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NORTH CAROLINA REGISTER

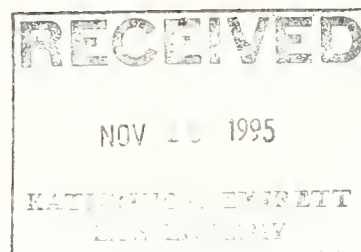
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November 15, 1995**

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Rules Division
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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 ninety five dollars (\$195.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

NORTH CAROLINA REGISTER

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Pages 1651 - 1827**

November 15, 1995

This issue contains documents officially filed
through October 31, 1995.

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NORTH CAROLINA REGISTER

Publication Schedule

(December 1995 - September 1996)

FILING DEADLINES			NOTICE OF RULE-MAKING PROCEED- INGS		NOTICE OF TEXT (either column A or column B)							
volume and issue number	issue date	last day for filing	end of com- ment period	earliest reg- ister issue for publica- tion of text	earliest date for public hearing	A. non-substantial economic impact			B. substantial economic impact			
						end of re- quired com- ment period	deadline to submit to RRC for review at next RRC meeting	first legisla- tive day of the next regular ses- sion	end of re- quired com- ment period	deadline to submit to RRC for review at next RRC meeting	first legisla- tive day of the next regular ses- sion	
10:17	12/01/95	11/07/95	01/30/96	02/01/96								
10:18	12/15/95	11/22/95	02/13/96	02/15/96								
10:19	01/02/96	12/07/95	03/04/96	03/15/96								
10:20	01/16/96	12/20/95	03/18/96	04/01/96								
10:21	02/01/96	01/10/96	04/01/96	04/15/96	02/16/96	03/04/96	03/20/96	05/13/96	04/01/96	04/22/96	01/30/97	01/30/97
10:22	02/15/96	01/25/96	04/15/96	05/01/96	03/01/96	03/18/96	03/20/96	05/13/96	04/15/96	04/22/96	01/30/97	01/30/97
10:23	03/01/96	02/09/96	04/30/96	05/01/96	03/18/96	04/01/96	04/22/96	01/30/97	04/30/96	05/20/96	01/30/97	01/30/97
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EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings 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.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration, Division of Purchase and Contract intends to adopt rules cited as 1 NCAC 5A .0012; 5B .0103, .0210, .0314, .0503, .1108, .1516 - .1521, .1803 - .1804; amend rules cited as 1 NCAC 5A .0001 - .0002, .0004; 5B .0101 - .0102, .0201, .0203 - .0204, .0206 - .0208, .0301 - .0310, .0312 - .0313, .0401 - .0403, .0501 - .0502, .0601 - .0602, .0701, .0801, .0901 - .0902, .0904 - .0906, .1001 - .1003, .1101, .1201, .1301 - .1302, .1401 - .1402, .1501, .1504 - .1513, .1601 - .1603, .1701 - .1702, .1901, .1903, .1906 - .1907, .1909; 5C .0101 - .0102, .0201 - .0204, .0208, .0211, .0217 - .0218, .0220, .0222, .0303 - .0304, .0403, .0508; 5D .0101 - .0102, .0201 - .0206, .0208 - .0210; and repeal rules cited as 1 NCAC 5A .0009 - .0010; 5B .0209, .0311, .0404, .0702, .0802 - .0808, .0810, .1103 - .1104, .1106, .1202, .1403, .1502 - .1503, .1703; 5C .0509; 5D .0301 - .0303, .0401 - .0403, .0501 - .0509.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 3:00 pm on November 30, 1995 at the Administration Building, Commission Room 5034, 116 West Jones Street, Raleigh, NC 27603.

Reason for Proposed Action: To address statutory changes, and to address the flexibility required to enhance the ability of the State to administer an effective governmental purchasing program.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. All comments must be received by the agency no later than December 15, 1995. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling R. Glen Peterson, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003. Phone: (919) 733-7232.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 5 - PURCHASE AND CONTRACT

**SUBCHAPTER 5A - DIVISION OF PURCHASE AND
CONTRACT**

.0001 RESPONSIBILITY

The Department of Administration is responsible for administering the state's program for the acquisition and management acquisition, management, and disposal of personal property. The Secretary of the Department of Administration (Secretary) is authorized and responsible for adopting and carrying out the rules promulgated herein.

The administration of this program is the responsibility of delegated to the State Purchasing Officer (SPO) who reports to the Secretary of the Department of Administration.

Statutory Authority G.S. 143-49.

.0002 SCOPE

The program administered by the Division of Purchase and Contract is based on sound competitive purchasing procedures, sound management of personal property, and the economical disposal of State property; and includes the following where public funds are involved:

- (1) acquisition by purchase, exchange, lease purchase, lease or rental of equipment, materials, and supplies, printing and services by for all agencies state departments, institutions, authorities, boards, commissions, and agencies;
- (2) acquisition by purchase or exchange of all equipment, materials and supplies by city and county boards of education, community colleges and technical institutes; printing, rentals, leases and services for all agencies, except for community colleges and local school administrative units;
- (3) making certain purchasing services available to charitable nonprofit hospital, fire departments and rescue squads; certain non-state agencies;
- (4) establishment and enforcement of purchase specifications;
- (5) inspection and testing of products- products;
- (6) review of agency purchasing and warehousing practices to ensure compliance with operating rules and procedures established by the SPO.

Statutory Authority G.S. 143-49; 143-53; 143-56; 143-60.

.0004 LOCATION

The principal offices of the Division of Purchase and Contract are located in the Administration Building, 116 West Jones Street, Raleigh, N.C. 27611 27603-8002.

Statutory Authority G.S. 143B-10.

.0009 BOARD OF AWARD

The Advisory Budget Commission designates two or more members to serve as a Board of Award for canvassing bids and recommending the award of contracts to the Secretary of Administration. The commission further designates the following state employees who can serve in this capacity in the absence of member(s) of the Commission:

Controller, State Board of Education

State Treasurer

Secretary of State

Representative from Attorney General's Office.

These alternate members shall not further delegate this responsibility. The board normally meets weekly.

Bids are reviewed only by the Division of Purchase and Contract, the Board of Award and the Secretary of Adminis-

~~tration. Records are kept of each meeting and made public by the State Purchasing Officer.~~

Statutory Authority G.S. 143-53.

.0010 ADMINISTRATIVE PROCEDURES

~~Rule making, declaratory rulings and contested case hearings are governed by the provisions of 1 NCAC 1B. Prior to requesting a contested case hearing, parties shall negotiate their complaint with the State Purchasing Officer. A decision shall be issued by the State Purchasing Officer within 30 days and is required in order to request a hearing.~~

Statutory Authority G.S. 150B-2; 150B-22; 150B-23.

.0012 DEFINITIONS

(a) For the purpose of this Chapter, agency is defined as meaning all departments, institutions, boards, commissions, or other units of the State, and community colleges and local school administrative units, unless specifically exempted herein by reference.

(b) A service contract shall mean any agreement in which an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for a state agency for compensation from state funds. The services may include (by way of illustration, not limitation) services such as maintenance of buildings or equipment, auditing, film production, employee training and food services, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services (in which case rules relating to consultants shall be applicable).

(c) Where the term "offer" is used, it refers to a bid, proposal or offer submitted in response to an Invitation for Bids, Request for Proposals, Negotiation, or Request for Quotations.

(d) Where "procedures" or "guidelines" are referred to herein, the context of such are incorporated in the N.C. Purchasing Manual which can be obtained from the Division of Purchase and Contract.

Statutory Authority G.S. 143-49; 143-53.

SUBCHAPTER 5B - PURCHASE PROCEDURES

SECTION .0100 - REQUISITIONING

.0101 PROCEDURE

Using agencies shall request quotation, bid and purchase actions of the Division of Purchase and Contract by means of written requisitions. ~~A special form is used for this purpose requests.~~

Statutory Authority G.S. 143-49; 143-51; 143-55.

.0102 VERBAL REQUESTS

Verbal or other means of request are not satisfactory

substitutes for a written ~~requisition requests~~ except in emergencies. Written confirmation must follow any such request made in an emergency situation.

Statutory Authority G.S. 143-49; 143-51; 143-55.

.0103 CONFIDENTIALITY

All information and documentation relative to the development of a contractual document (Request for Quotation, Invitation for Bids, Request for Proposals, Waiver of Competition, Negotiation, etc.) for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract (See Rules .0210, .0309, .1501 and .1518 of this Subchapter).

Statutory Authority G.S. 133-33; 143-53; 143-60.

SECTION .0200 - SPECIFICATIONS

.0201 TYPES OF SPECIFICATIONS

~~There are two general types of purchase specifications. One is a standard specification either developed by the standards section of the Division or as a result of developmental work of others with modification as necessary to meet the state's needs. The other type involves items of equipment, materials or supplies which by their nature do not lend themselves to standard specification or for which a standard specification has not yet been prepared. The requesting agency customarily develops the latter or offers a specification reference to which modifications and revisions as necessary are made by the Division of Purchase Contract, such specifications are generally used for individual purchases and may or may not be suitable for repetitive use. There are two general types of purchase specifications. A standard specification is originated and developed by the Standards Section. It is comprehensive in nature and intended for repeated use. The other type of specification is customarily originated by the requesting agency and modified as necessary by the Division of Purchase and Contract. It is, by the nature of the commodity or pattern of user demand, not intended for repetitive use. Sometimes, such other type specifications may be presented in the form of "brand name or equal" or, with satisfactory justification, in the form of "brand name only."~~

Statutory Authority G.S. 143-49(2); 143-53.

