis and an itemization of all actual fund-raising expenses. Financial records shall be retained for a period of at least three years after the license period to which they relate.~~

(c) ~~A copy of the IRS Form 990 and the following additional information shall be acceptable as the equivalent of the financial statement required in G.S. 131C-7(a)(6): A charitable organization or a sponsor who plans no solicitation of contributions in the State upon the expiration of its license shall file, with the Department, a financial report within 90 days of the expiration date of the license.~~

- (1) ~~a functional expense statement;~~
- (2) ~~an independent public accountant's report (opinion); and~~
- (3) ~~notes from the audit report.~~

(d) ~~A charitable organization which plans no solicitation of contributions in the State upon the~~

~~expiration of its current license shall file a financial report within 90 days of the expiration date of the current license. The charitable organization or sponsor's assets shall not be commingled with those of any other person.~~

Statutory Authority G.S. 131F-18; G.S. 131F-28.

.0504 ACCOUNTING BY SOLICITORS

(a) ~~Within 20 days from the conclusion of the particular solicitations for which he has been retained, a professional solicitor shall provide to the department an accounting of all monies received, pledged, and disbursed. The accounting shall be on a form prescribed by the department.~~

(b) ~~The professional solicitor shall employ and ensure accounting controls on all contributions received from solicitations.~~

(c) ~~The professional solicitor shall maintain accurate fiscal records and retain them for a period of at least three years after the period of licensing to which they relate.~~

Within 90 days from the conclusion of a solicitation for which a solicitor has been retained, the solicitor shall provide to the Department an accounting of all monies received, pledged, and disbursed. The accounting shall be on a form prescribed by the Department. Solicitor's expense information is required and may be accompanied by a statement from a certified public accountant verifying its accuracy. The accounting will be labeled as "verified" or "unverified" and will be available for inspection in the Charitable Solicitation Licensing Office.

Statutory Authority G.S. 131F-28.

.0505 CHARITABLE SALES PROMOTION - COVERTURE

~~Any charitable organization which has a charitable sales promotion sponsored on its behalf shall be responsible for obtaining from the for-profit entity the following:~~

- (1) ~~prior to the organization's entering into an agreement with the for-profit entity, projected amounts for gross sales, for the unit sales or similar basis, for the charitable organization's share per unit, and for the charitable organizations' total dollar share;~~
- (2) ~~after the promotion, a true accounting to include, at a minimum, those items stated in (1) of this Rule. The charitable organization shall furnish a copy of this accounting to the department before its~~

current license expires. The accounting may be incorporated as a part of its financial statement but shall include the basis for determining the charitable organization's share of the proceeds.

(a) Prior to a charitable sales promotion or coverture by a charitable organization or sponsor, the charitable organization or sponsor shall obtain the following:

- (1) A license as required under G.S. 131F-5, unless exempt from licensure under G.S. 131F-3; and
- (2) An agreement with the sales promotions or coverturer which shall include the projected amounts of gross sales, the projected sales for each vending unit, the charitable organization or sponsor's share per unit, and the charitable organization or sponsor's projected total dollar share.

(b) Upon the conclusion of the charitable sales promotion or coverture, the charitable organization or sponsor shall provide to the Department an accounting of the items set forth in Subparagraph (a)(2) of this Rule. In lieu of a separate accounting to the Department, the charitable organization or sponsor may incorporate the accounting into the financial report filed pursuant to Rule .0503 (b) of this Section.

Statutory Authority G.S. 131F-18; G.S. 131F-28.

.0506 SIMPLIFIED REPORTING FOR CERTAIN ORGANIZATIONS

(a) A charitable organization which has total support and revenue for the preceding fiscal year of one hundred thousand dollars (\$100,000) or less may elect to file as its financial statement in one of the following methods: A charitable organization or sponsor which has total support and revenue for the preceding fiscal year of less than one hundred thousand dollars (\$100,000) may elect to file its financial statement as required by G.S. 131F-6(8) or 131F-6(9). A financial statement filed pursuant to G.S. 131F-6(8) shall be signed by three members of the audit or finance committee.

- (1) a copy of a financial statement as required by G.S. 131C-7(a)(6);
- (2) a copy of a financial statement meeting the requirements of Rule .0503(e) of this Section;
- (3) a copy of a review performed by an independent public accountant accompanied by a statement signed by three members of the organization's

audit or finance committee that to the best of knowledge the financial records are true and correct; or

- (4) a copy of IRS Form 990 accompanied by a statement signed by three members of the organization's audit or finance committee that to the best of knowledge the financial records are true and correct.

(b) No report filed under Paragraph (a) of this Rule shall be in less detail than the report that was furnished to the governing board of the charitable organization. A charitable organization or sponsor which has total support and revenue for the preceding fiscal year of one hundred thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000) shall provide a copy of a compilation performed and signed by an independent public accountant and a copy of the IRS Form 990.

(c) A charitable organization which seeks a license to solicit and has not completed a fiscal year shall not be required to furnish a financial statement if: A charitable organization or sponsor which has total support and revenue for the preceding fiscal year of two hundred fifty thousand dollars (\$250,000) or more shall provide an audit by a certified public accountant and a copy of IRS Form 990.

- (1) the organization has no financial history prior to the beginning of solicitation;
- (2) the amount solicited is one hundred thousand dollars (\$100,000) or less;
- (3) the organization is newly formed; or
- (4) an application is made prior to the onset of solicitations.

Statutory Authority G.S. 131F-28.

.0507 MANAGEMENT OF THE CHARITABLE ORGANIZATION

(a) Each charitable organization shall have a governing board.

(b) The governing board of every charitable organization licensed under these Regulations shall:

- (1) be comprised of at least three members, no more than one third of which are family members;
- (2) hold at least one meeting during each of the organization's fiscal years;
- (3) record and maintain minutes of its meetings, including the name of all members present.

(c) The compensation, including reimbursement

or expenses, of officers, employees, members of the governing board, or contractual providers shall be reasonable. In determining whether compensation is reasonable, the department shall consider the skill, expertise, time expended, and the compensation for other similar positions in the organization's field.

(d) The charitable organization's assets shall not be commingled with those of any other person.

Statutory Authority G.S. 131C-12.

SECTION .0600 - LICENSING

.0605 REQUIREMENTS TO BE LICENSED AS A CHARITABLE ORGANIZATION

The department shall review for licensure any charitable organization which has submitted an application containing all information found in G.S. 131C-7 and the following additional reports and items:

- (1) a completed financial summary page;
- (2) the financial information required by either G.S. 131C-7(a)(6) or Rule .0503(e) of this Subchapter or by Rule .0506(a) of this Subchapter;
- (3) a completed payment of license fee form and appropriate fee;
- (4) a completed checklist of needed reports;
- (5) a copy of all contracts or agreements between professional fund-raising counsel and professional solicitors;
- (6) a schedule for fund-raising special events;
- (7) a schedule for contributions and grants;
- (8) a schedule for professional fund-raisers; and
- (9) a schedule of joint costs of multipurpose activities involving fund-raising.

Statutory Authority G.S. 131C-12.

.0606 REQUIREMENTS LICENSED PROFESSIONAL FUND-RAISING COUNSEL

The department shall review for licensure any person to act as a professional fund-raising counsel or a professional solicitor if such person has submitted an application containing all of the following reports and items:

- (1) the information required by G.S. 131C-8;
- (2) the information required in G.S. 131C-7(a)(1), 131C-7(a)(2), 131C-7(a)(3), 131C-7(a)(7), 131C-7(a)(9), 131C-7(a)(10), 131C-7(a)(12), 131C-7(a)(13),

131C-7(a)(14), and 131C-7(a)(16);

- (3) the place and date the person was legally established;
- (4) the form of the organization;
- (5) the name and address of any person who is in charge of solicitations;
- (6) the name and address of any person having custody of solicited contributions;
- (7) a copy of all contracts or agreements between the professional fund-raising counsel or professional solicitor and charitable organizations for which an activity is to be performed;
- (8) a completed payment of license fee form with the appropriate fee as required by Rule .0403 of this Subchapter;
- (9) a completed checklist of needed reports; and
- (10) a license and permit bond as required by G.S. 131C-10.

Statutory Authority G.S. 131C-12.

.0607 LICENSE YEAR

(a) A license year for a charitable organization or sponsor shall begin on the 15th day of the fifth month after the end of the fiscal year. Upon request, the department The Department may grant a different license year upon receipt of written notification of fiscal year change.

(b) If written request for the extension with justification for the untimely filing of a renewal application is submitted prior to the expiration date, then the department may grant an extension of a license for a charitable organization up to 60 days. Any extension granted shall not change the license year of the licensee. A license may be issued to any charitable organization or sponsor for less than a year when the charitable organization or sponsor files an application for licensure after the 15th of the fifth month of the end of the charitable organization or sponsor's fiscal year.

(c) A license may be issued to any charitable organization for less than a year if one of the following applies:

- (1) establishing the organization's license year in accordance with (a) of this Rule;
- (2) granting a license to a charitable organization following an extension for filing in accordance with (b) of this Rule; and
- (3) licensing any person who has been delinquent in their filing of an application.

(d) ~~A license year for a professional fund-raising counsel or a professional solicitor shall be established by the date on which a license was initially issued. The same license year is to be maintained as long as such person acts as a professional fund-raising counsel or professional solicitor.~~

(e) ~~Any person licensed under G.S. 108-78.1 et. seq. shall not be required to file an initial license under G.S. 131C-1 et. seq. until the expiration date of such license issued pursuant to G.S. 108-78.1 et. seq.~~

Statutory Authority G.S. 131F-28.

.0608 NONTRANSFERABILITY OF LICENSE

(a) ~~The license issued to any person subject to G.S. 131C-1 et. seq. 131F et. seq. shall not be transferable, to any other person. In the case of a name change of the licensed person, a new license will be issued without cost under the new name upon submission of documentation of the name change.~~

(b) Upon receipt of documentation of a name change of a licensed person, the Department shall issue, without cost to the licensee, a new license.

(c) Upon request, any charitable organization or sponsor licensed under the provisions of G.S. 131F et. seq. will be provided an additional copy of its license free of charge.

Statutory Authority G.S. 131F-28.

.0609 ADDITIONAL COPIES OF LICENSES

~~Upon request any parent organization licensed under the provisions of G.S. 131C-1 et. seq. will be provided one additional copy of its license free of charge.~~

Statutory Authority G.S. 131C-12.

.0610 LICENSE DENIAL OR REVOCATION

~~Any person subject to licensure under G.S. 131C-1 et. seq., who violates any of the prohibited acts of G.S. 131C-17 or the rules of this Subchapter, shall be notified by the department of its intent to deny or revoke a license in accordance with G.S. 131C-11(b).~~

Statutory Authority G.S. 131C-11; 131C-12.

SECTION .0700 - SOLICITATION AND DISCLOSURE

.0705 SOLICITATION VIOLATIONS AND REQUIREMENTS

(a) ~~Any person, subject to licensure under G.S. 131C-1 et. seq. who promises in a solicitation to produce an event, publication, item for sale, or program and is unable to do so or has not done so within 60 days following the scheduled date shall make an offer of a refund for any benefits or services not rendered. Any person, subject to licensure under G.S. 131F et. seq., who promises to produce an event and fails to do so or has not produced the event within 60 days following the scheduled event shall offer of a full refund to the purchaser.~~

(b) ~~Any person subject to licensure under G.S. 131C-1 et. seq. shall avoid all acts in solicitations and promised benefits that would cause any other person to suffer actual damages due to the unauthorized acts by the subject persons. Any person, subject to licensure under G.S. 131F et. seq. who offers a publication or item for sale who has not produced the publication or item for sale within 60 days of the promised delivery date shall offer of a full refund to the purchaser.~~

(c) ~~A charitable organization shall issue to each unpaid volunteer solicitor or salaried employee who solicits on its behalf a printed authorization or other identification and shall instruct that it be shown in all solicitations by such solicitor or employee. Any person subject to licensure under G.S. 131F et. seq. shall avoid all acts in solicitations that would cause any person to suffer actual damages.~~

(d) ~~A professional solicitor shall disclose at the time of solicitations that persons are being compensated for fundraising. A charitable organization or sponsor shall issue to each unpaid volunteer solicitor or salaried employee a printed authorization or other identification and shall instruct that it shown in all solicitations by such solicitor or employee.~~

(e) ~~If a professional solicitor states that tickets sold will be used by persons other than the purchaser, the solicitor must have written authorization from the groups which will receive the tickets that includes the number of tickets to be accepted. If this method is used, the specific organizations which will receive the tickets must be named in the solicitation. When a solicitor or solicitor counsel sells tickets to an event where the seats are specifically identified, the solicitor or solicitor counsel shall not sell duplicate tickets for the same seat.~~

(f) ~~A professional solicitor selling tickets for an event by use of a charitable inducement shall not sell duplicate tickets for the same seat, where seats~~

~~re specifically identified in the charitably promoted event. When a solicitor or solicitor counsel sells tickets for an event where the seats are not specifically identified, the solicitor counsel shall not sell tickets in excess of 10% of the seating capacity for the event.~~

~~(g) A professional solicitor selling tickets for an event by use of a charitable inducement shall not oversell the seating capacity for any one performance by 25 percent or by 10 percent in the aggregate for all performances. When a solicitor or solicitor counsel has sold tickets an event and the purchaser cannot be seated at a scheduled performance of the event, the solicitor or solicitor counsel shall offer to the purchaser the option of either guaranteed seating at another performance of full refund.~~

~~(h) A professional solicitor, who has sold tickets for a charitably promoted event, shall guarantee the purchaser of a ticket who cannot be seated at the scheduled performance guaranteed seating at another performance or a full refund of cost at the purchaser's option.~~

~~(i) A professional solicitor, soliciting on behalf of a charitable organization, shall obtain a signed authorization to solicit from two authorized representatives of the charitable organization and shall show such authorization in each in person solicitation contact.~~

Statutory Authority G.S. 131F-18; G.S. 131F-28.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26M .0301 - .0308.

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

The public hearing will be conducted at 1:30 p.m. on March 3, 1995 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action: North Carolina is changing the way it is providing and paying for child mental health and substance abuse services. The Carolina Alternatives program is being accomplished under authority of the Social Security Act,

Section 1915(b) as a waived programs to implement an at-risk, capitated plan.

Comment Procedures: Written comments concerning these adoptions must be submitted by March 3, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N. C. 27603, ATTN: Portia Rochelle, 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 26M - MANAGED CARE AND PREPAID PLANS

SECTION .0300 - MENTAL HEALTH MANAGED CARE - CAROLINA ALTERNATIVES

.0301 PROGRAM DEFINITION

The Division of Medical Assistance will contract with the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to coordinate and deliver, through Area Mental Health Authorities in participating counties, mental health and substance abuse services to Medicaid recipients ages 0 through 17. This program is hereinafter referred to as Carolina Alternatives.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0302 ACCESS TO CARE

(a) All Medicaid recipients through age 17 in participating areas shall enroll in Carolina Alternatives.