.0203 DEVELOPMENT OF SPECIFICATIONS

A standard specification is intended for general use, applicable insofar as practicable to the needs of state departments, institutions and agencies and kept ~~currently applicable to revision and modification current by the Standards Section.~~ In formulating such a specification, advisory committees made up of personnel from various ~~state agencies, institutions, public schools and the private~~

sector are often employed for advice and assistance. This type of specification is customarily offered also for the review and comments of manufacturers and suppliers who may participate in future bidding on the items in question.

Statutory Authority G.S. 143-49(2); 143-53.

.0204 ARTICLES FOR SPECIAL PURPOSES

Where articles are to be used for educational or training purposes, purposes or by handicapped persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, the evaluation of proposals offers, for waiver of competition, and the award of contracts.

Statutory Authority G.S. 143-49(2); 143-53.

.0206 SUBMISSION FOR ADOPTION

Upon completion of all necessary studies, reviews and drafts, any proposed standard specification is submitted to the State Purchasing Officer SPO for consideration and recommendation to the Secretary of Administration. When a specification is adopted as a standard, it becomes applicable to state purchases generally. A standard specification may be modified by the Division of Purchase and Contract on an interim basis as deemed necessary or advantageous until such time as the Secretary of Administration can consider the proposed revision.

Statutory Authority G.S. 143-49(2); 143-53.

.0207 COPIES OF SPECIFICATIONS

Copies of standard specifications are customarily distributed among interested bidders and in addition are available for public inspection at the Division office, 116 West Jones Street, Raleigh, North Carolina of Purchase and Contract or through available electronic media. Copies of standard specifications may be provided interested parties. A fee service charge for duplicating may be charged.

Statutory Authority G.S. 143-49(2); 143-53.

.0208 QUALIFIED PRODUCTS LIST

A qualified products list (QPL) is a type of specification which may or may not be adopted as a standard. The essential characteristic of this procedure is the examination and prequalification of brands and models of products on the basis of samples and tests. The prequalification limits bidding to products included on the list (QPL) at the time bids are requested. This procedure has a continuing aspect such that manufacturers are invited annually or at various times to submit products for evaluation and inclusion on the list. Customary sources for manufacturers are the Division's active bidder mailing lists and notifications of interest received in advance from other firms. The Division normally imposes a deadline for submission of samples. If

a product is added to the list, it is then eligible to be offered against subsequent requests an Invitation for bids Bids.

Statutory Authority G.S. 143-49(2); 143-53.

.0209 ON-SITE INSPECTION OF GOODS

~~The responsibility for on-site inspection of items purchased through the Division of Purchase and Contract is exercised by the standards and inspection section of the Division of Purchase and Contract. Any tests on new products or systems should be coordinated with this Section.~~

Statutory Authority G.S. 143-49(2); 143-53; 143-49; 143-60; 143B-397, 143B-398.

.0210 CONFIDENTIALITY

All information and documentation relative to the development of a specification shall be deemed confidential in nature until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later. (See Rules .0210, .0309, .1501 and .1518 of this Subchapter.)

Statutory Authority G.S. 133-33; 143-53; 143-60.

SECTION .0300 - COMPETITIVE BID/PROPOSAL PROCEDURE

.0301 SOLICITATION OF SEALED BIDS

Where the total requirements for any given commodity involve an expenditure in excess of five thousand dollars (\$5,000) the expenditure benchmark established under the provisions of G.S. 143-53.1, and where the competitive bidding procedure is employed, sealed bids are solicited by direct mailing and by advertisement in a newspaper of statewide circulation or by electronic media when deemed more advantageous for certain items or commodities at least 10 days prior to the date designated for opening of the bids.

Statutory Authority G.S. 143-52; 143-49; 143-53.1.

.0302 MAILING LISTS

The Division of Purchase and Contract maintains active bidders mailing lists for the purpose of soliciting bids offers on various categories of commodities and services. A form is available upon request as an application to be included on an appropriate bidders list. Inquiries should be directed to the Division of Purchase and Contract, 116 West Jones Street, Raleigh, North Carolina 27611. Prospective bidders Companies may be added to or removed from these lists after taking into consideration financial standing and responsibility, facilities for production, distribution and services, length of time successfully in business, responsiveness as a bidder, responsiveness, performance as a supplier, the need for competition, the budgeted amounts for maintaining the lists and for duplicating and mailing and other such factors as may be pertinent

and reasonable.

Only active bidders companies responsive to solicitations are retained on the active bidders mailing list lists.

It is not always economically feasible or otherwise practicable to ~~send requests for bids to all persons on the active bidders~~ use the entire mailing list. In such cases, the Division may ~~request bids from use those persons companies on the active bidders mailing list~~ who may reasonably and practically be expected to reply.

Statutory Authority G.S. 143-52; 143-49.

.0303 TELEGRAPH, FACSIMILE, AND TELEPHONE OFFERS

~~Telegraph or~~ Telegraph, facsimile, and telephone bids or proposals may be considered if received prior to specified opening time and provided they are confirmed in writing within a reasonable and acceptable time thereafter; provided, however, that telephone bids are confirmed by telegram sent prior to the time of bid opening are not acceptable in response to sealed competitive bids or proposals.

Statutory Authority G.S. 143-52; 143-49.

.0304 RECALL OF OFFERS

Bids Offers may be recalled prior to opening upon signed request from an authorized agent of the company bidding firm.

Statutory Authority G.S. 143-52; 143-49.

.0305 PUBLIC OPENING

Advertised bids procurements are publicly ~~opened~~ opened, in accordance with the procurement document instructions, and the names of the bidders companies, the manufacturer(s) and catalog numbers(s) of the item(s) they have offered and the prices, deliveries and payment terms they have submitted become public records subject to the provisions of Rule Rules .0309 and .1501 of this Section Subchapter.

Statutory Authority G.S. 143-52; 143-49.

.0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

~~Late bids may be considered prior to award only if it can be ascertained that the delay was not the fault of the bidder, that the bidder could have had no knowledge of prices as a result of the opening and that doing so serves the best interest of the state. The State Purchasing Officer shall look into the facts of such cases with determination of any such acceptability to be made under the procedure for canvassing bids and awarding contracts. No late offer, late modification, or late withdrawal will be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of State personnel directly serving the procurement process. It is the sole responsibility of the offeror to have~~

their offer delivered on time, regardless of the mode of delivery used, including the U. S. Postal Service or any other delivery services available.

Statutory Authority G.S. 143-52; 143-49.

.0307 ERROR/CLARIFICATION

When a bid an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon under the current operating procedures procedure for canvassing bids and awarding contracts; any action taken, however, shall not prejudice the rights of the public or other bidders offering companies. Where bids offers are submitted substantially in accordance with the invitation procurement document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices, which would improve the competitive position of the bid and alter the award of the contract.

Statutory Authority G.S. 143-52; 143-49.

.0308 EXTENSION OF ACCEPTANCE TIME

When in the public interest, bidders companies may be requested to extend the time offered for the acceptance of proposals and suppliers may be requested to extend the scheduled termination dates of contracts offers.

Statutory Authority G.S. 143-52; 143-49.

.0309 EVALUATION

In determining the award of contracts, bona fide proposals offers will be considered and evaluated as provided by statute and applicable rules ~~and regulations~~. Unexecuted offers or an offer without delivery will not be accepted. Nonacceptance of an offer a proposal is not to be construed as outright rejection or that it lacks merit but that another is deemed more advantageous. During the period of evaluation and prior to award, possession of the bids offers and accompanying information is limited to personnel of the Division of Purchase and Contract persons designated by the SPO, and to those in using agencies who are responsible for participating in the evaluation. Vendor participation may be sought where some clarification of a proposal is necessary for proper evaluation; and in doing so, no improvement in the bidder's competitive position is permissible. After award of the contract, the complete bid file is available to any interested person with the exception of trade secrets test information or similar proprietary information as provided by statute and rule secrets subject to the provisions of Rules .1501 and .1518 of this Subchapter.

Statutory Authority G.S. 143-52; 143-49; 143-53.

.0310 NOTIFICATION OF AWARD

~~Advertised procurements are awarded under procedures established by the Secretary of Administration. After contracts are awarded, successful bidders companies and agencies are notified by letter of acceptance or by purchase order as appropriate in writing or electronically.~~

Statutory Authority G.S. 143-52; 143-49.

.0311 GOODS REQUIRING IMMEDIATE ACCEPTANCE

~~In the purchase of items which are subject to rapid price fluctuation or immediate acceptance, the State Purchasing Officer may award contracts as he deems advisable provided that each such action is made a matter of record and reported promptly to the Board of Award.~~

Statutory Authority G.S. 143-52; 143-49.

.0312 LACK OF COMPETITION

The purpose of soliciting bids offers is both to seek and to obtain competition; the responsibility is dual. Where only a single bid offer or a single acceptable bid offer is received or, otherwise, where reasonable and available competition is not obtained, the reason shall be ascertained and made a matter of record.

Statutory Authority G.S. 143-52; 143-49.

.0313 TABULATIONS AND ABSTRACTS

Telephone, electronic, and written requests ~~Requests~~ for detailed or written tabulations and abstracts of bids offers cannot be honored.

Statutory Authority G.S. 143-52; 143-49; 143-53.

.0314 REQUEST FOR PROPOSALS

(a) An alternate acquisition method to the Invitation for Bid is a Request for Proposal (RFP).

(1) For the purchase of equipment, materials and supplies (commodities) the rules of this Chapter apply;

(2) In addition to the rules of this Chapter applying to the procurement of services, specific purchasing procedures and guidelines for service contracts are prescribed and published by the SPO.

(b) A RFP can also be handled as a two step process. Where a two step process is used only the technical proposal is opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable.

Statutory Authority G.S. 143-49; 143-52; 143-53.

SECTION .0400 - INFORMAL PROPOSALS (QUOTATION) PROCEDURE

.0401 GENERAL DELEGATION

In making purchases of commodities not covered by state term contracts and estimated to be less than five thousand dollars (\$5,000) the expenditure benchmark established under the provisions of G.S. 143-53.1, the State Purchasing Officer SPO may obtain either authorize agencies under a general delegation to make those purchases verbal or written quotations depending upon the nature and type of the purchase. These purchases are subject to the specific guidelines given in Rule .1603 of this Chapter and other basic purchasing procedures in this Chapter. Purchasing procedures and guidelines specific for services delegated to the agencies are prescribed and published by the SPO. This procedure does not require public advertising nor the public opening of proposals received.

~~In seeking competitive proposals on or otherwise in making purchases estimated to be less than five thousand dollars (\$5,000), the State Purchasing Officer may proceed in accordance with good purchasing practices and with or without public advertisement.~~

~~Wherever possible, however, several proposals are obtained from representative suppliers based on previous experience and knowledge of both the commodity and sources of supply.~~

Statutory Authority G.S. 143-52; 143-53; 143-53.1.

.0402 REVIEW BY BOARD OF AWARD AND SECRETARY OF ADMINISTRATION

The customary review and award procedure is not a requirement in acting on proposed contracts less than the dollar amount prescribed by the Secretary proposals which do not follow the formal advertising bidding procedure (1 NCAC 5B-0300). However, any controversial matters or questions of policy which might be involved in informal purchases are these proposed contracts may be reviewed with the Board of Award and Secretary of Administration.

Statutory Authority G.S. 143-52; 143-53.

.0403 DIVISION OF REQUIREMENTS

It is not permissible to divide requirements in order to keep them under the five thousand dollar (\$5,000) figure established benchmark or general delegation amounts, and thereby avoid the required sealed, advertised bidding competitive bid/proposal procedure or the required quotation procedure, whichever applies. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

Statutory Authority G.S. 143-52; 143-53.

.0404 DELEGATIONS

Purchases may be made directly by all state agencies which are authorized to issue their own purchase orders and by community colleges, technical institutes and public school administrative units, up to the dollar limit authorized by the

~~Division for each agency, under the quotation procedure in Rule .0401 of this Section. Such purchases can be made by general delegation.~~

~~A general delegation is an authorization made by the Division of Purchase and Contract to an agency for the purchase of all equipment, materials and supplies not covered by state contracts and costing less than the dollar limit authorized by the Division for the agency. In the case of similar and related items and groups of items, the maximum dollar limit authorized by the Division applies to the total cost rather than to the cost of any single item. Requirements may not, however, be divided to bring them within this provision.~~

~~Purchases by an agency of materials necessary for repairs or alterations, if to be used or furnished by that agency, should be made in the same manner as any other purchases.~~

Statutory Authority G.S. 143-53.

SECTION .0500 - REJECTION OF OFFERS

.0501 BASIS FOR REJECTION

In ~~requesting proposals~~ soliciting offers, any and all offers received may be rejected in whole or in part. Basis for rejection shall include, but not be limited to, the offer ~~proposal~~ being deemed unsatisfactory as to quantity, quality, delivery, price or service offered; the ~~proposal~~ offer not complying with conditions of the invitation procurement document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous bid offer; any determination that rejection would be to the best interest of the state.

Statutory Authority G.S. 143-52; 143-53.

.0502 REASONS FOR PUBLIC RECORD

Action in rejecting ~~all~~ offers in whole or in part ~~is taken as in a canvass of bids for award~~ shall conform to procedures prescribed by the SPO and the reasons therefor made a matter of record. ~~Such action may include a determination to negotiate the purchase or the contract in the open market to better advantage with purchase order to be placed or contract certified to using agencies in the usual manner.~~

Statutory Authority G.S. 143-52; 143-53.

.0503 NEGOTIATION

If all offers are rejected, a determination may be made to negotiate the purchase, with the award of contract handled in accordance with rules prescribed herein.

Statutory Authority G.S. 143-52; 143-53; 143-60.

SECTION .0600 - PURCHASE OF USED ITEMS

.0601 GENERAL PROCEDURES

When it appears to the ~~State Purchasing Officer~~ SPO that the acquisition of used equipment, materials or supplies is in the public interest, ~~the bidding procedure~~ competitive procedures shall be followed wherever feasible.

Statutory Authority G.S. 143-53.

.0602 ACQUISITION IN BEST INTEREST OF STATE

~~Requests for bids~~ Solicitation documents on used items may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of that which is considered most advantageous for the intended purpose ~~purposes(s)~~.

Statutory Authority G.S. 143-53.

SECTION .0700 - REMOVAL OF CERTAIN ITEMS FROM GENERAL CONSTRUCTION

.0701 POLICY

As may be practicable, ~~requirements such as venetian blinds, water coolers, laboratory furniture, food service equipment, etc.,~~ should certain items, as determined by the Secretary, may be removed from general construction contracts and purchased through the Division of Purchase and Contract.

Statutory Authority G.S. 143-53.

.0702 TURN KEY PROJECTS

~~Turn key projects are governed by the rules of the Division of State Construction, 1 NCAC 30.~~

Statutory Authority G.S. 143-341(3).

SECTION .0800 - PRINTING

.0801 GENERAL POLICY

The Division of Purchase and Contract makes provisions for or contracts for the printing requirements of, ~~state government all agencies, with the exception of community colleges and local school administrative units,~~ either through the use of applicable state facilities facilities, delegation, waiver, or by seeking competitive proposals competition in the open market.

~~Requests for quotations or bids~~ Competition in the open market on printing requirements fall generally into several broad categories such as pamphlets and publications, brochures, saddlestitched or perfect bound books, quick copy, forms, labels, engraving, binding and other miscellaneous work.

Statutory Authority G.S. 143-49; 143-53.

.0802 PROCEDURE

Except for occasional small jobs, requisitions for printing needs are initiated by state agencies and forwarded to the Division of Purchase and Contract for handling. The Division maintains lists of prospective bidders according to the capabilities and competitiveness of firms to perform certain types of work. Therefore, effort is made to direct requests to those firms able to respond competitively according to the nature of the work being called for. In addition, requests for bids on requirements costing five thousand dollars (\$5,000) or more are publicly advertised. For work where definite quantities are important, bid invitations designate the acceptable level of count to be delivered in terms of acceptable minimums and overages; over runs beyond those designated are not paid for. Where work delivered is below the acceptable quality level or time requirements are not met, the supplier is considered in default and the state seeks appropriate remedies.

Where the nature of the work requires security precautions, the state limits considerations of award to bidders capable of meeting such conditions. Further, the state in its discretion requires performance bonds on certain types of work or from bidders whose capabilities may be in question.

Statutory Authority G.S. 143-49.

.0803 LEAD TIME

Reasonable lead time is important in securing printing and binding work.

Where an unusual market exists due to such factors as a shortage of paper or the like or where work involving unusual composition or production is required, longer advance times may be necessary.

The requisition should indicate a delivery date which allows enough time for internal processing, public advertising, normal bidding and production time for the printer.

When requested delivery time is too short for normal processing, the requesting agency either should call and explain the situation before sending in the requisition or attach a note to the original copy of the requisition explaining the situation. Where possible, special handling is given in such cases.

Statutory Authority G.S. 143-49.

.0804 SUBMISSION OF MATERIAL AFTER PROMISED DATE

In instances where the manuscript is not completed and bids are to be obtained based on a sample of an existing similar publication, the requisition must indicate the date when the new copy will be available to the printer as well as the final delivery date. If an agency submits copy to the printer after the date promised, the printer is not held responsible for a resulting late delivery since his bid was based on a specific production period nor can he in such

cases be held to a delivery date proportionately later because prior production commitments may limit his open production time during the subsequent period. This situation can also be caused by delay in the return of proofs to the printer.

Statutory Authority G.S. 143-49.

.0805 SUBMISSION OF MANUSCRIPTS

Manuscripts should be submitted in an organized, logical fashion to facilitate the printing procedure and aid in insuring prompt delivery of the finished product.

When the copy is all new, it should be typed on one side only of 8 1/2 by 11 inch paper, double spaced, with the same number of lines per page wherever applicable. The original copy should be submitted for the printer to work from and a carbon copy retained by the using agency. The pages should be consecutively numbered to insure that none gets misplaced when separated for composing.