(b) Carolina Alternatives enrollees are eligible to receive all mental health and substance abuse services for which all Medicaid eligible children under age 21 are eligible. The services they receive will be provided or authorized by the Area Mental Health Authority which is responsible for assuring enrollee access to mental health services in the participating areas. The Division of Medical Assistance will deny payment for covered mental health services not provided or authorized through Carolina Alternatives for its enrollees.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0303 PATIENT INFORMING

Upon enrollment, all Carolina Alternatives enrollees will be provided:

- (1) information describing what mental health services are available;
- (2) where the services are available;
- (3) how to obtain them; and
- (4) how to appeal an adverse decision by Carolina Alternatives.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0304 RELATIONSHIP WITH CAROLINA ACCESS

Carolina Alternatives enrollees are eligible to receive all health services provided by or through Carolina ACCESS providers. Arrangements for coordination of care will be instituted to prevent duplication in the provision of health services covered under the State Plan for Medical Assistance.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0305 RELATIONSHIP WITH EPSDT PROGRAM

Carolina Alternatives enrollees are eligible to receive all EPSDT services as defined in the State Plan for Medical Assistance and approved by the Health Care Financing Administration.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0306 RELATIONSHIP WITH SUB-CONTRACTORS

Carolina Alternatives shall establish a community based provider network that includes qualified sub-contractors in accordance with the State Plan for Medical Assistance as approved by the Health Care Financing Administration and the contract between the Division of Medical Assistance and Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0307 UTILIZATION REVIEW REQUIREMENTS

Carolina Alternatives utilization review and quality assurance standards require approval of the Division of Medical Assistance as defined in the State Plan for Medical Assistance and approved by

the Health Care Financing Administration and the contract between the Division of Medical Assistance and Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

.0308 ENROLLEE AND SUB-CONTRACTOR APPEALS AND GRIEVANCES

Enrollee and contract provider appeals and grievances initiated through Carolina Alternatives will be handled by the Area Mental Health Authorities under the Carolina Alternatives Appeals and Grievances Procedures as set forth in 10 NCAC 14K .0328 and 10 NCAC 18J .0800.

Statutory Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1993, c. 321, s. 222(g).

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to amend rule cited as 11 NCAC 1 .0413.

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

The public hearing will be conducted at 10:00 a.m. on February 6, 1995 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, NC 27611.

Reason for Proposed Action: Technical corrections.

Comment Procedures: Written comments and questions should be directed to Ellen Sprenkel, 530 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4529. Oral presentations may be made at the public hearing.

CHAPTER 1 - DEPARTMENTAL RULES

SECTION .0400 - ADMINISTRATIVE HEARINGS

.0413 DEFINITIONS

The definitions contained in G.S. 150B-2 are

incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this Section:

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" means ~~either the Commissioner or Commissioner~~, a member of the Commissioner's staff appointed by the Commissioner under G.S. 58-2-55, or an administrative law judge assigned under G.S. 58-2-55.
- (3) "Party" means the Department, the licensee, or an intervenor who qualifies under 11 NCAC 1 .0425.
- (4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service; or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

Statutory Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to adopt rules cited as 11 NCAC 4 .0321, and .0432 - .0435.

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

The public hearing will be conducted at 10:00 a.m. on February 6, 1995 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, NC 27611.

Reason for Proposed Action: To improve consumer knowledge and protection.

Comment Procedures: Written comments and questions should be directed to Bill Stevens, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4913. Oral presentations may be made at the public hearing.

CHAPTER 4 - CONSUMER SERVICES DIVISION

SECTION .0300 - LIFE: ACCIDENT AND HEALTH

.0321 ACKNOWLEDGEMENT OF EXCLUSIONARY RIDERS AND SUBSTANDARD PREMIUM

Any insurer that issues a life or accident and health policy or certificate with exclusionary riders or a substandard premium rating must obtain an acknowledgment signed by the policy holder or certificate holder upon delivery of the policy or certificate indicating the holder's acceptance of the policy or certificate as issued. A copy of the signed acknowledgment must be attached to the holder's policy or certificate.

Statutory Authority G.S. 58-2-40; 58-63-65.

SECTION .0400 - PROPERTY AND LIABILITY

.0432 REFUND OF EXCESS PREMIUM ON SCHEDULED ITEMS

If an insured has any scheduled item covered by a homeowner's or personal inland marine insurance policy, and that item is replaced for less than the scheduled amount of coverage, the insurer shall refund the insured the difference in premium charged between the scheduled amount of coverage and the actual amount of the loss paid by the insurer. Any refund shall be computed from the date of issuance of the policy or three years, whichever is less.

Statutory Authority G.S. 58-2-40; 58-43-10; 58-63-65.

.0433 USE OF SPECIFIC COMPANY NAME IN RESPONSES

When an insurer makes a written response to an inquiry or complaint made by a consumer or the Department, the insurer shall identify on its response its mailing address and official corporate name, or its mailing address and specific corporate name if the insurer is part of a group of companies.

Statutory Authority G.S. 58-2-40; 58-2-190; 58-3-50; 58-63-65.

.0434 INSURANCE COMPANY CONTACT PERSONS

Every insurer shall provide the Department's Consumer Services Division with the name, title, address, and telephone number, including a toll-free number, of a designated person to whom any person may send a complaint or inquiry. Every insurer shall also provide the Division with the company president's name, address, and telephone number for the Division's use. Forms will be provided by the Division, which shall be completed and returned to the Division by every insurer. Every insurer shall complete and file with the Division a new form within 15 business days after any change in the information on the form.

Statutory Authority G.S. 58-2-40; 58-2-190; 58-63-65.

.0435 REFUND OF AUTO INSURANCE PREMIUM ON NEW BUSINESS

If an insured asks an insurer to cancel a newly issued motor vehicle insurance policy on or before the premium billing due date, the unearned premium refund made by the insurer shall be made on a pro rata rather than a short rate basis, and the refund shall be based on the premium initially quoted by the insurer if both of the following conditions are met:

- (1) The insured provided the insurer with accurate and complete information about the driving record of every person to be covered under the policy.
- (2) The insurer subsequently calculated the premium to be greater than the premium initially quoted.

Statutory Authority G.S. 58-2-40; 58-36-85; 58-63-65.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 10 .1404.

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

The public hearing will be conducted at 10:00 a.m. on February 6, 1995 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, NC 27611.

Reason for Proposed Action: Clarify intent.

Comment Procedures: Written comments and questions should be directed to Charles Swindell, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3368. Oral presentations may be made at the public hearing.

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .1400 - NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION

.1404 WINDSTORM AND HAIL EXCLUSIONS

Direct damage caused by windstorm or hail may be excluded from coverage only if an insured has purchased a separate policy for this peril from the North Carolina Insurance Underwriting Association under G.S. 58-45-35(e).

Statutory Authority G.S. 58-2-40; 58-45-35(e).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 12 .0513, .1024 and repeal 12 .1001.

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

The public hearing will be conducted at 10:00 a.m. on February 6, 1995 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room,

Raleigh, NC 27611.

Reason for Proposed Action: Technical changes.

Comment Procedures: Written comments and questions should be directed to T. N. Shackelford, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-5060. Oral presentations may be made at the public hearing.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0500 - ACCIDENT AND HEALTH GENERAL NATURE

.0513 ACCIDENT AND HEALTH: RIDER OR ELIMINATION ENDORSEMENT

All companies writing non-group ~~accident, health~~ or hospitalization insurance policies shall print in bold type on the face of ~~the~~ each policy a notification that a rider or elimination endorsement has been attached. ~~The~~ This requirement ~~shall be waived for~~ does not apply to an individual health ~~riders rider or elimination endorsement~~ when the applicant signs the rider or endorsement.

Statutory Authority G.S. 58-2-40; 58-65-40; 58-65-60.

SECTION .1000 - LONG-TERM CARE INSURANCE

.1001 APPLICABILITY AND SCOPE

~~Except as otherwise specifically provided, this Section applies to all new and renewal policies delivered or issued for delivery in North Carolina on or after September 1, 1990.~~

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1024 PROHIBITED POLICY PRACTICE

(a) No insurer may increase the rate or premium charged to an insured for a policy because of:

- (1) the increasing age of the insured at ages beyond 65; or
- (2) the amount of time the insured has been covered under a policy.

(b) This Rule applies only to policies newly issued on and after December 1, 1994.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to adopt rules cited as 11 NCAC 16 .0601 - .0607.

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

The public hearing will be conducted at 10:00 a.m. on February 6, 1995 at the Dobbs Building, 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, NC 27611.

Reason for Proposed Action: Establish standards and guidelines for health maintenance organization premium and rate filings with the Department of Insurance.

Comment Procedures: Written comments and questions should be directed to Mike Wells, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3284. Oral presentations may be made at the public hearing.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0600 - HEALTH MAINTENANCE ORGANIZATION FILINGS AND STANDARDS

.0601 DEFINITIONS

(a) The definitions contained in G.S. 58-67-5 are incorporated in this Section by reference.

(b) As used in this Section:

- (1) "Adjusted community rating" means a rating method that allows an HMO to prospectively establish premium rates based upon the expected revenue requirements for individual groups and to take into account a group's historical utilization, intensity, or cost experience.
- (2) "Capitated" means covered health care services are provided by an HMO, medical group, or institution based on a prepaid fixed amount per enrollee regardless of the actual value of those services.
- (3) "Community rating" means a general method of establishing premiums for

financing health care in which an individual's rate is based on the actual or anticipated average cost of health services used by all HMO members in a specific service area.

- (4) "Community rating by class" means a modification of community rating whereby individual groups can have different rates depending on the composition by age, gender, number of family members covered, geographic area, or industry.
- (5) "Contingency reserve" means the unassigned funds held over and above any known or estimated liabilities of an HMO for the protection of its enrollees against the insolvency of the HMO.
- (6) "Contract type" means a classification of members into categories usually based on enrolled dependent status, such as subscriber only, subscriber with one dependent, and subscriber with two or more dependents.
- (7) "Credibility rating" means a rating method that establishes premium rates based upon the assignment of a level of credibility to an HMO group's historical utilization, intensity, or cost experience.
- (8) "Fee-for-service" means payment for health care services is made on a retrospective basis based on the actual value of those services.
- (9) "Full-service HMO" means an HMO that provides a comprehensive range of medical services, including hospital and physician services.
- (10) "HMO expansion request" means all materials submitted for the purpose of obtaining authority to operate an HMO in a new or expanded geographic area in this State.
- (11) "HMO model type" means a classification that describes the manner in which physicians are affiliated with the HMO and the contractual and payment arrangements with hospitals; and includes types such as group, network, staff, independent practice association, and point-of-service.
- (12) "HMO rate filing" means an initial HMO rate filing, an HMO expansion request or an HMO rate revision filing.
- (13) "HMO rate revision filing" means all materials submitted for the purpose of

making a revision to an existing schedule of premiums.

- (14) "Incurred loss ratio" means the ratio of total medical expenses including the change in claim reserves to total earned premium revenues.
- (15) "Initial HMO rate filing" means all materials submitted for the purpose of obtaining a certificate of authority to operate an HMO in this State.
- (16) "Qualified actuary" means an individual who is an Associate or Fellow of the Society of Actuaries or a Member of the American Academy of Actuaries, and:
 - (A) has at least three years of substantive experience in the HMO or other managed health care field; or
 - (B) has comparable experience and is acceptable to the Commissioner of Insurance.
- (17) "Single-service HMO" means an HMO that undertakes to provide or arrange for the delivery of a single or limited type of health care service to a defined population on a prepaid basis.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0602 HMO GENERAL FILING REQUIREMENTS

(a) All schedules of premiums for enrollee coverage for health care services and amendments to schedules of premiums that are filed with the Department shall be submitted to and stamped received by the Life and Health Division and indicate whether the filing is an original or amended filing. All data requirements prescribed by this Section must be submitted within 30 days after the date that the filing is stamped received, or the filing will be deemed to be disapproved. Subsequent data submissions for rate filings deemed to be in non-compliance with this Section shall be made directly to the Department's Actuarial Services Division within the 30 day period.

(b) All filings shall be accompanied by:

- (1) A certification by a qualified actuary that the premiums applicable to an enrollee are not individually determined based on the status of his health and that such premiums are established in accordance with actuarial principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory.

- (2) Actuarial data supporting the schedule of premiums as prescribed by 11 NCAC 16 .0603, 11 NCAC 16 .0604, 11 NCAC 16 .0605, 11 NCAC 16 .0206 and 11 NCAC 16 .0207.

(c) All data and schedules that are required to be filed by this Section shall be filed in duplicate.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0603 HMO RATE FILING DATA REQUIREMENTS

All HMO rate filings shall include the following data:

- (1) Identification and a brief description of the HMO model type;
- (2) Identification of the enrollee issue basis, whether individual or group;
- (3) Identification and a brief description of the type of rating methodology, such as community rating, community rating by class, adjusted community rating, credibility rating, or other;
- (4) Identification and listing of all rate classification factors, such as age, gender, geographic area, industry, group size, or effective date;
- (5) A brief, summary description and numerical demonstration of the development of the capitated rate, including a listing of sources used;
- (6) A brief, summary description and numerical demonstration of the development of any portion of the premium rate developed for fee-for-service claims, including a listing of sources used;
- (7) A brief, summary description of the claim reserving methodology and the incorporation of claim reserves into the premium rate;
- (8) A brief, summary description of the procedure and assumptions used to convert the total per member per month cost to the proposed premium rates; including assumptions for the distribution of community rated contracts by contract type, the ratios by tier to the single rate, and the average number of members in each contract type;
- (9) The projected monthly incurred loss ratios for the period of time equal to the number of months for which the rates will be in effect, plus the number of months the rates will be guaranteed;

- (10) The percentage of the per member per month premium for administrative expenses and for surplus.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0604 INITIAL HMO RATE FILING DATA REQUIREMENTS AND STANDARDS

(a) All initial HMO rate filings shall include, in addition to the data required by 11 NCAC 16 .0603, the following data:

- (1) A comparison of the rates to other HMO rates with the same effective date in North Carolina for similar benefit plans.
 - (2) A completed diskette, provided by the Actuarial Services Division of the Department, containing a three-year financial projection that details total membership, revenues and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth.
- (b) All initial HMO rate filings shall use in the rate development a total retention loading of:
- (1) no greater than 25.0% of the total premium rate for full-service HMO products issued on a group basis;
 - (2) no greater than 35.0% of the total premium rate for single-service HMO products issued on a group basis;
 - (3) no greater than 35.0% of the total premium rate for full-service HMO products issued on an individual basis;
 - (4) no greater than 45.0% of the total premium rate for single-service HMO products issued on an individual basis.
- (c) If an HMO uses a total retention loading which is less than the maximum limit cited in Paragraph (b) of this Rule minus 15.0%, then the following supporting documentation shall be included in the filing:
- (1) a listing of each of the specific components which make up the total retention loading expressed as a percentage of premium;
 - (2) a brief description of the methodology employed to obtain each of the components which make up the total retention loading;
 - (3) a brief explanation as to why any of the components which make up the total retention loading have changed and a statement of opinion from an officer of the HMO that these changes are

- permanent in nature;
- (4) a brief, summary description of the impact of any special fee negotiations or contract arrangements which affect the premium rates; identification of specific hospitals or physician groups is not required;
- (5) a comparison of the rates to other HMO rates with similar benefit plans.
- (d) All HMO's must project a positive net income after taxes in each of the last 12 months of the three year financial projection.

Statutory Authority G.S. 58-67-10(d)(1); 58-67-50(b); 58-67-150.

.0605 HMO EXPANSION REQUEST DATA REQUIREMENTS

All HMO expansion requests shall include, in addition to the data required by 11 NCAC .0603, the following data:

- (1) a comparison of the actual financial results, including total membership, revenues, and expenses, to the projected financial results for at least the most recent 12-month period;
- (2) a completed diskette, provided by the Actuarial Services Division of the Department, containing a three-year financial projection that details total membership, revenues, and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth for both the existing service area and the proposed area of expansion.

Statutory Authority G.S. 58-67-10(d)(1); 58-67-50(b); 58-67-150.