When the copy is partly new and partly from a previous printing, it should also be prepared on one side only of 8 1/2 by 11 inch paper. The printed pages should be stapled or glued to sheets of paper and interspersed between the pages of typed copy in proper sequence. A duplicate manuscript should be prepared and retained for the agency's record.

Statutory Authority G.S. 143-49.

.0806 PRINTING SAMPLES

Printed form samples submitted with requisitions for printing which contain no corrections and are not marked to indicate that they are to be revised are presumed to be reprints and are bid accordingly. Since the cost for reprints is somewhat less, it is important that printing samples be so marked unless changes are required.

Statutory Authority G.S. 143-49.

.0807 AUTHOR'S ALTERATIONS

Author's alterations (abbreviated A.A.s) mean corrections in proofs which are not caused by printer's error. When an agency makes changes which should have been made in the manuscript before submission to the printer, the charge for A.A.s may be quite high; therefore, it is imperative that agencies submit manuscripts in as nearly perfect form as possible.

Statutory Authority G.S. 143-49.

.0808 APPROVAL SIGNATURE

When proofs are returned to the printer with the approval signature, any errors not marked for correction will appear in the finished product, and the printer is not held responsible.

Statutory Authority G.S. 143-49.

.0810 STATEMENT OF COST OF PUBLIC DOCUMENTS

~~Every agency, when publishing a public document that is not for the principal purpose of sale to the public, shall cause a statement as to the number of copies printed, total direct reproduction cost, and the cost per copy to be placed by the agency name.~~

Statutory Authority G.S. 143-170.1.

SECTION .0900 - INSPECTION AND TESTING

.0901 RESPONSIBILITY

~~When the request for bids requires inspection, it shall be done by a designee of the Division of Purchase and Contract before acceptance or payment. The vendor must notify the Division of Purchase and Contract upon delivery or installation as written in the request for bids. In general, it is the responsibility of the receiving agency to inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications. However, when the contract requires an inspection by the Division of Purchase and Contract, it shall be conducted by a designee of the Division.~~

Statutory Authority G.S. 143-60.

.0902 SELECTION

The Division of Purchase and Contract has the responsibility of determining what items contracted through the Division are to be inspected before release of payment. The Division may periodically inspect any ~~or all~~ items to insure that specifications are met.

The ~~user~~ agency must insure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or ~~underwriters' laboratories~~ safety requirements.

Statutory Authority G.S. 143-60.

.0904 SAMPLES

When samples are required in response to a solicitation document issued by the Division of Purchase and Contract, it is the responsibility of the Division to test, or have tested, those samples. Samples are not to be sent directly to laboratories outside the jurisdiction of the ~~receiving agency~~ Division of Purchase and Contract unless specifically authorized by the Division.

Statutory Authority G.S. 143-60.

.0905 SPECIFICATIONS

Inspectors may not modify, amend or revise a contract specification or accept products with deviations from contract specifications, either verbally or in writing without authorization from the Division of Purchase and Contract purchaser/engineer involved.

Statutory Authority G.S. 143-60.

.0906 REPORT OF DISCREPANCY

Where products delivered fail to meet the specifications or contract requirements, the discrepancy shall be reported to the ~~State Purchasing Officer~~ Division of Purchase and Contract for resolution.

Statutory Authority G.S. 143-60.

SECTION .1000 - GUARANTEES AND WARRANTIES

.1001 ENFORCEMENT

Using agencies are responsible for enforcing the contractual guarantee or warranty applying to the supplies, materials, and equipment purchased ~~clauses contained in their purchase orders and contract awards.~~

Statutory Authority G.S. 143-60.

.1002 REPORT TO PURCHASING

If any agency has difficulty in obtaining satisfactory performance, including service as provided for in a guarantee or warranty, the matter should be referred to the ~~State Purchasing Officer~~ Division of Purchase and Contract for his attention and appropriate action.

Statutory Authority G.S. 143-60.

.1003 RESPONSIBILITY OF USING AGENCY

The using agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported, the matter should be referred to the ~~State Purchasing Officer~~ Division of Purchase and Contract.

Statutory Authority G.S. 143-60.

SECTION .1100 - TERM CONTRACTS

.1101 USE

~~Term contract contracts,~~ known also as indefinite quantity or requirements contracts, are used generally to establish suppliers and prices of a given commodity, commodity or group of commodities or services for a period of time without guaranteed quantities being specified. Such contracts generally serve to consolidate ~~needs~~ normal requirements of various agencies into one agreement. While ~~the majority many~~ of the state's term contracts are effective for a period of one year, conditions sometimes call for issuance for a shorter or longer period.

A term contract is a binding agreement between purchaser and seller to buy and sell certain commodities or services at certain prices and under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices. Moreover, no ~~department, institution, or agency,~~

~~agency may purchase any supplies, materials or materials, equipment or services covered by a term contract from any other sources than those certified by the Secretary of Administration.~~

A term contract is normally based upon sealed competitive bids competition with the bidder companies being advised as to whose business they are competing he is bidding for and, if successful, whose business he has they have earned.

Statutory Authority G.S. 143-52; 143-55; 115C-522; 115D-58.5.

.1103 COPIES OF TERM CONTRACTS

~~State agencies and institutions and public school administrative units are furnished the necessary copies of a term contract in the form of a certification of the contract for use and guidance in preparing requisitions or in placing purchase orders.~~

Statutory Authority G.S. 143-52; 143-55.

.1104 AMENDMENTS TO CONTRACTS

~~If it should become necessary to amend, modify or cancel portions or all of existing contracts, copies of addenda shall be mailed to both the contractors and all using agencies and school units.~~

Statutory Authority G.S. 143-52; 143-55.

.1106 DISCOUNT SCHEDULES

~~Under certain special circumstances, the Division may issue a contract certification which, although not a binding contract, establishes discount schedules at which purchase of the commodities so indicated is authorized without further approval from the Division. Once established, such a certified discount schedule or other price basis may be continued for an unspecified length of time.~~

Statutory Authority G.S. 143-52; 143-55; 143-58; 143-49.

.1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

Statutory Authority G.S. 143-52; 143-49.

SECTION .1200 - PARTIAL AND MULTIPLE AWARDS

.1201 USE

Partial, progressive or multiple awards may be made by reason of insufficient funds, legislative mandates, where it is advantageous to award separately by items or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.

Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, the policy shall be to limit such awards to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care is exercised to protect the character and principles of competitive bidding competition, and dividing quantities among bidders companies on definite quantity requirements is not permitted unless and except as provided in the request for proposals procurement document.

Statutory Authority G.S. 143-53(6).

.1202 SELECTION FROM LISTS OF SUPPLIERS

~~When more than one supplier is listed, agencies and school units should determine which contract supplier can more nearly furnish the product or service to fill the particular need in question, price considered, and submit their requisition or place their purchase order accordingly.~~

Statutory Authority G.S. 143-53(6).

SECTION .1300 - SMALL PURCHASES

.1301 PROCEDURES

Procedures for making small purchases must include sufficient controls to insure proper protection of funds, provide for adequate audit trail and insure that small purchase authorizations are not used to circumvent normal purchasing practices. Basically, small purchase procedures involve the use of imprest (petty cash) funds or blanket purchase orders and may be utilized to procure supplies and services within the dollar limitations and other constraints prescribed by the SPO agency policy. They can be appropriately used to obtain small quantities of items not available under existing contracts, contracts, to buy very limited quantities where the normal method would result in excessive costs in relation to the value of material, to buy sundry services or to pay freight bills.

~~In all small purchase procedures, agencies are to employ approved accounting practices.~~

Statutory Authority G.S. 143-53.

.1302 DOLLAR LIMITATIONS

~~Agencies are to~~ The SPO shall prescribe dollar limitations which will be applicable to individual small purchase transactions. These limitations should be consistent with the purposes for which small purchase procedures have been authorized and with the accounting procedure to be utilized.

Statutory Authority G.S. 143-53.

SECTION .1400 - WAIVER OF COMPETITION

.1401 POLICY

Under certain conditions, and otherwise if deemed to be

in the public interest, ~~the State Purchasing Officer may recommend to the board of award that competitive bidding competition may be waived.~~ Conditions permitting waiver include but are not limited to cases where performance or price competition are not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where ~~bids have competition has~~ been solicited but no satisfactory ~~bid(s) offers~~ received; where standardization or compatibility is the overriding consideration; where a donation predicates the source of supply; where personal or certain professional services are required; where a particular medical product or service, or prosthetic appliance is needed; where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use; where additional products or services are needed to complete an ongoing job or task; where products are bought for "over the counter" resale; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of ~~bidders companies~~ which thwarts normal bidding competitive procedures; where the amount of the purchase is too small to justify soliciting quotations competition or where a small purchase is being made and a satisfactory price is available from a previous ~~bid or quotation contract~~; where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); where a used item(s) is available on short notice and subject to prior sale.

Statutory Authority G.S. 143-53.

.1402 DOCUMENTATION

Although ~~competitive bidding competition~~ may be waived for proper cause, its use is required wherever practicable; and further, where waiver is contemplated, ~~except for small purchases, the reason(s) therefore must be documented, and be reviewed as in a canvass of bids it must be documented and reported in accordance with procedures prescribed by the SPO.~~

Statutory Authority G.S. 143-53.