.0606 HMO RATE REVISION FILING DATA REQUIREMENTS

All HMO rate revision filings shall include, in addition to the data required by 11 NCAC 16 .0603, the following data:

- (1) a brief, summary description of the scope and reason for any rate revision, including the methodology employed to determine the revised rates;
- (2) the number of months the rates will be in effect and the number of months the rates will be guaranteed;
- (3) the dates and average percentage amounts of:
- (a) all prior rate revisions in North

- Carolina during the preceding three years, and
- (b) the current rate revision request; and quarterly rate increases shall be shown in comparison to both the immediately preceding quarter and the corresponding quarter of the previous 12-month period;
- (4) the North Carolina average annual per member per month premium revenue before and after the rate revision;
- (5) a brief, summary explanation of any deviations in actual versus expected utilization rates or medical costs that may be used to justify a premium rate revision;
- (6) identification and a brief, summary description of the derivation of any trend factor used to project medical expenses;
- (7) a comparison of the actual financial results, including total membership, revenues, and expenses, to the projected financial results for at least the most recent 12-month period;
- (8) a completed diskette, provided by the Actuarial Services Division of the Department, that contains a financial projection for the period of time equal to the number of months the rates will be in effect plus the number of months the rates will be guaranteed, that details total membership, revenues, and expenses, and that includes a statement of cash flow, a balance sheet, and a statement of working capital and net worth.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

.0607 HMO INCURRED LOSS RATIO STANDARDS

(a) Unless otherwise specifically determined by the Commissioner of Insurance, the following apply to all HMO rate revision filings:

- (1) The application of a requested rate increase or decrease shall result in an average incurred loss ratio projected for North Carolina over the period required in 11 NCAC 16 .0606(8) of this Section which is not less than:
- (A) 75.0% for full-service HMO products issued on a group basis;
- (B) 65.0% for single-service HMO products issued on a group basis;
- (C) 65.0% for full-service HMO products issued on an individual basis;

- (D) 55.0% for single-service HMO products issued on an individual basis;
- (2) If the average incurred loss ratio projected for North Carolina over the period required in 11 NCAC 16 .0606(8) of this Section, is greater than the minimum limit cited in Subparagraph (a)(1) of this Rule plus 15.0%, then the following supporting documentation shall be included in the filing:
- (A) a listing of each of the specific components which make up the total retention loading expressed as a percentage of premium;
- (B) a brief description of the methodology employed to obtain each of the components which make up the total retention loading;
- (C) a brief explanation as to why any of the components which make up the total retention loading have changed and a statement of opinion from an officer of the HMO that these changes are permanent in nature;
- (D) a brief, summary description of the impact of any special fee negotiations or contract arrangements which affect the premium rates; identification of specific hospitals or physician groups is not required;
- (E) a comparison of the rates to other HMO rates with similar benefit plans.
- (b) Unless otherwise specifically determined by the Commissioner of Insurance, the following apply to all initial HMO rate filings and HMO expansion requests:
- (1) The average incurred loss ratio projected for North Carolina over the last 12 months of the three year financial projection period shall be no less than:
- (A) 75.0% for full-service HMO products issued on a group basis;
- (B) 65.0% for single-service HMO products issued on a group basis;
- (C) 65.0% for full-service HMO products issued on an individual basis;
- (D) 55.0% for single-service HMO products issued on an individual basis;
- (2) If the average incurred loss ratio projected for North Carolina over the last 12 months of the three year financial projection is greater than the minimum limit cited in Subparagraph (b)(1) of

this Rule plus 15.0%, then the following supporting documentation shall be included in the filing:

- (A) a listing of each of the specific components which make up the total retention loading expressed as a percentage of premium;
- (B) a brief description of the methodology employed to obtain each of the components which make up the total retention loading;
- (C) a brief explanation as to why any of the components which make up the total retention loading have changed and a statement of opinion from an officer of the HMO that these changes are permanent in nature;
- (D) a brief, summary description of the impact of any special fee negotiations or contract arrangements which affect the premium rates; identification of specific hospitals or physician groups is not required;
- (E) a comparison of the rates to other HMO rates with similar benefit plans.

Statutory Authority G.S. 58-67-50(b); 58-67-150.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0104, .0902, .0907, .0910 - .0911, .0950, .0952 and .0954.

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

The public hearing will be conducted at 7:00 p.m. on February 1, 1995 at the Charlotte/Mecklenburg Government Center, 2nd Floor - Conference Center, 600 East 4th Street, Charlotte, North Carolina.

Reason for Proposed Action:

15A NCAC 2D .0104 - To place statutory requirements for adoptions by reference for referenced American Society Testing Materials (ASTM) methods into a single rule rather than

each individual rule that references ASTM methods.

15A NCAC 2D .0902, .0907, .0910, .0911 .0952, and .0954 - To change the application submittal date and final compliance dates.

15A NCAC 2D .0950 - To amend applicable interim standards to delete source categories where a specific rule has been developed and to define di-acetone alcohol as non-photochemically reactive to make this Rule consistent with 15A NCAC 2D .0518, Miscellaneous Volatile Organic Compound Emissions.

Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until February 16, 1995, to receive additional written statements.

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

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489 (phone)
(919) 733-1812 (fax)

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

.0104 INCORPORATION BY REFERENCE

(a) Anywhere there is a reference to rules contained in the Code of Federal Regulations (CFR) or to an American Society for Testing Materials method (ASTM) in this Subchapter, those rules and methods are incorporated by reference.

(b) The Code of Federal Regulations and American Society for Testing Materials methods incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.

(c) The Code of Federal Regulations may be

purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250. The cost of the referenced documents are as follows:

- (1) 40 CFR Parts 1 to 51: twenty-seven dollars (\$27.00);
- (2) 40 CFR Part 52: twenty-eight dollars (\$28.00);
- (3) 40 CFR Parts 53 to 60: thirty-one dollars (\$31.00);
- (4) 40 CFR Parts 61 to 80: fourteen dollars (\$14.00);
- (5) 40 CFR Parts 260 to 269: twenty-two dollars (\$22.00);

These prices are January 1992 prices.

(d) The American Society for Testing Materials methods may be purchased from the Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626-0535 at a price of twenty cents (\$0.20) per page.

Statutory Authority G.S. 150B-21.6.

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0902 APPLICABILITY

(a) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply statewide, in accordance with Rule .0946 of this Section.

(b) Rule .0953 of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) With the exceptions stated in Paragraph (f) of this Rule, this Section applies, in accordance with Rules .0907 and .0946 of this Section, to all sources of volatile organic compounds located in an area designated in 40 CFR 81.334 as nonattainment for ozone.

(d) With the exceptions stated in Paragraph (f) of this Rule, this Section shall apply, in accordance with Rule .0909 of this Section, to all sources of volatile organic compounds located in any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

- (1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;
- (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and

Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or

- (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are or may be subject to the requirements of this Section as a result of the violation informing them that they are or may be subject to the requirements of this Section. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(e) This Section ~~section~~ shall not apply to facilities in Mecklenburg county whose potential emissions of volatile organic compounds are less than 100 tons per year or to facilities in Gaston County until May 1, 1997 ~~1995~~. If Mecklenburg County is designated attainment in 40 CFR 81.334, all sources in Mecklenburg County subject to a rule in this Section before May 1, 1997 ~~1995~~, shall continue to comply with all such applicable rules in this Section. If any county or part of a county to which the Section applies in accordance with Paragraph (c) of this Rule is later designated in 40 CFR 81.334 as attainment for ozone, all sources in that county or that part of the county subject to a rule in this Section before the redesignation date shall continue to comply with all applicable rules in this Section.

(f) This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
 - (A) The operation of the source is not an integral part of the production process; and
 - (B) The emissions from the source do not exceed 800 pounds per calendar

month; and

- (C) The exemption is approved in writing by the Director; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director.

(g) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rule .0524 or .0525 of this Subchapter.

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

.0907 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (c) of Rule .0902 of this Section on May 1, 1997 ~~1995~~, that are subject to Rules .0917 through .0924, .0929 through .0931, .0934 through .0938, .0943 through .0945, and .0947 through .0951 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946, .0953, or .0954 of this Section.

(c) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by installing emission control equipment, replacing process equipment, or modifying existing process equipment, shall adhere to the following increments of progress and schedules:

- (1) A permit application and a compliance schedule shall be submitted before May 1, 1997 ~~1995~~;
- (2) The compliance schedule shall contain the following increments of progress:

- (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
 - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
 - (C) a date by which on-site construction or installation of the emission control and process equipment shall be completed.
- (3) Final compliance shall be achieved by May 31, ~~1999~~ 1995.

The owner or operator shall certify to the Director within 10 ~~ten~~ days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(d) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by using low solvent content coating technology shall adhere to the following increments of progress and schedules:

- (1) The permit application and a compliance schedule shall be submitted before May 1, ~~1997~~ 1995;
- (2) The compliance schedule shall contain the following increments of progress:
 - (A) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
 - (B) a date by which evaluation of product quality and commercial acceptance shall be completed;
 - (C) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
 - (D) a date by which process modifications shall be initiated; and
 - (E) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.
- (3) Final compliance shall be achieved by May 31, ~~1999~~ 1995.

The owner or operator shall certify to the Director within 10 ~~ten~~ days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(e) The owner or operator of sources subject to this Rule shall, if the Director requires a test to

demonstrate that compliance has been achieved, conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;
- (2) making or testing equipment or process modifications; or
- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of April 30, ~~1997~~ 1995, shall comply with all applicable rules in this Section upon start-up of the source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

.0910 ALTERNATIVE COMPLIANCE SCHEDULES

(a) If the Director finds that the application of a compliance schedule in Rule .0907 of this Section would be technologically or economically infeasible for a source, he may promulgate a different schedule for that source.

(b) The owner or operator of a volatile organic compound source affected by a rule in this Section may submit to the Director a proposed alternative compliance schedule if:

- (1) The proposed alternative compliance schedule is submitted before May 1, ~~1997 January 1~~, 1995;
- (2) The final control plans for achieving compliance are submitted simultaneously;
- (3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is proposed as an alternative; and
- (4) Sufficient documentation and certification from appropriate suppliers, contractors, manufacturers, or fabricators are submitted to justify the dates proposed for the increments of progress.

(c) The owner or operator of a volatile organic compound source affected by a rule in this Section may submit to the Director an alternative compliance schedule for the phase-out or shut-down of a

volatile organic compound source, if:

- (1) The proposed alternative compliance schedule is submitted before May 1, 1997 ~~January 1, 1995~~; and
- (2) The final control plans for achieving compliance with rules of this Section are submitted simultaneously.

(d) All alternative compliance schedules proposed or promulgated under this Rule shall provide for compliance with the applicable rules as expeditiously as practicable but not later than May 31, 1999 ~~1995~~.

(e) Any schedule approved under this Rule may be revoked at any time if the source does not meet the increment of progress stipulated.

(f) When an alternate compliance schedule is promulgated under this Rule, the permit shall contain a condition stating the compliance schedule.

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

.0911 EXCEPTION FROM COMPLIANCE SCHEDULES

Rule .0907 of this Section will not apply to sources that are in compliance with applicable ~~rules~~ Rules of this Section before May 1, 1996 ~~July 1, 1994~~, and that have determined and certified compliance to the satisfaction of the Director before August 1, 1996 ~~October 1, 1994~~.

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

.0950 INTERIM STANDARDS FOR CERTAIN SOURCE CATEGORIES

(a) This Rule applies to the following types of sources:

- (1) tobacco processing,
- (2) textile dyeing,
- ~~(3) textile coating,~~
- ~~(4) bakeries,~~
- ~~(5) Christmas ornament manufacturing,~~
- (3) ~~(6)~~ wastewater treatment operations at beer brewers,
- (4) ~~(7)~~ fiberglass yacht manufacturing,
- (5) ~~(8)~~ soybean processing,
- (6) ~~(9)~~ paint and coating manufacturing,
- (7) ~~(10)~~ synthetic organic chemical manufacturing industry distillation and reactors,
- (8) ~~(11)~~ synthetic organic chemical manufacturing industry batch operations,
- (9) ~~(12)~~ petroleum and industrial wastewater

treatment plants,

- (10) ~~(13)~~ wood furniture finishing,
- (11) ~~(14)~~ plastic parts coating operations,
- (12) ~~(15)~~ web offset lithography,
- (13) ~~(16)~~ autobody refinishing,
- (14) ~~(17)~~ industrial cleanup solvents,
- (15) ~~(18)~~ aerospace, and
- (16) ~~(19)~~ marine coatings.

(b) The owner or operator of a source to which this Rule applies shall not emit volatile organic compounds into the atmosphere in any one day from all sources at the plant site at which the source is located more than a total of 40 pounds of photochemically reactive solvent from any article, machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cycloolefinic type of unsaturation ~~except perchloroethylene--five percent;~~
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule ~~except ethylbenzene--eight percent;~~
- (3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive may be classified from its chemical structure into more than one of the groups in this Paragraph of chemical compounds, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents. Diacetone alcohol and perchloroethylene are not considered photochemically reactive under this Rule.

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

.0952 PETITION FOR ALTERNATIVE

CONTROLS

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (c) of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more;
- (2) sources covered under Rule .0946 of this Section; or
- (3) sources covered under ~~Rules~~ Rule .0953 or .0954 of this Section.

(c) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section on May 1, 1997 ~~July 1, 1994~~, can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director before May 1, 1997 ~~January 1, 1995~~. The petition can be made only for sources in existence or under construction on May 1, 1997 ~~June 30, 1994~~.

(d) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section because of the application of Paragraph (d) of Rule .0902 of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director within six months after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone. The petition can be made only for sources in existence or under construction on the date that the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(e) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations

- (3) conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations; reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction which will be achieved, and the quantity and composition of volatile organic compounds which will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;
- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0907 or .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(f) The Director and the U.S. Environmental Protection Agency (EPA) shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (e) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or

economical infeasibility;

- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the petition.

(g) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director and the EPA, the permit shall contain a condition stating such controls.

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

0954 STAGE II VAPOR RECOVERY

(a) Applicability. This Rule applies to the control of gasoline vapors at the vehicle fill-pipe during refueling operations at a facility. The vapors are captured and returned to a vapor-tight underground storage tank or are captured and destroyed. These systems must be installed at all facilities that dispense gasoline to motor vehicles unless exempted under Paragraph (b) of this Rule.

(b) Exemptions. The following gasoline dispensing facilities are exempt from this Rule based upon the previous two years records:

- (1) any facility which dispenses 10,000 gallons or less of gasoline during calendar month;
- (2) any facility which dispenses 50,000 gallons or less during calendar month and is an independent small business marketer of gasoline;
- (3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or
- (4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3) or (4) in this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Subparagraph (f) of this Rule, and shall remain subject to these provisions even if the facility's

later operation meets the exemption requirements.

(c) Proof of Eligibility. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain the following:

- (1) chronologically arranged bills of lading for receipt of gasoline shipments from the last three years; and
- (2) daily inventory of each gasoline type for each day of operation or equivalent records as required; this shall be maintained for the last three years.

These records shall be furnished to the Director upon request.

(d) Definitions. For the purpose of this Rule, the following definitions apply:

- (1) "CARB" means the California Air Resources Board.
- (2) "Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.
- (3) "Defective equipment" means any absence, disconnection, or malfunction of a Stage II vapor recovery system component which is required by this Rule including the following:
 - (A) a vapor return line that is crimped, flattened or blocked or that has any hole or slit that allows vapors to leak out;
 - (B) a nozzle bellows that has any hole or tear large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length;
 - (C) a nozzle face-plate or cone that is torn or missing over 25 percent of its surface;
 - (D) a nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism;
 - (E) an inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this Rule; or
 - (F) a failure to meet the requirements of Paragraph (g) of this Rule.
- (4) "Facility" means any gasoline service

station, gasoline dispensing facility, or gasoline cargo tanker.

- (5) "ISBM" means independent small business marketer.
- (6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.
- (7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.
- (8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (9) "Pressure Balanced Stage II System" means one which is not vacuum-assisted. That is, the volume of vapor in the automobile's fuel tank displaced by the incoming liquid gasoline equals the space in the underground tank created by the gasoline leaving.
- (10) "Remote Vapor Check Valve" means a check valve in the vapor return line but not located in the nozzle.
- (11) "Stage II Vapor Recovery" means the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight storage tank or are captured and destroyed.
- (12) "Throughput" means the amount of gasoline dispensed at a facility during any calendar month after June 30, 1994.

(e) Stage II Requirements. No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

- (1) the transfer is made using a Certified Stage II vapor recovery system that meets the requirements of the inspections;
- (2) all installed Stage II vapor recovery systems use coaxial vapor recovery hoses; no dual-hose designs shall be used;
- (3) all installed Stage II vapor recovery systems used are certified by CARB except that the Stage I system need not be CARB certified. In addition, no Stage II system shall employ a remote vapor check valve. Pressure balanced Stage II systems may be used; and
- (4) the underground vapor return piping satisfies the requirements of Rule .0953

of this Subchapter.

In the event that CARB revokes certification of an installed system, the owner or operator of the facility shall have four years to modify his equipment to conform with re-certification requirements unless modifications involve only the replacement of dispenser check valves, hoses, or nozzles or appurtenances to these components in which case the allowed time period is three months. This time period is defined as the period from the day that the owner or operator of the facility has been officially notified by the Director.

(f) Compliance Schedule. Affected gasoline service station or gasoline dispensing facilities shall comply with this Rule as follows:

- (1) if the gasoline service stations or gasoline dispensing facilities are subject to the requirements of this Rule in accordance with Paragraph (c) of Rule .0902 of this Section, compliance shall be achieved no later than:
 - (A) May 1, ~~1998~~ 1996, for facilities having any single monthly throughput of at least 100,000 gallons per month;
 - (B) May 1, ~~1999~~ 1997, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;
 - (C) for affected facilities owned by a single ISBM:
 - (i) May 1, ~~1998~~ 1996, for 33 percent of affected facilities;
 - (ii) May 1, ~~1999~~ 1997, for 66 percent of the affected facilities;
 - (iii) May 1, ~~2000~~ 1998, for the remainder of the affected facilities;
 By January 31, ~~1998~~ 1996, the ISBM shall provide the Director with a list detailing specific scheduling of the ISBM station conversion.
 - (D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or
 - (E) before beginning operation for islands constructed after April 30, ~~1997~~ 1995.
- (2) if the gasoline service station or gasoline dispensing facility is subject to the requirements of this Rule in accordance with Paragraph (d) of Rule .0902 of this Section, compliance shall be achieved no later than:
 - (A) one year from the date that the Direc-

tor notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of at least 100,000 gallons per month;

(B) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;

(C) for affected facilities owned by a single ISBM:

(i) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 33 percent of affected facilities;

(ii) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 66 percent of the affected facilities;

(iii) three years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for the remainder of the affected facilities;

(D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or

(E) before beginning operation for islands constructed after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone.

(g) Testing Requirements:

(1) Within 30 days after the commencement of operation of the Stage II system and every five years thereafter, the owner or operator of the facility shall submit reports of the following tests as described in EPA-450/3-91-022b:

(A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1,

Pressure Decay/Leak Test Procedure every five years;

(B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure every five years; and

(C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices every five years.

If the tests have been performed within the last two years, the owner or operator may submit a copy of those tests in lieu of retesting. Testing shall be in accordance with Rule .0912 of this Section.

(2) The owner or operator shall perform daily testing and inspections as follows:

(A) daily tests to ensure proper functioning of nozzle automatic overfill control mechanisms and flow prohibiting mechanisms, and

(B) daily visual inspection of the nozzle bellows and face-plate.

(3) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.

(4) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.

(5) Where the Air Quality Division conducts tests or upon requirement from the Director to test the vapor control system it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(h) Operating Instructions and Posting:

(1) The owner or operator of the facility shall post operating instructions for the vapor recovery system on the top one-third of the front of each gasoline dispenser to include the following:

(A) a clear description of how to correctly dispense gasoline with the vapor recovery nozzles;

(B) a warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically

- shutting off), may result in spillage or recirculation of gasoline;
- (C) a telephone number to report problems experienced with the vapor recovery system to the owner or operator of the facility; and
 - (D) a telephone number to report problems experienced with the vapor recovery system to the Director.
- (2) The owner or operator shall provide written instructions on site as detailed in EPA-450/3-91-022b to insure that employees of the facility have an accurate understanding of the operation of the system and, in particular, when the system is malfunctioning and requires repair.

(i) Other General Requirements. The owner or operator of the facility shall conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until the system has been properly repaired.

(j) Record-keeping and Reporting. Owners or operators of the facility shall maintain records in accordance with Rule .0903 of this Section on compliance and testing.

(k) Referenced document:

- (1) EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U. S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services, 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851 and the cost is fifty-two dollars (\$52.00).

- (2) The American Society for Testing and Materials (ASTM) specification and test

methods cited in this Rule are hereby incorporated by reference including any subsequent amendments and editions. A copy of the ASTM specification and test method can be obtained from the Air Quality Section, Division of Environmental Management, P.O. Box 29525, Raleigh, North Carolina 27626, at a price of twenty cents (\$0.20) per page.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources; Sedimentation Control Commission intends to amend rules cited as 15A NCAC 4B .0018 and adopt 4B .0028.

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

The public hearing will be conducted at 9:00 a.m. on February 3, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, N. C.

Reason for Proposed Action:

15A NCAC 4B .0018 - This amendment is necessary to clarify the appeal rights of an individual whose erosion and sedimentation control plan is disapproved by the Director of the Division of Land Resources under authority G.S. 113A-54.1(c).

15A NCAC 4B .0028 - This new rule is needed to clarify the authority of the Sedimentation Control Commission to regulate land-disturbing activities undertaken by railroad companies. Specifically, the Commission must recognize a zone of federal preemption within railroad rights-of-way which is established by federal law. Outside this zone, the Office of the Attorney General has advised that the Commission does have authority to enforce the Sedimentation Pollution Control Act of 1973.

Comment Procedures: Any person requiring information may contact Mr. Craig Deal, Land Quality Section, P.O. Box 27687, Raleigh, North Carolina 27611, Telephone - (919) 733-4574.

Written comments may be submitted to the above address no later than February 16, 1995.

CHAPTER 4 - SEDIMENTATION CONTROL

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

0018 APPROVAL OF PLANS

(a) Persons conducting land-disturbing activity on a tract which covers one or more acres shall file three copies of the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction, at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or on inspection of the job site, that a significant risk of accelerated erosion or off-site sedimentation exists, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction by statute and all other land-disturbing activity if no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
 - (A) approved,
 - (B) approved with modification,
 - (C) approved with performance reservations, or
 - (D) disapproved.
- (3) The Commission's disapproval, modification, or performance reservations of any proposed plan, shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23. (This Section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).
- (4) Subparagraph (b)(3) of this Rule shall not apply to the approval or

modification of plans reviewed by the Commission pursuant to G.S. 113A-61(c).

- (5) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Subparagraph (b)(2) of this Rule shall not begin until a complete environmental document is available for review.

(c) Erosion and sedimentation control plans may also be disapproved unless they include an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. Such procedures shall respect applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) The secretary shall appoint such employee(s) of the Department as he deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, approved with performance reservations, or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by an

employee of the Department then he may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Land Resources. The director shall make the proposed erosion control plan and the records relating to the local government's and departmental employees' review, available to an appeals review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of appeal, the appeals review committee shall notify the local government and the person submitting the plan of a place and time for consideration of the appeal, and shall afford both parties an opportunity to present written or oral arguments. The appeals review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such hearing.

(e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to a contested case under G.S. 150B, Article 3. An applicant desiring to appeal the Director's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3. The general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B-23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B-36.

Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-60(a); 113A-61(b); 113A-61(c); 150B-23; 150B, Article 3.

.0028 RAILROAD COMPANIES

(a) Federal Preemption. The Commission recognizes that under the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. 211, et seq., as interpreted by federal administrative rules and court decisions, there is a zone of federal preeminence where federal law prevails over the Sedimentation Pollution Control Act (SPCA) within railroad rights-of-way. This zone includes

within it the area on, under, and immediately adjacent to the railroad roadbed. The zone of federal preeminence also encompasses certain additional areas within the rights-of-way during emergencies and when the FRSA requires the railroads to perform repair and maintenance activities to protect railway safety and the public. It is the intent of the Commission to regulate areas beyond the zone of federal preeminence where the Commission has jurisdiction under the SPCA.

(1) Beyond the zone of federal preeminence, the Act applies to land-disturbing activities, as that term is defined in G.S. 113A-52(6), whether within or outside of the existing right-of-way.

(2) The zone of federal preeminence generally extends outward from the center of the railroad roadbed out to and including drainage ditches on either side of the roadbed.

(3) The area of federal preeminence temporarily expands to encompass areas adjacent to the roadbed within which emergency repairs are undertaken pursuant to the requirements of the FRSA and FRA administrative rules in response to a derailment, washout, or other emergency condition which requires immediate action to protect railroad safety and human life for the duration of the emergency condition.

(4) The Act and Rules are applied within the zone of federal preeminence to eliminate a local safety hazard as long as the SPCA and Rules are not incompatible with federal standards and does not create a burden on interstate commerce, as provided by 45 U.S.C. 434.

(5) In areas other than the areas of federal preeminence described herein, railroad companies shall comply with the requirements of the Act and Rules, in accordance with these Rules.

(6) The Act and Rules do not apply within the zone of federal preeminence; however, the Act and Rules do apply to erosion and sedimentation pollution when it leaves the zone or enters the waters of the State of North Carolina.

(b) Land-Disturbing Activities Undertaken On the Railroad Right of Way:

(1) New construction projects. New construction projects, including but not

limited to construction of new roadbeds, railyards, maintenance shops, administrative offices and other railroad facilities shall be considered a land-disturbing activity within the meaning of G.S. 113A-52(6) to which both the Act and the FRSA are applicable. Therefore, in all cases of new construction disturbing more than one acre, an erosion control plan as required by G.S. 113A-57(4) shall be filed by railroad companies for approval or disapproval by the Commission in accordance with G.S. 113A-54.1.

- (2) Major maintenance and reconstruction projects. Major maintenance and reconstruction projects outside of the zone of federal preeminence, including but not limited to, rehabilitation or reconstruction of existing roadbeds, redesign or reconstruction of drainage features, and similar operations typically characterized by the use of heavy earth-moving equipment such as bulldozers, pans, and motor graders and by fill flushing, roadbed widening and other changes to the existing natural cover or topography, that may cause or contribute to sedimentation shall be considered land-disturbing activities within the meaning of G.S. 113A-52(6). In all cases of major maintenance or reconstruction projects disturbing more than one acre, an erosion and sedimentation control plan outlining the erosion and sedimentation control measures to be taken to control erosion and sedimentation pollution beyond the zone of federal preeminence and which will prevent sedimentation pollution from entering the waters of the State or leaving railroad company property shall be filed as required by G.S. 113A-57(4), for approval or disapproval by the Commission in accordance with G.S. 113A-54.1. Sedimentation pollution from major maintenance or construction projects conducted within the zone of federal preeminence does not come within the regulatory jurisdiction of the Commission until the sedimentation pollution leaves the federal zone of preeminence or enters the waters of the State, and the

Commission then may require erosion and sediment control plans to be filed and measures and practices to be implemented beyond the zone of federal preeminence to control or abate sedimentation pollution on railroad company property.

- (3) Minor maintenance projects. Minor maintenance projects outside of the zone of federal preeminence, including but not limited to ditching, drainage repairs, and similar operations typically characterized by the use of a Jordan spreader, Gradall, or similar equipment, that change the natural cover or topography and that may cause or contribute to sedimentation pollution shall be considered land-disturbing activities within the meaning of G.S. 113A-52(6). Sedimentation from minor maintenance projects conducted within the zone of federal preeminence does not come within the regulatory jurisdiction of the Commission until the sedimentation pollution leaves the federal zone of preeminence or enters the waters of the State, and the Commission then may require erosion and sediment control plans to be filed and measures and practices to be implemented beyond the zone of federal preeminence to control or abate sedimentation pollution on railroad company property. In all cases of minor maintenance projects, as defined herein, which disturb more than one acre, expose the surface to accelerated erosion and which may either cause or contribute to sedimentation pollution beyond the zone of federal preeminence or which may cause sedimentation pollution to enter the waters of the State or leave railroad company property, an erosion and sedimentation control plan shall be filed by the railroad companies with the Commission for approval or disapproval in accordance with G.S. 113A-54.1.

- (A) For minor maintenance projects as defined in Subparagraph (b)(3) of this Rule where the land-disturbing activity is less than 300 continuous feet in linear length at each location where minor maintenance is undertaken, a general erosion and

sedimentation control plan may be filed for approval or disapproval by the Commission on an annual basis for all such projects undertaken in the State by the railroad companies. The Commission may enter into such agreements or memoranda of understanding (MOU) as are necessary with the railroad companies concerning the requirements of any such general plan. The general plan shall, at a minimum, consist of:

- (i) standard specifications and construction details for all erosion and sedimentation control measures to be used within the minor maintenance project;
 - (ii) standard seeding or other ground cover specifications for the minor maintenance project; and
 - (iii) locations of spoil disposal areas to be used for the minor maintenance project.
- (B) For all other minor maintenance projects as defined in Subparagraph (b)(3) of this Rule the erosion and sedimentation control plan shall be filed by the railroad companies with the Commission for approval or disapproval for each minor maintenance project and shall, at a minimum, consist of:
- (i) a map showing the relative location of the land-disturbing activity and the relative location of erosion and sedimentation control measures to be used at all lakes or natural watercourses within the project;
 - (ii) line drawings representing the minor maintenance project to be undertaken;
 - (iii) standard specifications and constructions details for all erosion and sedimentation control measures to be used within the minor maintenance project; and
 - (iv) standard seeding or other ground cover specifications for the minor maintenance project.
- (C) In the event that a minor maintenance project outside the zone of federal preeminence is undertaken because of a citation, defect or other directive

issued by the FRA against the railroad companies, the land-disturbing activity shall be considered an emergency repair as provided for in Paragraph (c) of this Rule.

- (4) For all minor maintenance projects as defined in Subparagraph (b)(3) of this Rule occurring within Trout Buffer Zones and High Quality Water Zones, the Commission reserves the right to require additional measures, specifications, and construction details, as may be necessary to comply with G.S. 113A-57(1) and 15A NCAC 4B .0024 and 4B .0025, to the extent such compliance is compatible with the requirements of the FRSA and FRA administrative rules.

- (5) For all projects, as defined in Subparagraph (b)(3) of this Rule, on a site-specific basis, the Commission reserves the right to require additional plans, specifications, and construction details as may be necessary to comply with the Act and these Rules, to the extent the additional requirements are not in conflict with the FRSA and the FRA administrative rules.

(c) Emergency Repairs:

- (1) Railroad companies shall notify the Department within 10 days following initiation of any emergency repair which would constitute a land-disturbing activity within the meaning of G.S. 113A-52(6) and these Rules. Emergency repair shall include, but not be limited to activities undertaken beyond the zone of federal preeminence as it existed before the emergency condition arose which are undertaken in response to derailments, washouts, or other emergency conditions requiring immediate action pursuant to the requirements of the FRSA or FRA administrative rules in order to protect railroad safety and human life.
- (2) Railroad companies shall install and employ temporary sedimentation and erosion control devices and practices as are necessary to prevent erosion and sedimentation pollution beyond the zone of federal preeminence, as expanded due to the emergency conditions, as soon as reasonably possible but in no event later than 15 days after the

initiation of any land-disturbing activity involved with any emergency repair.