.1403 DATA PROCESSING HARDWARE AND SOFTWARE

~~If competitive bidding is waived in the acquisition of data processing hardware and software, a written explanation is required from the using agency together with written comments and advice from the Director of the Division of State Information Processing Services and, where accounting functions are involved, the State Auditor. These expressions are given due consideration by the State Purchasing Officer for any recommendation he presents to the Board of Award and Secretary of Administration.~~

Statutory Authority G.S. 143-53.

SECTION .1500 - MISCELLANEOUS PROVISIONS

.1501 CONFIDENTIALITY

To promote maximum competition and to protect the public bidding competitive procedure from being used to obtain information which would normally not be available otherwise, the Division of Purchase and Contract is authorized to maintain the confidentiality of certain types of information. Such information includes ~~Dun and Bradstreet reports, bidders' financial statements and, if requested by a bidder or prospective bidder, similar personal or proprietary information; chemical formulations, manufacturing processes and other trade secrets; specific test results trade secrets, as determined by North Carolina law,~~ and like information as the ~~State Purchasing Officer SPO~~ may determine to insure the integrity of the public purchasing process.

Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

Statutory Authority G.S. 143-52; 143-53(9).

.1502 BONDS

~~Although bid bonds are not required by the Division, performance bonds may be called for at the discretion of the State Purchasing Officer.~~

Statutory Authority G.S. 143-52.

.1503 REMEDIES

~~In the event of default or other unsatisfactory performance on the part of a contractor, the Division shall take appropriate action to protect and safeguard the state's interest.~~

Statutory Authority G.S. 143-60.

.1504 PAYMENT PLANS

Purchase contracts may provide for payment over a period of time. Such instances, however, ~~shall~~ should be fully justified, kept to a ~~minimum~~, minimum and carry written prior approval of the administrative head of the agency. ~~agency and, as applicable, of the Budget Division of the Department of Administration~~ Administrative heads and governing board of agencies are responsible for seeing that statutory or other prohibitions are not violated. ~~In entering into any such agreements, the~~ The intended plan of payment is to be included in the procurement document made known to prospective bidders.

Statutory Authority G.S. 143-53.

.1505 FUNDS FROM DIFFERENT SOURCES

Unless approved otherwise, all public funds irrespective of source, whether special, federal, local, gifts, bequests,

agency may purchase any supplies, ~~materials or materials,~~ equipment or services covered by a term contract from any other sources ~~than those certified by the Secretary of Administration.~~

A term contract is normally based upon sealed ~~competitive bids~~ competition with the ~~bidding companies~~ being advised as to whose business they are competing ~~he is bidding~~ for and, if successful, whose business ~~he has~~ they have earned.

Statutory Authority G.S. 143-52; 143-55; 115C-522; 115D-58.5.

.1103 COPIES OF TERM CONTRACTS

~~State agencies and institutions and public school administrative units are furnished the necessary copies of a term contract in the form of a certification of the contract for use and guidance in preparing requisitions or in placing purchase orders.~~

Statutory Authority G.S. 143-52; 143-55.

.1104 AMENDMENTS TO CONTRACTS

~~If it should become necessary to amend, modify or cancel portions or all of existing contracts, copies of addenda shall be mailed to both the contractors and all using agencies and school units.~~

Statutory Authority G.S. 143-52; 143-55.

.1106 DISCOUNT SCHEDULES

~~Under certain special circumstances, the Division may issue a contract certification which, although not a binding contract, establishes discount schedules at which purchase of the commodities so indicated is authorized without further approval from the Division. Once established, such a certified discount schedule or other price basis may be continued for an unspecified length of time.~~

Statutory Authority G.S. 143-52; 143-55; 143-58; 143-49.

.1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

Statutory Authority G.S. 143-52; 143-49.

SECTION .1200 - PARTIAL AND MULTIPLE AWARDS

.1201 USE

Partial, progressive or multiple awards may be made by reason of insufficient funds, legislative mandates, where it is advantageous to award separately by items or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.

Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, the policy shall be to limit such awards to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care is exercised to protect the character and principles of competitive bidding competition, and dividing quantities among ~~bidders~~ companies on definite quantity requirements is not permitted unless and except as provided in the ~~request for proposals~~ procurement document.

Statutory Authority G.S. 143-53(6).

.1202 SELECTION FROM LISTS OF SUPPLIERS

~~When more than one supplier is listed, agencies and school units should determine which contract supplier can more nearly furnish the product or service to fill the particular need in question, price considered, and submit their requisition or place their purchase order accordingly.~~

Statutory Authority G.S. 143-53(6).

SECTION .1300 - SMALL PURCHASES

.1301 PROCEDURES

Procedures for making small purchases must include sufficient controls to insure proper protection of funds, provide for adequate audit trail and insure that small purchase authorizations are not used to circumvent normal purchasing practices. Basically, small purchase procedures involve the use of imprest (petty cash) funds or blanket purchase orders and may be utilized to procure supplies and services within the dollar limitations and other constraints prescribed by the SPO agency policy. They can be appropriately used to obtain small quantities of items not available under existing contracts. ~~contracts, to buy very limited quantities where the normal method would result in excessive costs in relation to the value of material, to buy sundry services or to pay freight bills.~~

~~In all small purchase procedures, agencies are to employ approved accounting practices.~~

Statutory Authority G.S. 143-53.

.1302 DOLLAR LIMITATIONS

~~Agencies are to~~ The SPO shall prescribe dollar limitations which will be applicable to individual small purchase transactions. ~~These limitations should be consistent with the purposes for which small purchase procedures have been authorized and with the accounting procedure to be utilized.~~

Statutory Authority G.S. 143-53.

SECTION .1400 - WAIVER OF COMPETITION

.1401 POLICY

Under certain conditions, and otherwise if deemed to be

in the public interest, ~~the State Purchasing Officer may recommend to the board of award that competitive bidding competition may be waived.~~ Conditions permitting waiver include but are not limited to cases where performance or price competition are not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where ~~bids have competition has~~ been solicited but no satisfactory ~~bid(s) offers~~ received; where standardization or compatibility is the overriding consideration; ~~where a donation predicated the source of supply;~~ where personal or certain professional services are required; where a particular medical product or service, or prosthetic appliance is needed; ~~where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;~~ where additional products or services are needed to complete an ongoing job or task; where products are bought for "over the counter" resale; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of ~~bidders companies~~ which thwarts normal bidding competitive procedures; where the amount of the purchase is too small to justify soliciting quotations competition or where a ~~small~~ purchase is being made and a satisfactory price is available from a previous ~~bid or quotation contract;~~ where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); where a used item(s) is available on short notice and subject to prior sale.

Statutory Authority G.S. 143-53.

.1402 DOCUMENTATION

Although ~~competitive bidding competition~~ may be waived for proper cause, its use is required wherever practicable; and further, where waiver is contemplated, ~~except for small purchases, the reason(s) therefore must be documented, and be reviewed as in a canvass of bids it must be documented and reported in accordance with procedures prescribed by the SPO.~~

Statutory Authority G.S. 143-53.

.1403 DATA PROCESSING HARDWARE AND SOFTWARE

~~If competitive bidding is waived in the acquisition of data processing hardware and software, a written explanation is required from the using agency together with written comments and advice from the Director of the Division of State Information Processing Services and, where accounting functions are involved, the State Auditor. These expressions are given due consideration by the State Purchasing Officer for any recommendation he presents to the Board of Award and Secretary of Administration.~~

Statutory Authority G.S. 143-53.

SECTION .1500 - MISCELLANEOUS PROVISIONS

.1501 CONFIDENTIALITY

To promote maximum competition and to protect the public bidding competitive procedure from being used to obtain information which would normally not be available otherwise, the Division of Purchase and Contract is authorized to maintain the confidentiality of certain types of information. Such information includes ~~Dun and Bradstreet reports, bidders' financial statements and, if requested by a bidder or prospective bidder, similar personal or proprietary information; chemical formulations, manufacturing processes and other trade secrets; specific test results~~ trade secrets, as determined by North Carolina law, and like information as the ~~State Purchasing Officer SPO~~ may determine to insure the integrity of the public purchasing process.

Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

Statutory Authority G.S. 143-52; 143-53(9).

.1502 BONDS

~~Although bid bonds are not required by the Division, performance bonds may be called for at the discretion of the State Purchasing Officer.~~

Statutory Authority G.S. 143-52.

.1503 REMEDIES

~~In the event of default or other unsatisfactory performance on the part of a contractor, the Division shall take appropriate action to protect and safeguard the state's interest.~~

Statutory Authority G.S. 143-60.

.1504 PAYMENT PLANS

Purchase contracts may provide for payment over a period of time. Such instances, however, ~~shall~~ should be fully justified, kept to a ~~minimum;~~ minimum and carry written prior approval of the administrative head of the agency. ~~agency and, as applicable, of the Budget Division of the Department of Administration~~ Administrative heads and governing board of agencies are responsible for seeing that statutory or other prohibitions are not violated. ~~In entering into any such agreements, the~~ The intended plan of payment is to be included in the procurement document made known to prospective bidders.

Statutory Authority G.S. 143-53.