- (3) Railroad companies shall file an erosion and sedimentation control plan for any land-disturbing activity of more than one acre beyond the zone of federal preeminence as it existed before the emergency condition arose in order to prevent erosion and sedimentation pollution from leaving railroad property. The plan must be filed within 35 days following cessation of the emergency condition or later as specified by the Commission.

(d) After notice from the Commission, pursuant to 15A NCAC 4B .0016(b), railroad companies, subject to the availability of funds and where technically feasible, shall provide ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation upon all uncovered areas which:

- (1) are located beyond the zone of federal preeminence,
- (2) contribute to sedimentation beyond the zone of federal preeminence and ground cover or other protective measures, structures or devices shall be implemented if needed beyond the zone of federal preeminence to control or abate sedimentation pollution on railroad company property,
- (3) existed on February 1, 1976 (the effective date of the original Rules),
- (4) resulted from a land-disturbing activity,
- (5) exceed one acre, and
- (6) are experiencing continued accelerated erosion and causing off-site damage from sedimentation.

Statutory Authority 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1).

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 10H .0801, .0807 and .0808.

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

The public hearing will be conducted at 10:00 a.m. on February 1, 1995 at the Archdale Building, 512 N. Salisbury Street, 3rd Floor Conference Room, Raleigh, NC 27604.

Reason for Proposed Action: To set, and revise requirements for falconry permits and falconry facilities.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 17, 1995 through February 17, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0800 - FALCONRY

.0801 DEFINITIONS

In addition to the definitions contained in G.S. 113-130, and unless the context requires otherwise, as used in 15A NCAC 10B .0216 and in this Section:

- (1) "Falconry permit" or "permit" means a joint federal-state falconry permit, or a separate state falconry permit issued by this state or by another state meeting federal falconry standards and listed in Paragraph (k) of 50 C.F.R. 21.29.
- (2) "Falconry license" means the annual special purpose falconry license which is required by G.S. 113-270.3(b)(5) in addition to any other applicable general purpose or special purpose license.
- (3) "State" means the State of North Carolina, except when the context indicates reference to another state of the United States.
- (4) "Commission" means the North Carolina Wildlife Resources Commission.
- (5) "Executive director" means the Executive Director of the North Carolina Wildlife Resources Commission. When action is required by the commission by any provision of this Section, such action may be

performed by the executive director on behalf of the commission.

- (6) "Bred in captivity" or "captive-bred" refers to raptors hatched in captivity from parents that mated or otherwise transferred gametes in captivity.
- (7) "Raptor" means a live migratory bird of the Order Falconiformes or the Order Strigiformes, other than a bald eagle (Haliaeetus leucocephalus) or a golden eagle (Aquila chrysaetos).

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.28; 50 C.F.R. 21.29.

.0807 CLASSES OF PERMITS

(a) Apprentice Class. Apprentice class falconry permits are subject to the following conditions, requirements and limitations:

- (1) The permittee must be at least 14 years old.
- (2) Regardless of the age of the permittee, the apprentice must have a sponsor who is a holder of a general or master falconry permit for the period during which the apprentice permit is held. The sponsor must be a North Carolina resident or must live within 200 miles of the apprentice. A sponsor may not have more than three apprentices at any one time. A sponsor must provide written justification to the Commission when he decides to drop an apprentice. The Commission will notify the apprentice who must obtain another sponsor and so advise the Commission within 90 days. The apprentice's raptors may be seized by the Commission and the permit revoked if after the 90 day period the apprentice fails to obtain another sponsor and/or to notify the Commission of the same. If after 180 days, the apprentice fails to obtain another sponsor and/or to notify the Commission of the same, he shall be required to reapply and be reexamined prior to the reissuance of his permit.
- (3) The permittee may not possess more than one raptor and may not obtain more than one raptor for replacement during any period of 12 months.
- (4) The permittee may possess only the following raptors which must be taken from the wild: an American kestrel (*Falco sparverius*), a red-tailed hawk

(*Buteo jamaicensis*), or a red-shouldered hawk (*Buteo lineatus*).

(b) General Class. General class falconry permits are subject to the following requirements and limitations:

- (1) The permittee must be at least 18 years old.
- (2) The permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent. The permittee's apprentice sponsor must provide written certification of the falconer's skills on forms supplied by the Commission. This certification must also be approved by at least one other general or master class falconer by his signature and falconry permit number on the form.
- (3) The permittee may not possess more than two raptors and may not obtain more than two raptors for replacement during any period of 12 months.
- (4) The permittee may not take, transport, or possess any golden eagle or any species listed as endangered or threatened under the federal regulations, except as provided by the federal falconry regulations.

(c) Master Class. Master class falconry permits are subject to the following conditions and limitations:

- (1) The permittee must have at least five years' experience in the practice of falconry at the general class level or its equivalent.
- (2) The permittee may not possess more than three raptors and may not obtain more than two raptors taken from the wild for replacement during any period of 12 months.
- (3) The permittee may not take, transport, or possess any golden eagle for falconry purposes unless authorized in writing by the U.S. Fish and Wildlife Service.
- (4) The permittee may not take species listed as endangered in 50 CFR 17 but may transport or possess such species in accordance with 50 CFR 17.
- (5) The permittee may not take during any period of 12 months, as part of his three-bird limitation, more than one raptor listed as threatened in 50 CFR 17 and then only in accordance with 50 CFR 17.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

0808 FACILITIES AND EQUIPMENT

(a) Inspection and Certification. Prior to initial issuance of a North Carolina falconry permit, the applicant's raptor housing facilities and falconry equipment shall be certified by a representative of the Commission as meeting the standards set forth in Subsections (b) and (c) of this Rule.

(b) Housing Facilities. The primary consideration of raptor housing, whether indoors (mews) or outdoors (weathering area), being protection of the raptor from the environment, predators, and undue disturbance, the applicant shall have holding facilities meeting the following standards:

(1) Standards for Apprentice Class Falconry Facilities:

(A) (1) Indoor Facilities (Mews). Minimum size of the mew mews shall be 8 x 8 feet with access provided by a full-size door at least 2 x 6.5 feet that allows easy access and maintenance, and that shall close automatically or be securable inside and outside. ~~Chipboard or waferboard must be properly sealed to prevent formaldehyde toxication. Interior walls should not be painted or stained. Mews should be located away from loud noises undue disturbance and shade should be provided. If more than one raptor is to be kept in a mew, they shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to extend its wings fully. There shall be at least one window, protected on the inside by vertical bars spaced narrower than the width of the raptor's body and containing a window perch, spaced narrower than the width of the bird's body, and a secure door that must close automatically. The floor of the mew mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided. The interior of the mews shall be free of splinters, protruding nails and other obstructions that could be injurious to the raptor. Any lighting fixtures shall be shielded or otherwise protected.~~

(B) (2) Outdoor Facilities (Weathering Areas). Weathering areas shall be

fenced and covered with netting or wire mesh, or roofed to protect the birds raptor from disturbance and attack by predators, ~~except that perches more than six and one-half feet high need not be covered or roofed.~~ Covers or roofs shall not be less than seven feet high ~~and shall have at least 24 inches clearance above highest perch.~~ The enclosed area shall be no less than 8 x 8 feet, but large enough to insure the birds raptor cannot strike the fence, cover or roof when flying from the perch. The floor of the weathering area shall be covered with a thick covering layer of natural or artificial turf material that allows for adequate drainage. Protection from excessive sun, wind, and inclement weather shall be provided for each bird the raptor. Adequate ~~perches shall be provided.~~ The weathering area shall also include a jump box, A-frame, or similar structure constructed of weatherproof material and which will offer the raptor a secure perch with adequate head and tail clearance. ~~All edges of this structure shall be padded with artificial turf or similar material. The interior width and the interior height from the bottom to top, shall be no less than 32 inches for a red-tailed hawk, or 1 1/2 times the length of the bird to be accommodated. The interior perch shall be a minimum of five inches high. Structure shall be constructed of treated materials or painted with a non-lead base paint. At least two perches shall be provided for each bird the raptor. These shall be covered with artificial turf, hemp rope, or similar material. Secured leash shall offer access to all perches and bath container yet should not allow the raptor to come in contact with the fence and be free from entanglement. All areas accessible to the raptor shall be smooth and free of splinters and other obstructions that could be injurious to the raptor.~~

(2) Standards for General and Master Class Falconry Facilities:

(A) Indoor Facilities (Mews). The mews shall be of a size to allow easy access

for caring for the raptors held in the facility and shall have a secure door that can be easily closed. If more than one raptor is to be kept in a mews, the raptors shall be tethered or separated by partitions and the area for each raptor shall be large enough to allow the raptor to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars spaced narrower than the width of the raptor's body and containing a window perch. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided. The interior of the mews shall be free of splinters, protruding nails and other obstructions that could be injurious to the raptor. Any lighting fixtures shall be shielded or otherwise protected.

(B) Outdoor Facilities (Weathering Areas). Weathering areas shall be fenced and covered with netting or wire mesh, or roofed to protect the raptor's from disturbance and attack by predators, except that perches more than six and one-half feet high need not be covered or roofed. The enclosed area shall be large enough to insure the raptor(s) cannot strike the fence when flying from the perch. The floor of the weathering area shall allow for adequate drainage. Protection from excessive sun, wind, and inclement weather shall be provided for each raptor. Adequate perches shall be provided. All areas accessible to the raptor shall be smooth and free of splinters and other obstructions that could be injurious to the raptor.

(c) Equipment. The following items shall be in the possession of the applicant before he can obtain a permit:

- (1) At least one pair of Alymeri type (two-piece) jesses or similar type constructed of pliable high-quality leather or suitable synthetic material, to be used when any raptor is flown free; (Traditional one piece jesses may be used on raptors when not being flown.)
- (2) At least one flexible, weather-resistant leash and one figure eight type swivel of acceptable falconry design;
- (3) At least one suitable bath, 2"-6" deep

and at least 24" wide wider than the length of the raptor for drinking and bathing for each raptor;

- (4) A reliable scale or balance with perch attached for weighing raptors held and capable of measuring weighing up to five pounds and graduated to increments of not more than 1/2 ounce or 15 grams;
- (5) Outdoor Perches. At least one portable weathering area perch of an acceptable design (block perch, ring perch, or bow perch) shall be provided for each raptor; These include a block, ring or bow perch.
- (6) At least one pair of bells of falconry design and of appropriate size.

(d) Maintenance. All facilities and equipment shall be kept at or above the standards contained in Subsections Paragraphs (b) and (c) of this Rule at all times

(e) Transportation and Temporary Holding. A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance for a period not exceeding 30 days.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

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 10K .0001 and .0002.

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

The public hearing will be conducted at 10:00 a.m. on February 13, 1995 at the Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604.

Reason for Proposed Action:

15A NCAC 10K .0001 - To clarify hunter safety course requirements.

15A NCAC 10K .0002 - Eliminate fees for issuance of duplicate certificates.

Comment Procedures: Interested persons may

present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 17, 1995 through February 17, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.

SUBCHAPTER 10K - HUNTER SAFETY COURSE

.0001 COURSE REQUIREMENTS

(a) The hunter safety course shall provide a minimum of ten hours of ~~classroom~~ instruction.

(b) Of the ten hours of instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to instruction related to the safe handling of firearms. The remaining four hours shall include instruction on hunter responsibility (ethics), wildlife conservation and wildlife management, wildlife identification, game care, specialty hunting, survival and first aid, water safety, and special concerns (alcohol and drugs, turkey hunting, trapping, all terrain vehicles, hunting dogs).

(c) The hunter safety course shall be ~~taught~~ administered by an instructor certified by the North Carolina Wildlife Resources Commission.

(d) The following requirements must be satisfied by the course participant in order to successfully complete a hunter safety course and be entitled to the issuance of a Certificate of Competency:

- (1) attain the age of 12;
- (2) ~~attend~~ complete all ten hours of the instruction;
- (3) score a minimum of 70 percent on the final written examination; and
- (4) achieve an appropriate level of competency and safety in the handling of firearms, and be able to properly demonstrate the following tasks: ~~by demonstrating to the satisfaction of the instructor the following tasks:~~

- (A) Opening the pump, bolt, lever, break and semi-automatic action of a firearm, as applicable, keeping the muzzle pointed in a safe position, and ascertain that the firearm is unloaded;
- (B) Identifying the location of the safety on each type of firearm action and the position in which the safety is activate;
- (C) The elbow, trail, cradle, double hand, shoulder and sling methods of carrying a firearm while hunting and the appropriate method to be used by

each of three hunters when walking single file and when walking abreast;

(D) The manner in which a fence is crossed both while hunting alone and with a companion;

(E) The manner in which a firearm is safely loaded into a vehicle and unloaded from a vehicle.

Any student who either intentionally or unintentionally points a firearm at another or at himself shall fail the course and must re-enroll at a later date.

Statutory Authority G.S. 113-134; 113-270.1A.

.0002 ISSUANCE OF CERTIFICATE OF COMPETENCY

(a) Upon the conclusion of a hunter safety course, the instructor shall complete a card for each participant who successfully completed the course in accordance with 15A NCAC 10K .0001 and forward the card to the North Carolina Wildlife Resources Commission for processing.

(b) Within a reasonable time after receiving the completed card referred to in Paragraph (a) of this Rule, the Commission shall issue a Certificate of Competency to the participant successfully completing the course. This certificate shall include:

- (1) a certification number;
- (2) the participant's name, address, social security and date of birth;
- (3) the hunter safety course instructor's name; and
- (4) course completion date.

(c) The Commission shall maintain permanent files of all successful participants in hunter safety courses who were issued a certificate of competency. Duplicate certificates may be obtained from the Commission ~~upon payment of two dollars (\$2.00) per copy to cover the cost of duplication.~~

Statutory Authority G.S. 113-134; 113-270.1A.

**TITLE 19A - DEPARTMENT OF
TRANSPORTATION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 4A .0005.

The proposed effective date of this action is June 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 Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Amendment is proposed to correct designation of responsibility due to staff reorganization in the Division of Highways.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.

**CHAPTER 4 - SECRETARY OF
TRANSPORTATION**

**SUBCHAPTER 4A - DUTIES AND
RESPONSIBILITIES**

.0005 BRIDGE WEIGHT LIMITATION

Any bridge which will not carry the maximum permissible statutory load limits, shall have posted at each end of the bridge the gross weight limits as determined by the State Highway ~~Engineer—~~
~~Maintenance Administrator~~ Administrator or his designee.

Statutory Authority G.S. 136-72; 143B-350.

**TITLE 21 - OCCUPATIONAL
LICENSING BOARDS**

**CHAPTER 12 - LICENSING
BOARD FOR GENERAL CONTRACTORS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to amend rules cited as 21 NCAC 12 .0506, .0701; adopt .0208.

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

The public hearing will be conducted at 10:00 a.m. on February 15, 1995 at the Office of the North Carolina Licensing Board for General Contractors, 3739 National Drive, Suite 225, Raleigh, North Carolina.

Reason for Proposed Action:

21 NCAC 12 .0208 - To define the term "undertakes to superintend or manage" as used in G.S. 87-1 to describe a person, firm or corporation deemed to be a general contractor.

21 NCAC 12 .0506 - To change the fee for an affidavit as to status of licensure from twelve dollars (\$12.00) to twenty dollars (\$20.00).

21 NCAC 12 .0701 - To change the notice period of the threshold determination of the review committee to the party against whom the charges have been brought and the party preferring the charges from 10 to 20 days following the review committee's decision.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is P.O. Box 17187, Raleigh, NC 27619. Written submission of comments or argument will be accepted up to and including February 16, 1995.

**SECTION .0200 - LICENSING
REQUIREMENTS**

.0208 CONSTRUCTION MANAGEMENT

(a) The term "undertakes to superintend or manage" as used in G.S. 87-1 to describe a person, firm or corporation deemed to be a general contractor means that the person, firm, or corporation is responsible for superintending or managing the entire construction project, and either contracts directly with subcontractors to perform the construction for the project or is compensated for

superintending or managing the project based upon the cost of the project or the time taken to complete the project. Such person, firm, or corporation must hold a general contracting license in the classifications and limitation applicable to the construction of the project.

(b) The term "undertakes to superintend or manage" described in Paragraph (a) of this Rule does not include an architect or engineer licensed in North Carolina who is supervising the execution of design plans for the project owner and who does not contract directly with subcontractors to perform the construction for the project.

Statutory Authority G.S. 87-1.

SECTION .0500 - LICENSE

.0506 CHARGE FOR STATUS OF LICENSURE AFFIDAVIT

The Board shall charge persons requesting an affidavit as to status of licensure a fee of ~~twenty~~ twelve dollars ~~(\$12.00)~~ (\$20.00) per affidavit. The Board may furnish copies of such affidavits free of charge to governmental entities.

Statutory Authority G.S. 87-8; 87-13; 50B-19(5)d..

SECTION .0700 - BOARD DISCIPLINARY PROCEDURES

.0701 IMPROPER PRACTICE

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may refer charges against that person or corporation by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

- (1) A charge, properly filed, is initially referred to the review committee.
- (2) The review committee is a committee made up of the following individuals:
 - (A) one member of the Board, and
 - (B) the legal counsel of the Board, and
 - (C) the Secretary-Treasurer.
- (3) The review committee is specifically delegated the responsibility of determining, prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review

committee is final.

- (4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge is forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by registered mail, return receipt requested.
- (5) If the respondent denies the charge brought against him, then, in the sole discretion of the review committee, a field investigation may be performed by an investigator retained by the Board.
- (6) After all preliminary evidence has been received by the review committee, it makes a threshold determination of the charges brought. From the evidence, it recommends to the Board that:
 - (A) The charge be dismissed as unfounded or trivial;
 - (B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
 - (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11.
- (7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought and the party preferring the charge within ~~ten~~ 20 days of the review committee's decision. ~~Though it is not forbidden to do so, the~~ The review committee is not required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. The Board, in its discretion, may choose to hold a hearing on the merits of any disputed charge. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87-11.

Statutory Authority G.S. 87-11; 150B-3; 150B-38.

CHAPTER 42 - BOARD OF EXAMINERS IN OPTOMETRY

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Examiners in Optometry intends to amend rules cited as 21 NCAC 42B .0107 and .0110.

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

The public hearing will be conducted at 9:00 a.m. on February 8, 1995 at 109 N. Graham Street, Wallace, NC 28466.

Reason for Proposed Action: To incorporate Part III of the national licensing exam for optometry into the Board's existing examination process, and to make technical changes to related rules.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be directed through February 16, 1995 to the following address: N.C. Board of Examiners in Optometry, 109 N. Graham Street, Wallace, NC 28466.

SUBCHAPTER 42B - LICENSE TO PRACTICE OPTOMETRY

SECTION .0100 - LICENSE BY EXAMINATION

.0107 WRITTEN EXAMINATION

(a) Each applicant must submit evidence of having reached the recommended levels of acceptable performance on the National Board examinations given by the National Board of Examiners in

Optometry on or after the April, 1978 administration in one of the following formats and under the following conditions prior to Board approval of his application to take the clinical practicum examination administered by the Board and shall authorize the release of his official score report by the National Board to the Board prior to the approval by the Board of his application to take the clinical practicum examination.

- (1) April, 1978 through August, 1986 administrations: passing scores on Parts I, IIA, and IIB, with scores of not less than 75 in Section 7 (Pathology) and Section 9 (Pharmacology) on the Part IIB examination, and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease ("TMOD") examination.
- (2) April, 1987 through August, 1992 administrations: passing scores on the Basic Science examination and Clinical Science examination of the National Board, with scores of not less than 75 on the Ocular Disease/Trauma and Clinical Pharmacology sections of the Clinical Science examination, and a score of not less than 75 on the National Board's TMOD examination.
- (3) April, 1993 and thereafter: passing scores on Basic Science and Clinical Science Examinations of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma component within the Clinical Science examination, and a score of not less than 75 on either the TMOD component within the Clinical Science examination, or on the equivalent stand-alone TMOD examination.
- (4) January, 1996 and thereafter: passing scores on Part III (Patient Care) of the National Board will be required in addition to those examinations as set forth in Subparagraph (a)(3) of this Rule. Passing scores of at least 75 shall be submitted by or on behalf of each applicant on each of the three sections of Part III; to wit, Patient Management, Visual Recognition and Interpretation of Clinical Signs, and Clinical Skills. Further, the applicant must submit evidence of having demonstrated a proficiency equal or equivalent to a score of 75 in the following procedures within the Clinical Skills section

as described in the National Board's Candidate Guide for the Clinical Skills section of Part III: General Case History/Patient Communication; Biomicroscopy; Goldman Applanation Tonometry; Gonioscopy; Pupil Testing; Binocular Indirect Ophthalmoscopy; and Fundus Lens Evaluation.

(b) For candidates with passing scores on at least one National Board examination part under different formats and time periods described in (a)(1) and (a)(2) of this Rule, the following equivalences shall apply:

- (1) Parts I and IIA are the equivalent of Basic Science.
- (2) Part IIB is the equivalent of Clinical Science without the inclusion of TMOD.

Statutory Authority G.S. 90-117.5; 90-118.

.0110 PASSING SCORE

An applicant must attain an average grade of 75 on ~~each part of~~ the clinical practicum examinations to pass the examination and be issued a license. No applicant who has received a grade of less than 60 on any part of the clinical practicum examination shall be considered eligible for licensure even though his overall clinical practicum score may average 75. Each applicant will be notified by the Executive Director as to his success or failure after the results of the examination have been determined by the Board.

Statutory Authority G.S. 90-117.5; 90-118.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Community Colleges intends to amend rules cited as 23 NCAC 2B .0104 and 2C .0604.

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

The public hearing will be conducted at 10:00 a.m. on February 16, 1995 at the State Board Room, Caswell Bldg., 200 W. Jones Street, Raleigh, NC 27603-1379.

Reason for Proposed Action:

23 NCAC 2B .0104 - To more accurately reflect the priorities of the System and its Board and to better serve as a foundation for policy and program decisions.

23 NCAC 2C .0604 - Action by the 1994 General Assembly (Ratified Senate Bill 27, Section 109) requires implementation of a new procedure for reviewing all programs annually. This change complies with the mandate and revises the previous program review requirement.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or by mail on or before February 16, 1995 addressed to Brenda Splawn, Department of Community Colleges, 200 W. Jones St., Raleigh, NC 27603-1379.

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2B - THE COMMUNITY COLLEGE SYSTEM

SECTION .0100 - GENERAL PROVISIONS

.0104 MISSION OF THE COMMUNITY COLLEGE SYSTEM

~~The North Carolina Community College System is a statewide organization of public two year postsecondary educational colleges with an open door admissions policy. Its mission is to provide adults in North Carolina with quality and convenient learning opportunities consistent with identified student and community needs. These opportunities are accessible to all adults regardless of age, sex, socio-economic status, ethnic origin, race, religion, or disability. Educational and training programs are designed to enhance the personal, social, and economic potential of the individual and to produce measurable benefits to the state. The system fulfills this mission by providing:~~

- ~~(1) Vocational programs and courses for students desiring to prepare for skilled trades or to upgrade their job skills;~~
- ~~(2) Technical programs and courses that meet the career needs of individuals;~~
- ~~(3) Transferable programs and courses for students desiring to attend a senior college or university;~~
- ~~(4) Special occupational training and upgrad-~~

- ing programs and services for businesses, industries, and agencies;
- (5) ~~Programs and courses in adult basic education, high school completion, and continuing education;~~
 - (6) ~~Counseling, career guidance, job placement services, and other programs essential to developing the potential of individual students;~~
 - (7) ~~Programs and services to enrich the quality of community life;~~
 - (8) ~~Effective and cooperative relationships with the schools, colleges, universities, government agencies, and employers across the state; and~~
 - (9) ~~Sound management practices and systematic planning to allocate the resources required to achieve the stated objectives of the North Carolina Community College System.~~

The mission of the North Carolina Community College System is to open the door to opportunity for adults seeking to improve their lives and well-being by providing:

- (1) education and training for the workforce, including basic skills and literacy education, occupational and pre-baccalaureate programs;
- (2) support for economic development through services to business and industry; and
- (3) services to communities which improve the quality of life.

Statutory Authority G.S. 115D-1; 115D-4.1; 115D-5; 115D-8.

SUBCHAPTER 2C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0600 - COLLEGE EVALUATION

.0604 PROGRAM REVIEW

(a) Each college shall monitor the quality and viability of each all of its curriculum programs and services. Each curriculum program and the occupational extension program shall be reviewed at least once every five years with regard to the achievement of its stated purpose, quality of instruction, curriculum design, cost, student outcomes, and contribution to the overall mission of the college annually. Summary reports of these reviews shall be transmitted to the System President. Colleges shall provide information to the Department of Community Colleges on program

enrollment and cost; student progress, achievement and outcomes; and employer satisfaction.

(b) Technical and vocational curriculum programs shall meet the following standards for performance:

- (1) the standard required by an outside licensure or accrediting agency for passing rates on licensure or certification examinations, where applicable; and
- (2) a satisfactory level on at least five of the following eight required elements:
 - (A) a three year annual average enrollment of at least 10 students, unduplicated headcount; and
 - (B) a performance level that is no more than 15 percent below the system average for each of the following:
 - (i) student goal accomplishment for program completion;
 - (ii) student goal accomplishment for other student goals;
 - (iii) program completer satisfaction with program;
 - (iv) early leaver satisfaction with program;
 - (v) program completer employment rate;
 - (vi) early leaver employment rate;
 - (vii) employer satisfaction.

(c) The college transfer program performance level shall be no more than 15 percent below the system average grade point average earned after two semesters in a four-year institution for students who completed 90 or more quarter credit hours at the community college.

(d) Programs which do not meet these standards will be subject to further review to document temporary or permanent conditions which should be taken into account to justify offering the program. If further review fails to provide a justification for the program or to lead to improvement so that the program meets the standards, the program shall be terminated.

Statutory Authority G.S. 115D-5.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend rules cited as 26 NCAC 2A .0102 and 2B .0104.

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

The public hearing will be conducted at 10:00 am on February 3, 1995 at the Lee House, Hearing Room #2, 222 N. Blount Street, Raleigh, NC.

Reason for Proposed Action:

26 NCAC 2A .0102 - In the 1994 Regular Session, the General Assembly granted to the Office of Administrative Hearings the statutory authority to contract privately for the indexing, marketing, sales, reproduction, and distribution of the North Carolina Administrative Code (NCAC). This proposed amendment provides the information for contacting the party with whom OAH has contracted.

26 NCAC 2B .0104 - The subscription cost to the Register has remained the same since 1989. Due to the increase in the size of the publication, increase in cost of postage, and an increase in cost of printing, the subscription price must be increased to cover the actual cost of the publication. The amendment also offers a discount for subscriptions to multiple copies.

Comment Procedures: Any interest person may submit their views either orally at the hearing or in writing directed to: Anna Baird, Rulemaking Coordinator, PO Drawer 27447, Raleigh, NC 27611-7447. All comments must be received by 5:00 pm on February 16, 1995.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0100 - PUBLICATION

.0102 AVAILABILITY OF THE NCAC

(a) The Office of Administrative Hearings has available for public inspection all past and current rules filed under the provisions of G.S. 150B. Copies are available at a cost as established in 26 NCAC 1 .0103.

(b) Pursuant to G.S. 150B-21.18, the Codifier of Rules licensed the indexing, marketing, sales, reproduction, and distribution for subscription services to the NCAC to Barclays Law Publishers, PO Box 8066, 400 Oyster Point Boulevard, South San Francisco, California 94080, telephone 1-800-888-3600.

(b) Monthly supplemented bound looseleaf compilations are available for a year's subscription at the following costs plus N.C. sales tax if applicable. Renewal for supplement service for one year is one half the cost of a new subscription plus N.C. sales tax if applicable.

Volume	Title	Chapter	Subject	New Subscription
1-53	1-26		All titles	\$750.00
1	1		Administration	90.00
2	2	1-24	Agriculture	75.00
3	2	25-52	Agriculture	75.00
4	3		Auditor	10.00
5	4	1-2	ECD (includes ABC)	45.00
6	4	3-20	ECD	90.00
7	5	1-2	Correction	60.00
8	5	3-4	Correction	30.00
9	6		Council of State	

PROPOSED RULES

	7		Cultural Resources	60.00
10	8		Elections	10.00
11	9		Governor/Lt. Governor	45.00
12	10	1 2	Human Resources	30.00
13	10	3A 3K	Human Resources	90.00
14	10	3L 3R	Human Resources	
			(includes CON)	45.00
15	10	3S 3W	Human Resources	30.00
16	10	4 6	Human Resources	30.00
17	10	7	Human Resources	30.00
18	10	8 9	Human Resources	30.00
19	10	10	Human Resources	30.00
20	10	11 14	Human Resources	60.00
21	10	15 17	Human Resources	45.00
22	10	18	Human Resources	75.00
23	10	19 30	Human Resources	90.00
24	10	31 33	Human Resources	30.00
25	10	34 41	Human Resources	60.00
26	10	42	Human Resources	45.00
27	10	43 51	Human Resources	90.00
28	11		Insurance	90.00
29	12		Justice	90.00
30	13	1 6	Labor	30.00
31	13	7	OSHA	45.00
32	13	8 16	Labor	45.00
33	14A		Crime Control and	
			Public Safety	45.00
34	15A	1 2	EHNR (includes EMC)	90.00
35	15A	3 6	EHNR	45.00
36	15A	7	Coastal Management	45.00
37	15A	8 9	EHNR	30.00
38	15A	10	Wildlife	45.00
39	15A	11 18	EHNR	90.00
40	15A	19 26	EHNR	
			(includes Breathalyzer)	75.00
41	16		Education	30.00
42	17	1 6	Revenue	75.00
43	17	7 11	Revenue	60.00
44	18		Secretary of State	30.00
45	19A		Transportation	90.00
46	20		Treasurer	45.00
47	21	1 16	Licensing Boards	75.00
48	21	17 37	Licensing Boards	75.00
49	21	38 70	Licensing Boards	
	22		Administrative Procedures	75.00
50	23		Community Colleges	10.00
51	24		Independent Agencies	10.00
52	25		State Personnel	60.00
53	26		Administrative Hearings	10.00

(e) Monthly supplemented electronic compilations in WordPerfect 5.2, DOS 5.0 or succeeding versions, condensed text with PKZIP on a 3½ inch (1.44 Mb) high density diskette, are available for a year's subscription at the following costs plus N.C. sales tax if applicable:

	YEAR	
TITLE		SUBSCRIPTION

PROPOSED RULES

Titles 1 - 26	450.00
Title 1	60.00
Title 2	60.00
Title 3	10.00
Title 4	60.00
Title 5	60.00
Title 6	30.00
Title 7	30.00
Title 8	10.00
Title 9	45.00
Title 10	360.00
Title 11	60.00
Title 12	60.00
Title 13	60.00
Title 14A	45.00
Title 15A	300.00
Title 16	30.00
Title 17	120.00
Title 18	30.00
Title 19A	60.00
Title 20	45.00
Title 21	120.00
Title 22 (Repealed)	
Title 23	10.00
Title 24	10.00
Title 25	60.00
Title 26	10.00
T15A.02 & T15A.13	120.00

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(e) An electronic compilation without supplement service is available at a cost of fifty dollars (\$50.00) plus N.C. sales tax if applicable. The electronic format is WordPerfect 5.2, DOS 5.0 or succeeding versions, condensed with PKZIP and contained on a 3½ inch (1.44 Mb) high density diskette.