.1505 FUNDS FROM DIFFERENT SOURCES

Unless approved otherwise, all public funds irrespective of source, whether special, federal, local, gifts, bequests,

receipts, fees, etc., or state appropriated, used for the ~~purchase~~ purchase, rental, lease, and lease-purchases of equipment, materials, supplies and services are to be handled under the provisions of Article 3 of Chapter 143 of the General Statutes and in accordance with procedures established pursuant thereto by the Division of Purchase and Contract. (Community Colleges and local educational administrative units are not required to use the Division of Purchase and Contract on rentals, leases and services.)

Statutory Authority G.S. 143-53; 143-60(5).

.1506 CONDITIONAL GRANTS: ETC: IN PUBLIC PURCHASING

Where a grant, donation or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be ~~is~~ fully documented and shall ~~is to~~ have prior approval of the ~~Secretary of Administration SPO~~. When a donation from private sources is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary.

Statutory Authority G.S. 143-53.

.1507 CHANGE IN CORPORATE STRUCTURE

In cases where contractors ~~suppliers~~ are involved in corporate consolidations, acquisitions or mergers, the Division of Purchase and Contract is authorized to negotiate satisfactory agreements for the transfer of contractual obligations and the continuance of ~~supply~~ contracts within the framework of the new corporate structures but with the understanding that the state's contracts are not instruments for sale and shall not be assigned.

Statutory Authority G.S. 143-53.

.1508 PURCHASES FOR ACROSS THE COUNTER RESALE

Purchases of items for "across the counter" resale ~~ordinarily~~ are not handled through the Division of Purchase and Contract. However, all purchases of items for use by state agencies, ~~and school administrative units~~ even if channeled through bookstores or other internal supply sources, including stockrooms and warehouses, are to be in accordance with regular purchase procedures rules adopted by the Secretary.

Statutory Authority G.S. 143-53; 143-60(5).

.1509 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

Every reasonable effort is made to avoid making purchases from or through employees of ~~state government or any of its agencies or of public school administrative units~~. Any agency. Prior written approval from the Secretary is required in any instances which may develop of doing

business with such personnel ~~are reported to the Secretary of Administration for action as deemed appropriate~~.

Statutory Authority G.S. 143-53; 143-60(5).

.1510 USE OF STATE PURCHASING POWER FOR PRIVATE GAIN

The purchasing power of the state is not to be used for private advantage or gain. Purchases under contracts made by the state, except those in accordance with G.S. 143-58.1 are not to be allowed for personal use out of private funds nor are agencies ~~or institutions~~ to place orders for articles for ownership by employees or other individuals.

Statutory Authority G.S. 143-53; 143-58.1.

.1511 ANTITRUST VIOLATIONS

In instances of identical bidding offers or where there are otherwise indications of ~~collusive bidding~~ collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the state's best interests. Instances of suspected antitrust violation are reported to appropriate law enforcement authorities.

In submitting bids offers to the Division, each ~~bidding~~ company must certify under penalty of perjury that his bid ~~their offer~~ has ~~not~~ been arrived at competitively and without ~~collusively~~ collusion and that he has ~~they have~~ not violated any federal or North Carolina antitrust laws.

Statutory Authority G.S. 143-53; 143-54.

.1512 AVAILABILITY OF SERVICES TO CERTAIN NON-STATE AGENCIES

The Division of Purchase and Contract makes purchasing services available to ~~charitable nonprofit hospitals, local nonprofit community sheltered workshops, political subdivisions, volunteer fire departments and rescue squads~~ certain non-state agencies as defined by G.S. 143-49 and 143-49.1. ~~Such services are limited to the expenditure of public funds, and are rendered under rules and regulations adopted by the Secretary of Administration. Services to volunteer fire departments and rescue squads concern only gasoline, oil and tires. Department of Administration rules provide that the services be made available in a gradual, orderly and effective manner.~~ Necessarily, this is affected by budgetary allowances for personnel, time and related costs.

The Division inquires periodically among non-state agencies ~~hospitals and political subdivisions of the state~~ to determine the types of items available from state term contracts for which they would want the Division to contract for them. Based on this information, the Division develops an implementing schedule of items together with the times for handling them and the methods of purchasing or contracting. The Division has final decision as to items included on the schedule.

~~Any hospital or subdivision may elect individually to participate in the purchase of any particular items or groups~~

of items provided in the schedule in the following manner: for indefinite quantity contracts, by requesting the Division prior to the invitation for bids to include its requirements in the next invitation; and, when definite quantity purchases are handled, by requisitioning in the same manner as state agencies.

Where non-state agencies covered by this provision a hospital or subdivision elects to participate in a contract, ~~contract or purchase~~, its resulting contractual duties, obligations and responsibilities are the same as those required for state agencies and institutions.

~~Hospitals and subdivisions~~ Non-state agencies covered by this provision shall make payments to suppliers in a timely manner and in accordance with the terms of the contracts, ~~contract and, for data and statistical purposes, shall furnish the Division a copy of each order or release issued under such contracts.~~

As may be practicable in terms of personnel, time and costs, the Division may offer its services, in addition to purchasing and contracting, to ~~hospitals and subdivisions~~ non-state agencies with respect to preparation of specifications, contracts for services, inspection and testing of products, expediting deliveries and advising as to market conditions.

Statutory Authority G.S. 143-49(6); 143.49.1.

.1513 COOPERATIVE PURCHASING

Where an agency ~~of the state or school administrative unit~~ is a participant in an authorized cooperative project with another governmental activity or with a charitable non-profit organization, ~~corporation~~, goods and services necessary to the project shall be acquired according to the state's customary procedures; provided, however, that if the interest of the state would be better served by one of the following acquisition methods, making acquisition on behalf of such governmental activity or corporation, or by authorizing acquisition on the state's behalf under the provisions of Article 8 of Chapter 143 of the General Statutes, the State Purchasing Officer SPO may do so with prior approval of the ~~Secretary of Administration~~ Secretary:

- (1) by making acquisition on behalf of such government activity or charitable non-profit organization;
or
- (2) by authorizing acquisition on the State's behalf under the provisions of G.S. 143, Article 8; or
- (3) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given by the Secretary to the differences in purchasing rules, regulations and procedures of the contracting entity.

Statutory Authority G.S. 143-49; 143-53; 143-60.

.1516 ADVERTISING

No contract shall be used for any advertising by the

contractor without prior written approval of the Division of Purchase and Contract.

Statutory Authority G.S. 143-53; 143-60.

.1517 GOODS REQUIRING IMMEDIATE ACCEPTANCE

In the purchase of items which are subject to rapid price fluctuation or immediate acceptance, the SPO may award contracts as deemed advisable provided that each such action is made a matter of record and reported promptly to the Board of Award and Secretary.

Statutory Authority G.S. 143-52; 143-49.

.1518 BOARD OF AWARD

When the dollar value of a contract for the purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the amount prescribed by the Secretary, the Board of Award (Board) shall canvass the bids (review the recommended action) and submit their recommendation (award, cancellation, approval, negotiation, etc.) to the Secretary. The Secretary either concurs with the recommendation of the Board by awarding contracts or approving other recommended action, or takes other appropriate action as deemed necessary. The Advisory Budget Commission designates two or more members to serve as a Board. The Secretary further designates the following persons who can serve in this capacity in the absence of member(s) of the Commission:

Assistant Superintendent for Financial Services,

Department of Public Instruction;

State Treasurer;

Secretary of State;

Representative from Attorney General's Office;

All Council of State members with the exception of the Governor.

These alternate members shall not further delegate this responsibility. The Board normally meets weekly.

Recommendations for the award of contracts are reviewed only by the Division of Purchase and Contract, the Board, and the Secretary. Records are kept of each meeting and made public by the SPO unless the SPO determines a record needs to be confidential due to the nature of the purchase (Ex: Law enforcement surveillance equipment). The Secretary may elect to proceed with the award of contracts without the recommendation of the Board in cases of emergencies or in the event that a Board is not available. In such cases, contracts awarded without Board review will be reported to a subsequent Board as a matter of record.

Exemptions: Purchases not normally presented to the Board or to the Secretary for approval; exemption by statute, by Special Delegation, or where one agency is buying from another agency or through State or Federal Surplus.

Statutory Authority G.S. 143-53; 143-318.18(10).

receipts, fees, etc., or state appropriated, used for the ~~purchase purchase, rental, lease, and lease-purchases~~ of equipment, materials, supplies and services are to be handled under the provisions of Article 3 of Chapter 143 of the General Statutes and in accordance with procedures established pursuant thereto by the Division of Purchase and Contract. (Community Colleges and local educational administrative units are not required to use the Division of Purchase and Contract on rentals, leases and services.)

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business with such personnel ~~are reported to the Secretary of Administration for action as deemed appropriate.~~

Statutory Authority G.S. 143-53; 143-60(5).

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The purchasing power of the state is not to be used for private advantage or gain. Purchases under contracts made by the state, except those in accordance with G.S. 143-58.1 are not to be allowed for personal use out of private funds nor are agencies ~~or institutions~~ to place orders for articles for ownership by employees or other individuals.

Statutory Authority G.S. 143-53; 143-58.1.

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The Division inquires periodically among non-state agencies hospitals and political subdivisions of the state to determine the types of items available from state term contracts for which they would want the Division to contract for them. Based on this information, the Division develops an implementing schedule of items together with the times for handling them and the methods of purchasing or contracting. The Division has final decision as to items included on the schedule.