Statutory Authority G.S. 150B-21.18; 150B-21.25.

SUBCHAPTER 2B - NORTH CAROLINA REGISTER

SECTION .0100 - PUBLICATION

.0104 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) The North Carolina Register is published twice monthly by the Office of Administrative Hearings and is available at a cost of ~~one hundred and five dollars (\$105.00)~~ one hundred and twenty dollars (\$120.00) plus N.C. sales tax if applicable per year subscription.

(b) A five percent discount will be applied to the total cost when ordering multiple copies.

(c) Requests for subscriptions shall be directed to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, (919) 733-2678.

Statutory Authority G.S. 150B-21.25.

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

DECEMBER 94

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	18	Secretary of State
2	Agriculture	19A	Transportation
4	Commerce	21	Occupational Licensing Boards
10	Human Resources		4 - Auctioneers
11	Insurance		6 - Barber Examiners
12	Justice		34 - Mortuary Science
13	Labor		54 - Practicing Psychologists
15A	Environment, Health, and Natural Resources		56 - Professional Engineers and Land Surveyors
16	Public Education	24	Independent Agencies
17	Revenue		5 - State Health Plan Purchasing Alliance Board
		25	State Personnel

			Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	35	.0204		✓				01/01/95	
			.0205					✓		
2	NCAC	48E	.0302		✓		✓		01/01/95	
4	NCAC	3K	.0101	✓			✓		01/01/95	
			.0201 - .0202	✓			✓		01/01/95	
			.0203	✓					01/01/95	
			.0204	✓			✓		01/01/95	
			.0205	✓					01/01/95	
			.0206	✓			✓		01/01/95	
			.0301	✓					01/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
4	NCAC	3K	.0302	✓			✓		01/01/95	
			.0401	✓			✓		01/01/95	
			.0402	✓					01/01/95	
			.0403 - .0404	✓			✓		01/01/95	
			.0405	✓					01/01/95	
			.0501 - .0502	✓					01/01/95	
			.0601	✓					01/01/95	
			.0701 - .0702	✓					01/01/95	
			.0703	✓			✓		01/01/95	
10	NCAC	3R	.0305					✓		
		26B	.0110		✓		✓		01/01/95	
		50B	.0101		✓				01/01/95	
			.0102		✓		✓		01/01/95	
			.0201		✓		✓		01/01/95	
			.0204		✓		✓		01/01/95	
			.0207		✓				01/01/95	
			.0311		✓		✓		01/01/95	
			.0313		✓		✓		01/01/95	
			.0402 - .0404		✓		✓		01/01/95	
			.0408		✓		✓		01/01/95	
11	NCAC	12	.0561	✓			✓		01/01/95	
			.1024					✓		
12	NCAC	9A	.0103		✓		✓		01/01/95	
		10B	.0204 - .0205		✓				01/01/95	
			.0502		✓		✓		01/01/95	
			.0904		✓				01/01/95	
			.2101 - .2102		✓				01/01/95	
			.2105		✓				01/01/95	
		11	.0202		✓				01/01/95	
			.0210	✓			✓		01/01/95	
13	NCAC	7F	.0101		✓		✓		01/01/95	
		13	.0101		✓		✓		01/01/95	
			.0103	✓			✓		01/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13	NCAC	13	.0201 - .0205		✓		✓		01/01/95	
			.0206 - .0208		✓				01/01/95	
			.0209 - .0213		✓		✓		01/01/95	
			.0301 - .0302		✓		✓		01/01/95	
			.0303 - .0306		✓				01/01/95	
			.0401 - .0402		✓		✓		01/01/95	
			.0403		✓				01/01/95	
			.0404	✓			✓		01/01/95	
			.0405 - .0406		✓		✓		01/01/95	
			.0407 - .0408	✓					01/01/95	
			.0409 - .0410		✓		✓		01/01/95	
			.0411	✓			✓		01/01/95	
			.0412		✓		✓		01/01/95	
			.0413		✓				01/01/95	
			.0414		✓		✓		01/01/95	
			.0415 - .0416		✓				01/01/95	
			.0419 - .0421		✓		✓		01/01/95	
			.0501		✓		✓		01/01/95	
			.0502 - .0503			✓			01/01/95	
			.0504		✓		✓		01/01/95	
			.0601 - .0609			✓			01/01/95	
			.0801		✓		✓		01/01/95	
			.0803 - .0804		✓				01/01/95	
			.0805		✓		✓		01/01/95	
			.0807		✓		✓		01/01/95	
			.0808 - .0809		✓				01/01/95	
			.0810			✓			01/01/95	
			.0812 - .0813		✓				01/01/95	
			.0814			✓			01/01/95	
			.0815		✓		✓		01/01/95	
			.0816			✓			01/01/95	
15A	NCAC	10B	.0106		✓		✓		01/01/95	
		13A	.0011 - .0012		✓		✓		01/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	16A	.1102		✓				01/01/95	
		18A	.3101 - .3102		✓				01/01/95	
			.3105		✓				01/01/95	
			.3106	✓					01/01/95	
			.3201 - .3212	✓					01/01/95	180 DAYS
		19A	.0102		✓				12/16/94	180 DAYS
			.0502		✓		✓		01/01/95	
		19B	.0101		✓				01/01/95	
			.0310			✓			01/01/95	
			.0314 - .0315			✓			01/01/95	
			.0318 - .0319			✓			01/01/95	
			.0503		✓				01/01/95	
		19C	.0601 - .0602		✓		✓		01/01/95	
			.0603		✓				01/01/95	
			.0605 - .0606		✓		✓		01/01/95	
			.0607		✓				01/01/95	
			.0609	✓			✓		01/01/95	
			.0610	✓					01/01/95	
16	NCAC	6E	.0202		✓				12/27/94	180 DAYS
			.0202		✓		✓		07/01/95	
17	NCAC	5C	.0103		✓				01/01/95	
			.0403 - .0404		✓				01/01/95	
			.2101		✓				01/01/95	
		7B	.4202		✓				01/01/95	
			.4205 - .4206		✓				01/01/95	
18	NCAC	7	.0101		✓				01/01/95	
			.0102		✓		✓		01/01/95	
			.0103			✓			01/01/95	
			.0201			✓			01/01/95	
			.0202		✓				01/01/95	
			.0204 - .0208		✓				01/01/95	
19A	NCAC	2B	.0217		✓				01/01/95	
			.0603		✓		✓		01/01/95	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	2D	.0816					✓		
		2E	.0222					✓		
21	NCAC	4B	.0103		✓				01/01/95	
			.0104		✓		✓		01/01/95	
			.0201		✓		✓		01/01/95	
			.0202		✓				01/01/95	
			.0301		✓		✓		01/01/95	
			.0401 - .0402		✓				01/01/95	
			.0403 - .0405		✓		✓		01/01/95	
			.0601 - .0603		✓				01/01/95	
			.0604	✓					01/01/95	
			.0605	✓			✓		01/01/95	
			.0701	✓					01/01/95	
	6F		.0001					✓		
	6L		.0002					✓		
			.0003		✓		✓		01/01/95	
			.0006 - .0007		✓		✓		01/01/95	
	34C		.0203 - .0204		✓				01/01/95	
			.0301		✓				01/01/95	
	54		.2704 - .2706	✓					12/19/94	180 DAYS
	56		.0502		✓		✓		01/01/95	
			.1702					✓		
24	NCAC	5	.0203	✓			✓		01/01/95	
			.0205	✓			✓		01/01/95	
			.0207	✓			✓		01/01/95	
25	NCAC	1D	.2513							EXPIRED

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

ADMINISTRATION

State Employees Combined Campaign

NCAC 35 .0202 - Content of Applications	RRC Objection	11/17/94
Agency Revised Rule	Obj. Removed	11/17/94

COMMERCE

Banking Commission

NCAC 3K .0201 - Application for Authorization//Reverse Mortgage Lender	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
NCAC 3K .0205 - Certificate of Authorization	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
NCAC 3K .0206 - Nontransferability of Certificate of Authorization	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94
NCAC 3K .0601 - Counseling	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2Q .0112 - Applications Requiring Professional Engineer Seal	RRC Objection	11/17/94
No Response from Agency	Obj. Cont'd	12/15/94

General Procedures for Public Health Programs

15A NCAC 24A .0404 - Reimbursement for Services Not Covered by Medicaid	RRC Objection	12/15/94
RRC Approved Motion to Reconsider	Obj. Cont'd	12/15/94

Wildlife Resources and Water Safety

15A NCAC 10B .0106 - Wildlife Taken for Depredations or Accidentally	RRC Objection	11/17/94
Agency Revised Rule	Obj. Cont'd	11/17/94
Agency Revised Rule	Obj. Removed	12/15/94

HUMAN RESOURCES

Medical Assistance

10 NCAC 50B .0402 - Financial Responsibility and Deeming	RRC Objection	12/15/94
Agency Revised Rule	Obj. Removed	12/15/94

Mental Health: General

10 NCAC 14K .0314 - Assessment	RRC Objection	11/17/94
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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>10 NCAC 14K .0315 - Treatment/Habilitation Planning and Documentation</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

INSURANCE

Medical Database Commission

<i>11 NCAC 15 .0006 - Data Submission</i>	<i>RRC Objection</i>	<i>10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>11 NCAC 15 .0007 - Provider Verification</i>	<i>RRC Objection</i>	<i>10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

LABOR

Boiler and Pressure Vessel

<i>13 NCAC 13 .0202 - Inspector Qualification</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0204 - Conflict of Interest</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0205 - Owner-User Inspection Agency</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0211 - Certificate Inspections</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0212 - Preparation for Inspection</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0213 - Fees</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0304 - Appeals</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0402 - North Carolina Stamping and Registration</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0405 - Safety Valves</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>13 NCAC 13 .0411 - Valves, Drains, and Bottom Blowoffs</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>

LICENSING BOARDS AND COMMISSIONS

Commission for Auctioneers

<i>21 NCAC 4B .0501 - Application for Course Approval</i>		
<i>Rule Withdrawn by Agency</i>		<i>12/15/94</i>
<i>21 NCAC 4B .0502 - Requirements for Approval/Minimum Standards</i>		
<i>Rule Withdrawn by Agency</i>		<i>12/15/94</i>

Board of Barber Examiners

<i>21 NCAC 6F .0001 - Physical Structure</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 6L .0002 - Measurements of Barber Shop</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Dental Examiners

<i>21 NCAC 16M .0001 - Dentists</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Licensing Board of Landscape Architects

<i>21 NCAC 26 .0105 - Fees</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Opticians

<i>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>11/17/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/15/94</i>
<i>21 NCAC 40 .0319 - Applicants From Other States</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Professional Engineers and Land Surveyors

<i>21 NCAC 56 .0502 - Application Procedure: Individual</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>12/15/94</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>01/01/95</i>
<i>21 NCAC 56 .1702 - Definitions</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1703 - Requirements</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1704 - Units</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1705 - Determination of Credit</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

PUBLIC EDUCATION

Elementary and Secondary Education

<i>16 NCAC 6E .0202 - Interscholastic Athletics</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>

SECRETARY OF STATE

Notary Public Division

<i>18 NCAC 7 .0103 - Notaries Public Deputy</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>
<i>18 NCAC 7 .0301 - Approved Course of Study</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>

TRANSPORTATION

Division of Highways

<i>19A NCAC 2B .0603 - Driveway Permits for Special Commercial Property</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/15/94</i>

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.

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^a - Consolidated Cases.

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Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Joseph E. Kernstine v. Department of Human Resources	93 CSE 1151	Morgan	07/15/94	
Alvin M. Davis v. Department of Human Resources	93 CSE 1152	Morgan	08/04/94	
Thomas M. Birdwell III v. Department of Human Resources	93 CSE 1155	Morgan	08/02/94	
Joe Louis Mayo v. Department of Human Resources	93 CSE 1161	West	04/19/94	
Bobby Lewis Smith v. Department of Human Resources	93 CSE 1162	Nesnow	06/16/94	
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Louis C. Cade v. Department of Human Resources	93 CSE 1166	Morrison	06/16/94	
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Betty A. Williams, Fred E. Jones v. Department of Human Resources	93 CSE 1178	Nesnow	04/20/94	
Jeff A. Taylor v. Department of Human Resources	93 CSE 1180	Morgan	07/15/94	
Eric G. Sykes v. Department of Human Resources	93 CSE 1181	Becton	04/20/94	
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Terrence D. Timmons v. Department of Human Resources	93 CSE 1183	Becton	10/11/94	
Ray A. Johnstone v. Department of Human Resources	93 CSE 1186	Morrison	10/03/94	
Morris Ray Bethel v. Department of Human Resources	93 CSE 1188	West	07/11/94	
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Edward Boggan v. Department of Human Resources	93 CSE 1192	Chess	09/01/94	
Raymond Junior Cagle v. Department of Human Resources	93 CSE 1194	Morrison	10/03/94	
Ernest N. Pruitt Jr. v. Department of Human Resources	93 CSE 1197	Nesnow	06/28/94	
Michael P. McCay v. Department of Human Resources	93 CSE 1198	Morgan	08/02/94	
Robert Matthew Rossi v. Department of Human Resources	93 CSE 1199	Becton	08/22/94	
Bernadette Cook v. Department of Human Resources	93 CSE 1202	Gray	04/27/94	
Rawan Weigel v. Department of Human Resources	93 CSE 1212	Gray	08/26/94	
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Randall R. Rhodes v. Department of Human Resources	93 CSE 1219	Nesnow	06/16/94	
Glen Nelson Washington v. Department of Human Resources	93 CSE 1221	Morgan	08/02/94	
Michael V. Dockery v. Department of Human Resources	93 CSE 1222	Morgan	07/15/94	
Robert Corley Jr. v. Department of Human Resources	93 CSE 1225	Chess	10/05/94	
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Dennis W. Nolan v. Department of Human Resources	93 CSE 1254	Morrison	04/27/94	
Robert Calvin Connor v. Department of Human Resources	93 CSE 1258	West	04/19/94	
James D. Williams v. Department of Human Resources	93 CSE 1259	West	04/19/94	
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Marty Franzen v. Department of Human Resources	93 CSE 1264	Morgan	07/15/94	
Vaughn D. Pearsall v. Department of Human Resources	93 CSE 1267	Becton	04/20/94	
Gerald L. Murrell v. Department of Human Resources	93 CSE 1271	Gray	08/26/94	
Larry D. Dawson v. Department of Human Resources	93 CSE 1273	Morrison	07/07/94	
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King D. Graham v. Department of Human Resources	93 CSE 1275	Becton	05/18/94	
Brian C. Carelock v. Department of Human Resources	93 CSE 1276	Mann	10/13/94	
Bradford C. Lewis v. Department of Human Resources	93 CSE 1278	Mann	10/13/94	
Derek Watson v. Department of Human Resources	93 CSE 1283	Reilly	06/30/94	
Luther Borden v. Department of Human Resources	93 CSE 1284	West	06/23/94	
Walter B. Lester v. Department of Human Resources	93 CSE 1287	Nesnow	06/28/94	
Wilbert E. Anderson v. Department of Human Resources	93 CSE 1288	Nesnow	10/12/94	
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Curtis C. Osborne v. Department of Human Resources	93 CSE 1299	Gray	09/19/94	
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Larry Cornelius Smith v. Department of Human Resources	93 CSE 1302	Morrison	06/30/94	
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Reginald Eugene Hill v. Department of Human Resources	93 CSE 1309	West	10/06/94	
Jimmy C. Harvell v. Department of Human Resources	93 CSE 1310	Nesnow	10/27/94	
John Edward Tannehill v. Department of Human Resources	93 CSE 1312	Nesnow	10/03/94	
Benjamin McCormick v. Department of Human Resources	93 CSE 1313	Morgan	08/02/94	
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John D. Bryant v. Department of Human Resources	93 CSE 1327	Reilly	10/27/94	
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Ricky Glenn Mabe v. Department of Human Resources	93 CSE 1356	Mann	09/26/94	
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Anthony Curry v. Department of Human Resources	93 CSE 1371	Chess	08/18/94	
Charles W. Norwood Jr. v. Department of Human Resources	93 CSE 1385	West	06/13/94	
David L. Terry v. Department of Human Resources	93 CSE 1386	Mann	05/18/94	
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Steven A. Elmquist v. Department of Human Resources	93 CSE 1392	Reilly	04/29/94	
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Melvin Lewis Griffin v. Department of Human Resources	93 CSE 1412	Morgan	08/02/94	
Dennis E. Fountain Jr. v. Department of Human Resources	93 CSE 1414	Chess	05/13/94	
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Daniel Thomas Hefe v. Department of Human Resources	93 CSE 1432	Morrison	04/28/94	
Gilbert J. Gutierrez v. Department of Human Resources	93 CSE 1433	Morrison	05/13/94	
Alton D. Johnson v. Department of Human Resources	93 CSE 1434	Reilly	04/29/94	
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Jeffery E. Holley v. Department of Human Resources	93 CSE 1436	Reilly	08/23/94	
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Donald W. Clark v. Department of Human Resources	93 CSE 1441	Nesnow	05/13/94	
William E. David Jr. v. Department of Human Resources	93 CSE 1442	Nesnow	05/02/94	
Arthur Lee Carter v. Department of Human Resources	93 CSE 1445	Morgan	08/10/94	
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Stephen L. Brown v. Department of Human Resources	93 CSE 1470	Chess	09/27/94	
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Christopher Ivan Smith v. Department of Human Resources	93 CSE 1510	Gray	07/07/94	
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Billy L. Sneed v. Department of Human Resources	93 CSE 1514	Gray	12/14/94	
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Edward E. Furr v. Department of Human Resources	93 CSE 1524	Reilly	06/17/94	
James Hunsaker v. Department of Human Resources	93 CSE 1526	Chess	11/08/94	
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Mark E. Campbell v. Department of Human Resources	93 CSE 1537	Nesnow	05/19/94	
Vernon Lamont Weaver v. Department of Human Resources	93 CSE 1538	Nesnow	09/23/94	
Jesse B. McAfee v. Department of Human Resources	93 CSE 1539	Nesnow	09/26/94	
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Carl E. Crump v. Department of Human Resources	93 CSE 1545	Becton	09/23/94	
Herman F. Jacobs Jr. v. Department of Human Resources	93 CSE 1557	Chess	09/27/94	
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Dorsey L. Johnson v. Department of Human Resources	93 CSE 1565	Gray	09/19/94	
Wade A. Burgess v. Department of Human Resources	93 CSE 1568	Morrison	04/28/94	
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Willie Hawkins v. Department of Human Resources	93 CSE 1585	Morgan	08/02/94	
B.A. Sellen v. Department of Human Resources	93 CSE 1586	Morgan	08/02/94	
John P. Vadas v. Department of Human Resources	93 CSE 1589	Becton	11/08/94	
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Johnny T. Usher v. Department of Human Resources	93 CSE 1592	Chess	05/19/94	
Tim H. Maxwell v. Department of Human Resources	93 CSE 1594	Chess	06/30/94	
Charles Darrell Matthews v. Department of Human Resources	93 CSE 1596	West	06/13/94	
John William Vance Jr. v. Department of Human Resources	93 CSE 1597	Becton	05/13/94	
Bobby R. Sanders v. Department of Human Resources	93 CSE 1598	Nesnow	07/25/94	
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Brian Gilmore v. Department of Human Resources	93 CSE 1615	Chess	05/13/94	
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Bennie E. Hicks v. Department of Human Resources	93 CSE 1641	Nesnow	07/25/94	
Herbert Council v. Department of Human Resources	93 CSE 1643	Nesnow	07/25/94	
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June V. Pettus v. Department of Human Resources	93 CSE 1647	Becton	10/31/94	
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Earl Newkirk Jr. v. Department of Human Resources	93 CSE 1680	Morrison	08/26/94	
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Billy D. Gibson v. Department of Human Resources	94 CSE 0166	Mann	09/26/94	
Ronald Garrett v. Department of Human Resources	94 CSE 0227	Reilly	08/22/94	
Ervin C. Harvey v. Department of Human Resources	94 CSE 0247	Becton	08/22/94	
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Maurice Franks v. Department of Human Resources	94 CSE 0310	West	10/27/94	
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Grayson Kelly Jones v. Department of Human Resources	94 CSE 0433	West	09/15/94	
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Warren F. Welch v. Department of Human Resources	94 CSE 0541	Mann	11/09/94	
Timothy R. Abraham v. Department of Human Resources	94 CSE 0595	Reilly	10/12/94	
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Stephen M. Rose v. Private Protective Services Board	94 DOJ 0359	Nesnow	05/19/94	
Lemuel Lee Clark Jr. v. Private Protective Services Board	94 DOJ 0360	Nesnow	05/19/94	
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Frankie L. McKoy v. Private Protective Services Board	94 DOJ 0706	Chess	09/09/94	
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Michael L. Bonner v. Private Protective Services Board	94 DOJ 0794	Morrison	09/14/94	
Edward A. Maguire v. Private Protective Services Board	94 DOJ 0795	West	12/09/94	
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Willie David Moore v. Criminal Justice Ed. & Training Sds. Comm.	93 DOJ 1071	Nesnow	04/11/94	9:3 NCR 218
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Steven W. Wray v. Sheriffs' Education & Training Standards Comm.	93 DOJ 1803	Chess	06/29/94	
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Gregory Blake Manning v. Criminal Justice Ed. & Training Sds. Comm.	94 DOJ 0048	Gray	03/29/94	
Russell Pinkelton Jr. v. Sheriffs' Education & Training Sds. Comm.	94 DOJ 0118	Gray	08/10/94	
William Franklin Sheetz v. Sheriffs' Education & Training Sds. Comm.	94 DOJ 0196	Chess	06/16/94	
James M. Buie v. Criminal Justice Ed. & Training Sds. Comm.	94 DOJ 0401	Nesnow	08/26/94	
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Nelson Falcon v. Sheriffs' Education & Training Sds. Comm.	94 DOJ 0611	Mann	08/12/94	
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Christopher Murch as Guardian Ad Litem for Angela D. Murch, a Minor v. Barbara Richardson, Admin. Except. Child. Prog.; Craven Cty School Sys.; Bradford L. Sneed, Superintendent	93 EDC 0161	Mann	11/28/94	
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Annice Granville, Phillip J. Granville v. Onslow County Bd. of Education	93 EDC 0742	Mann	08/01/94	9:11 NCR 863
Milt Sherman & Rose Marie Sherman v. Pitt County Board of Education	93 EDC 1617	West	11/29/94	
Mary Ann Sciullo & Frank Sciullo on behalf of their minor child, Samuel W. Sciullo v. State Board of Education	94 EDC 0044	Gray	07/22/94	
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ROBERT, STEPHANIE AND JOSHUA CAMPBELL,
Petitioners,

v.

**DEPARTMENT OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES; AND
CHILDREN'S SPECIAL HEALTH SERVICES,**
Respondent.

This matter was heard before Brenda B. Becton, Administrative Law Judge, on October 5, 1994, in Charlotte, North Carolina. At the conclusion of the hearing, the parties were afforded an opportunity to file written post hearing submissions.

For Petitioner: KNOX, KNOX, FREEMAN & BROTHERTON,
Attorneys at Law, Charlotte, North Carolina; Bobby L. Bollinger, Jr. appearing.

For Respondent: John P. Barkley, Assistant Attorney
General, N.C. Department of Justice, Raleigh, North Carolina.

Whether the Campbells met the requirements for obtaining post-adoption coverage for Joshua.

15A NCAC 21F .0800
15A NCAC 24A .0200

Based upon official documents in the file, sworn testimony of the witnesses, stipulations of the parties, and other competent and admissible evidence, the undersigned makes the following:

1. Robert and Stephanie Campbell are adoptive parents of Joshua Campbell.
2. Joshua Campbell was born on October 25, 1989.
3. Robert and Stephanie Campbell received Joshua on November 21, 1990 when Joshua was several months old.
4. Joshua was flown in from Korea and his adoption was arranged through an out of State agency.
5. Joshua has cerebral palsy.

6. Stephanie Campbell learned of the Children's Special Health Services program from a friend at a support group who had also adopted a disabled child.
7. Mrs. Campbell first called and then went to see Margie Gray, an employee of the Mecklenburg County Health Department about the Children's Specialized Health Services program.
8. On March 6, 1991, Robert and Stephanie applied for the Children's Specialized Health Services program by filling out the forms provided by Ms. Gray, including a "financial eligibility application" (form DHS3014-3).
9. Joshua Campbell was approved as a "family of one" for inpatient and outpatient Children's Special Health Services by the Respondent for the time period of March 6, 1991 through March 5, 1992. A Financial Eligibility Status form (DEHNR 3507) was issued by the Respondent on April 8, 1991.
10. When Mrs. Campbell completed the forms provided by Ms. Gray, she thought, based on the information she had received, that she had done all that was required in order to assure that Joshua would receive post-adoption coverage.
11. Ms. Gray did not tell Mrs. Campbell about any other forms that needed to be filled out or any additional steps that needed to be taken in order to assure post-adoption coverage for Joshua, but she did mention that annual re-certification would be necessary.
12. At no time prior to the final order of adoption did the Petitioners receive any information that Joshua might not be eligible for post-adoption coverage.
13. On February 6, 1992, the final order of adoption was entered.
14. Prior to adoption Joshua was not in the custody of a County Department of Social Services or of an adoption agency licensed in the State of North Carolina.
15. During the period of eligibility from March 6, 1991 through March 5, 1992, the Petitioners purchased a "cube chair" for Joshua and submitted the bill to the Respondent. That bill, in the approximate amount of \$300.00, was eventually approved and paid by the Respondent.
16. On March 6, 1992, the Petitioner parents applied for re-certification for Children's Specialized Health Services coverage on behalf of Joshua. The Petitioner, Robert Campbell, executed and signed a "financial eligibility application" that was sent to him by Elizabeth Pifer from North Carolina Vocational Rehabilitation in Charlotte. This form already included the notation that the "child was certified prior to adoption" when Mr. Campbell received it.
17. Shortly thereafter, in a telephone conversation with Michael Clements, a Public Health Social Work Consultant with the Respondent, the Petitioners were advised that the income earned by them at their respective jobs would render Joshua financially ineligible for benefits from the Children's Special Health Services Division.
18. At approximately the same time that they spoke with Mr. Clements, the Petitioners received a document entitled "Reply to Request for Service" dated March 31, 1992. This document stated that the Petitioners' request for service could not be approved without a financial eligibility form executed by Robert and Stephanie Campbell and further noted that "financial eligibility based on family income will be required."
19. In April, 1992, Robert and Stephanie Campbell had a combined gross income of approximately \$60,000.00 and they knew from talking with Michael Clements that they would not be financially eligible for Children's Special Health Services as a family of three.

20. Mr. and Mrs. Campbell were unaware of the Respondent's regulation that requires that a child must be in the custody of Social Services or a State licensed adoption agency prior to the final order of adoption being entered in order for the child to be eligible for post-adoption services. If the Campbells had been informed of this requirement, they would have investigated the possibility of having custody placed with such an institution in order to ensure Joshua's eligibility for the medical coverage provided by Children's Special Health Services.
21. 15A NCAC 24A .0202(f)(2) (1994) provides that the financial eligibility requirements of that subchapter shall not apply to "Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met."
22. 15A NCAC 21F .0801(a) (1991) provides as follows:

If the requirements of this Section are met, a child with a supported medical condition shall, after adoption, be considered a family of one under 15A NCAC 24A .0204(c) for purposes of determining financial eligibility for program support.
23. 15A NCAC 21F .0802 (1991) provides as follows:

To be eligible for program support, the child must meet the following requirements:

 - (1) The child must be in the custody of a county department of social services or an adoption agency licensed in the State of North Carolina;
 - (2) The child must have a program supported medical condition as provided in Rule .0303 of this Subchapter.
24. 15A NCAC 21F .0804(b) (1991) provides that applications for post-adoption coverage shall be made by the agency having legal responsibility for the child.
25. 15A NCAC 21F .0804(c) (1991) provides that "Program review and approval, or disapproval, shall be made prior to the final court order for adoption in accordance with Rule .0801 of this Section."
26. The purpose for Children's Special Health Services agreeing to cover certain medical interventions is to facilitate the adoption of children with certain medical diagnoses.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The financial eligibility requirements of the subchapter of the North Carolina Administrative Code that deals with eligibility determinations do not apply to applicants for Children's Special Health Services when the requirements of 15A NCAC 21F .0800 dealing with adoptions are met. 15A NCAC 24A .0202(f)(2).
2. In order to meet the requirements of 15A NCAC 21F .0800, a child must be in the custody of a county department of social services or an adoption agency that is licensed in North Carolina and the child must have one of the medical conditions cited in another portion of the code. The application for post-adoption coverage is to be made by the agency having legal responsibility for the child and the application must be made and approved prior to the final court order for adoption. 15A NCAC 21F .0802, .0804(b), .0804(c).
3. There is no dispute about whether Joshua Campbell has disabilities which would be covered if he meets the other criteria for coverage.

4. Since Joshua was never in the custody of a county department of social services or an adoption agency licensed by the State, he does not meet one of the criteria necessary for coverage.
5. The Petitioners argue that excluding coverage for Joshua based upon who had custody is discriminatory and violates the Americans with Disabilities Act. All of the children served by Children's Special Health Services have disabilities. Therefore, Joshua is not being discriminated against on the basis of his disability. Joshua is being treated differently due to the circumstances of his adoption. Joshua does not fall within that category of difficult to place children with disabilities who are in the custody of a county department of social services or State licensed adoption agency.
6. Not all distinctions are outlawed by our laws against discrimination. When the state has a rational basis for making distinctions, such distinctions are not necessarily frowned upon. Here, the underlying purpose for offering to pay for certain categories of medical expenses for adoptable children with disabilities is to encourage families to adopt these children. Joshua's situation is an example of a case where no such extra incentive was necessary to induce Robert and Stephanie Campbell to open their hearts and home to a child with special needs. While the medical coverage offered by Children's Special Health Services would lessen the financial burden the Campbells will incur, it was not an inducement for their decision to adopt a child with disabilities.
7. Extending coverage to children like Joshua who are fortunate enough to find adoptive parents whether or not they are served by the programs provided by Children's Special Health Services would not in any way further the purpose that the Children's Special Health Services program was created to serve.
8. Joshua Campbell is not eligible to be treated as a family of one pursuant to 15A NCAC 21F .0800, and consequently, he is not eligible for Children's Special Health Services.

RECOMMENDED DECISION

The North Carolina Department of Environment, Health, and Natural Resources will make the Final Decision in this contested case. It is recommended that the agency adopt the Findings of Fact and Conclusions of Law set forth above and find that Joshua Campbell is not eligible to be treated as a family of one pursuant to 15A NCAC 21F .0800, and that the Respondent has acted in accordance with the rules by which it is governed.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the North Carolina Department of Environment, Health, and Natural Resources makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 28th day of December, 1994.

Brenda B. Becton
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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