Any hospital or subdivision may elect individually to participate in the purchase of any particular items or groups

~~of items provided in the schedule in the following manner: for indefinite quantity contracts, by requesting the Division prior to the invitation for bids to include its requirements in the next invitation; and, when definite quantity purchases are handled, by requisitioning in the same manner as state agencies.~~

Where non-state agencies covered by this provision a ~~hospital or subdivision~~ elects to participate in a contract, ~~contract or purchase~~, its resulting contractual duties, obligations and responsibilities are the same as those required for ~~state agencies and institutions~~.

~~Hospitals and subdivisions~~ Non-state agencies covered by this provision shall make payments to suppliers in a timely manner and in accordance with the terms of the contracts, ~~contract and, for data and statistical purposes, shall furnish the Division a copy of each order or release issued under such contracts.~~

As may be practicable in terms of personnel, time and costs, the Division may offer its services, in addition to purchasing and contracting, to ~~hospitals and subdivisions~~ non-state agencies with respect to preparation of specifications, contracts for services, inspection and testing of products, expediting deliveries and advising as to market conditions.

Statutory Authority G.S. 143-49(6); 143.49.1.

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Where an agency ~~of the state or school administrative unit~~ is a participant in an authorized cooperative project with another governmental activity or with a charitable non-profit ~~organization, corporation,~~ goods and services necessary to the project shall be acquired according to the state's customary procedures; provided, however, that if the interest of the state would be better served by one of the following acquisition methods, making acquisition on behalf of such governmental activity or corporation, or by authorizing acquisition on the state's behalf under the provisions of Article 8 of Chapter 143 of the General Statutes, the State Purchasing Officer SPO may do so with prior approval of the ~~Secretary of Administration.~~ Secretary:

- (1) by making acquisition on behalf of such government activity or charitable non-profit organization;
or
- (2) by authorizing acquisition on the State's behalf under the provisions of G.S. 143, Article 8; or
- (3) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given by the Secretary to the differences in purchasing rules, regulations and procedures of the contracting entity.

Statutory Authority G.S. 143-49; 143-53; 143-60.

.1516 ADVERTISING

No contract shall be used for any advertising by the

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Statutory Authority G.S. 143-53; 143-60.

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In the purchase of items which are subject to rapid price fluctuation or immediate acceptance, the SPO may award contracts as deemed advisable provided that each such action is made a matter of record and reported promptly to the Board of Award and Secretary.

Statutory Authority G.S. 143-52; 143-49.

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Assistant Superintendent for Financial Services,

Department of Public Instruction;

State Treasurer;

Secretary of State;

Representative from Attorney General's Office;

All Council of State members with the exception of the Governor.

These alternate members shall not further delegate this responsibility. The Board normally meets weekly.

Recommendations for the award of contracts are reviewed only by the Division of Purchase and Contract, the Board, and the Secretary. Records are kept of each meeting and made public by the SPO unless the SPO determines a record needs to be confidential due to the nature of the purchase (Ex: Law enforcement surveillance equipment). The Secretary may elect to proceed with the award of contracts without the recommendation of the Board in cases of emergencies or in the event that a Board is not available. In such cases, contracts awarded without Board review will be reported to a subsequent Board as a matter of record.

Exemptions: Purchases not normally presented to the Board or to the Secretary for approval; exemption by statute, by Special Delegation, or where one agency is buying from another agency or through State or Federal Surplus.

Statutory Authority G.S. 143-53; 143-318.18(10).

.1519 PROTEST PROCEDURES

A party wanting to protest a contract award handled by the Division of Purchase and Contract must submit a written request for a protest meeting to the SPO which must be received in the Division of Purchase and Contract within 30 consecutive calendar days from the date of the protested contract award. This letter must contain specific sound reasons and any supporting documentation for why the party is protesting the award or the protest will be promptly rejected. If the SPO can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the SPO will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The SPO will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the SPO shall be the final administrative review.

Statutory Authority G.S. 150B-2; 150B-22; 150B-23; 143-53.

.1520 DEFAULT PROCEEDINGS; DEBARMENT

The SPO, who may consult with the Board of Award, may find a contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the SPO can take action, immediate if necessary, to purchase the needed products or services on the open market and charge any additional cost for the product or service and expense for doing so to the defaulting contractor. (If there was a performance bond required of the company as part of the contract, it can be redeemed with the cash proceeds going to the State.) In addition, that company may be removed from all mailing lists and debarred from doing business with any agency, for a period of time at the discretion of the SPO. This does not limit any other remedies that may be available to the State or agency.

Statutory Authority G.S. 143-49; 143-52; 143-60.

.1521 FAITHFUL PERFORMANCE

A bond, or other suitable means, may be required of the contractor at their expense and in the discretion of the State Purchasing Officer.

Statutory Authority G.S. 143-52.

SECTION .1600 - EXEMPTIONS: EMERGENCIES AND DELEGATIONS

.1601 EXEMPTIONS

Unless directed otherwise by the Secretary, Secretary of Administration it is not mandatory that published books, manuscripts and like material and perishable articles such as fresh meats for the items and services listed in this Rule to

be purchased through the Division of Purchase and Contract. Where such purchases are made directly by using agencies, however, competitive bids are competition is required wherever possible possible, unless a small purchase is being made. The Secretary of Administration has directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract. The printing of Supreme Court reports is exempted from handling through the Division of Purchase and Contract. The purchase of liquor is not handled through the Division of Purchase and Contract.

- (1) purchase of liquor;
- (2) printing of Supreme Court reports is exempted;
- (3) perishable articles such as fresh meats;
- (4) published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like material;
- (5) services provided by individuals by direct employment contracts with the state;
- (6) public utility services (gas, water and electricity);
- (7) telephone, telegraph and cable services furnished by those companies;
- (8) services provided which are subject to published tariff rates as established by the Interstate Commerce Commission;
- (9) services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
- (10) contracts for construction of and structural changes to public buildings;
- (11) personal services provided by a professional individual on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service;
- (12) services provided directly by an agency of the state, federal or local government, or their employees when performing the service as a part of their normal governmental function;
- (13) In addition to products and services exempted by Statute, the SPO may exempt certain products and services provided that the SPO makes findings:
 - (a) that competition will not enhance the price that the State would receive for the product or service; and
 - (b) that competition will not enhance the quality of the product or service that the State would receive.

The Secretary has directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract, if over their

normal delegated dollar amount.

Statutory Authority G.S. 143-53; 143-56; 143-62; 7A-6(B).

.1602 EMERGENCIES

The ~~State Purchasing Officer~~ SPO may make or authorize purchases in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work; while emergencies are defined generally as situations which endanger lives, property or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchases or rental of equipment, supplies, materials, printing or services.

When circumstances require such action, verbal approval is to be obtained from the Division of Purchase and Contract if time permits. Subsequently, whether or not such prior approval was possible, the circumstances must be documented and reported in accordance with procedures prescribed by the SPO in writing to the Division, to be reported as in cases of canvassing bids and awarding contracts and made a matter of record.

Statutory Authority G.S. 143-57; 143-60.

.1603 DELEGATIONS

The ~~State Purchasing Officer~~ SPO may authorize by general delegation (see Rule .0401 of this Subchapter) or special delegation (see below) any state agency, ~~community college, technical institute or local board of education~~ to purchase directly such supplies, materials, equipment or services as he may designate, provided that:

- (1) Where available, items or their functional equivalents are obtained in accordance with established state contracts;
- (2) ~~Items which are purchased by schedule are consolidated and forwarded to the Division according to the established dates and schedules (monthly, quarterly, etc.);~~
- (2) (3) Agency quotation forms, general conditions of purchase and purchase order forms are subject to approval by the Division;
- (4) ~~No indefinite quantity contracts or price agreements are entered into without specific prior approval by the Division;~~
- (3) (5) Copies of all agency purchase orders or like information are forwarded as requested to the Division, giving the basis for the purchase (state contract, local quotation, etc.);
- (4) (6) In all cases, applicable legal requirements and good purchasing practices are followed, including obtaining reasonable and adequate competition where available available, unless a small purchase is being made, with quotation made a matter of ~~record- record~~;

- (5) Delegations may be subject to certain dollar limitations, guidelines and conditions as determined by the SPO;

- (6) Public advertisement is not required unless made a condition of the delegation.

~~In such cases, public advertisement is not required unless made a condition of the authorization. Every such authorization is in writing, made a matter of record and subject to approval of the Secretary of Administration. Such delegation cannot be contrary to the intent of any existing contract for the same or similar goods or services. Further, while not limited as to expenditure, such delegation is confined to items and quantities which, by their nature or circumstance such perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. The SPO may authorize, by special delegation, any agency to purchase certain items and quantities, or services without limitation as to expenditure. Such delegation is normally confined, but not limited to, items and quantities, or services which by their nature or circumstance, such as perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. Every such delegation shall be in writing and made a matter of record.~~

~~The SPO Division of Purchase and Contract, in its discretion, may require that proposals offers received under such delegations be sent to it the Division for determination of the successful bidder company.~~

Approval of purchases by public school administrative units as provided under General Statute 115C-522 is based upon purchases being made in accordance with the provisions of Article 3 of Chapter 143.

The Division of Purchase and Contract periodically reviews its delegations of purchase to ascertain the availability of these supplies, materials, equipment or services and their continued suitability for delegation.

Statutory Authority G.S. 143-53.

SECTION .1700 - PURCHASES FROM NORTH CAROLINA DEPARTMENT OF CORRECTION

.1701 AUTHORIZATION

~~The division of purchase and contract authorizes state agencies and institutions to~~ Agencies shall purchase products from the North Carolina Department of Correction ~~prison enterprises according to availability, suitability, quality and price as provided by statute.~~

Statutory Authority G.S. 148-70; 143-53; 143-59.

.1702 NO COMPETITIVE BIDDING

The Division's procedures do not place the purchase of prison products under ~~competitive bidding~~ competition against private industry.

.1519 PROTEST PROCEDURES

A party wanting to protest a contract award handled by the Division of Purchase and Contract must submit a written request for a protest meeting to the SPO which must be received in the Division of Purchase and Contract within 30 consecutive calendar days from the date of the protested contract award. This letter must contain specific sound reasons and any supporting documentation for why the party is protesting the award or the protest will be promptly rejected. If the SPO can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the SPO will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The SPO will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the SPO shall be the final administrative review.

Statutory Authority G.S. 150B-2; 150B-22; 150B-23; 143-53.

.1520 DEFAULT PROCEEDINGS; DEBARMENT

The SPO, who may consult with the Board of Award, may find a contractor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the SPO can take action, immediate if necessary, to purchase the needed products or services on the open market and charge any additional cost for the product or service and expense for doing so to the defaulting contractor. (If there was a performance bond required of the company as part of the contract, it can be redeemed with the cash proceeds going to the State.) In addition, that company may be removed from all mailing lists and debarred from doing business with any agency, for a period of time at the discretion of the SPO. This does not limit any other remedies that may be available to the State or agency.

Statutory Authority G.S. 143-49; 143-52; 143-60.

.1521 FAITHFUL PERFORMANCE

A bond, or other suitable means, may be required of the contractor at their expense and in the discretion of the State Purchasing Officer.

Statutory Authority G.S. 143-52.

SECTION .1600 - EXEMPTIONS: EMERGENCIES AND DELEGATIONS

.1601 EXEMPTIONS

Unless directed otherwise by the Secretary, Secretary of Administration it is not mandatory that published books, manuscripts and like material and perishable articles such as fresh meats for the items and services listed in this Rule to

be purchased through the Division of Purchase and Contract. Where such purchases are made directly by using agencies, however, competitive bids are competition is required wherever possible possible, unless a small purchase is being made. The Secretary of Administration has directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract. The printing of Supreme Court reports is exempted from handling through the Division of Purchase and Contract. The purchase of liquor is not handled through the Division of Purchase and Contract.

- (1) purchase of liquor;
- (2) printing of Supreme Court reports is exempted;
- (3) perishable articles such as fresh meats;
- (4) published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like material;
- (5) services provided by individuals by direct employment contracts with the state;
- (6) public utility services (gas, water and electricity);
- (7) telephone, telegraph and cable services furnished by those companies;
- (8) services provided which are subject to published tariff rates as established by the Interstate Commerce Commission;
- (9) services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
- (10) contracts for construction of and structural changes to public buildings;
- (11) personal services provided by a professional individual on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service;
- (12) services provided directly by an agency of the state, federal or local government, or their employees when performing the service as a part of their normal governmental function;
- (13) In addition to products and services exempted by Statute, the SPO may exempt certain products and services provided that the SPO makes findings:
 - (a) that competition will not enhance the price that the State would receive for the product or service; and
 - (b) that competition will not enhance the quality of the product or service that the State would receive.

The Secretary has directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract, if over their

normal delegated dollar amount.

Statutory Authority G.S. 143-53; 143-56; 143-62; 7A-6(B).

.1602 EMERGENCIES

The ~~State Purchasing Officer~~ SPO may make or authorize purchases in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work; while emergencies are defined generally as situations which endanger lives, property or the continuation of a vital program and which can be rectified only by immediate on-the-spot purchases or rental of equipment, supplies, materials, printing or services.

When circumstances require such action, verbal approval is to be obtained from the Division of Purchase and Contract if time permits. Subsequently, whether or not such prior approval was possible, the circumstances must be documented and reported in accordance with procedures prescribed by the SPO in writing to the Division, to be reported as in cases of canvassing bids and awarding contracts and made a matter of record.

Statutory Authority G.S. 143-57; 143-60.

.1603 DELEGATIONS

The ~~State Purchasing Officer~~ SPO may authorize by general delegation (see Rule .0401 of this Subchapter) or special delegation (see below) any ~~state agency, community college, technical institute or local board of education~~ to purchase directly such supplies, materials, equipment or services as he may designate, provided that:

- (1) Where available, items or their functional equivalents are obtained in accordance with established state contracts;
- (2) ~~Items which are purchased by schedule are consolidated and forwarded to the Division according to the established dates and schedules (monthly, quarterly, etc.);~~
- (2) (3) Agency quotation forms, general conditions of purchase and purchase order forms are subject to approval by the Division;
- (4) ~~No indefinite quantity contracts or price agreements are entered into without specific prior approval by the Division;~~
- (3) (5) Copies of all agency purchase orders or like information are forwarded as requested to the Division, giving the basis for the purchase (state contract, local quotation, etc.);
- (4) (6) In all cases, applicable legal requirements and good purchasing practices are followed, including obtaining reasonable and adequate competition where available available, unless a small purchase is being made, with quotation made a matter of ~~record.~~ record;

(5) Delegations may be subject to certain dollar limitations, guidelines and conditions as determined by the SPO;

(6) Public advertisement is not required unless made a condition of the delegation.

~~In such cases, public advertisement is not required unless made a condition of the authorization. Every such authorization is in writing, made a matter of record and subject to approval of the Secretary of Administration. Such delegation cannot be contrary to the intent of any existing contract for the same or similar goods or services. Further, while not limited as to expenditure, such delegation is confined to items and quantities which, by their nature or circumstance such perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. The SPO may authorize, by special delegation, any agency to purchase certain items and quantities, or services without limitation as to expenditure. Such delegation is normally confined, but not limited to, items and quantities, or services which by their nature or circumstance, such as perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. Every such delegation shall be in writing and made a matter of record.~~

The ~~SPO Division of Purchase and Contract, in its discretion,~~ may require that proposals offers received under such delegations be sent to it the Division for determination of the successful bidder company.

Approval of purchases by public school administrative units as provided under General Statute 115C-522 is based upon purchases being made in accordance with the provisions of Article 3 of Chapter 143.

The Division of Purchase and Contract periodically reviews its delegations of purchase to ascertain the availability of these supplies, materials, equipment or services and their continued suitability for delegation.

Statutory Authority G.S. 143-53.

SECTION .1700 - PURCHASES FROM NORTH CAROLINA DEPARTMENT OF CORRECTION

.1701 AUTHORIZATION

~~The division of purchase and contract authorizes state agencies and institutions to~~ Agencies shall purchase products from the North Carolina Department of Correction ~~prison enterprises according to availability, suitability, quality and price as provided by statute.~~

Statutory Authority G.S. 148-70; 143-53; 143-59.

.1702 NO COMPETITIVE BIDDING

The Division's procedures do not place the purchase of prison products under ~~competitive bidding~~ competition against private industry.

Statutory Authority G.S. 148-70.

.1703 PURCHASES IN CONFLICT WITH STATE CONTRACTS

~~Products of the prison enterprises are not to be purchased in conflict with similar products which might be included on established state contracts. If a requirement is covered by an established contract, the order must be placed with the supplier listed thereon. In some instances, the prison enterprises is designated as the supplier on an established state contract.~~

Statutory Authority G.S. 148-70; 143-53(11).

SECTION .1800 - INVENTORIES AND STORES

.1803 SUPERVISION

The Division of Purchase and Contract has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

Statutory Authority G.S. 143-49(4); 143-60.

.1804 PERSONAL PROPERTY INVENTORY PLAN

The Division of Purchase and Contract has the responsibility of establishing policies for inventory management and control over storerooms and stores operated by State government.

Statutory Authority G.S. 143-49(4); 143-60.

SECTION .1900 - RECORDS OF THE DIVISION OF PURCHASE AND CONTRACT

.1901 RECORD MAINTENANCE

~~Except where rules of the Division of Purchase and Contract provide State law provides to the contrary, after the award of a contract, the records of the Division are available as described below public documents. Retention schedules of both active and inactive files are established by the archives and records section of the Department of Cultural Resources. Purchase files should be maintained for a period of five years after the expiration date of the contract.~~

Statutory Authority G.S. 143B-10(f).

.1903 FILES

Each requisition received by the Division of Purchase and Contract is assigned a unique, sequential control number and is placed in a pre-numbered folder. This number then becomes the file number for the requisition and subsequent documents bid or quote number and the purchase order number, if one is issued by the Division.

~~All documents related to the bid or quote or purchase~~

~~order will be filed in the pre-numbered folder. The file includes the requisition, worksheet, mailing list, bid responses offers, tabulation, related correspondence, and the certification of award to the successful contractor bidder as well as the purchase order, if one is issued by Purchase and Contract.~~

~~Certain information may be classified as confidential under 1 NCAC 5B .0309 during the period of evaluation, and under 1 NCAC 5B .1501 as the State Purchasing Officer may determine. All other material After award of contract all material, except confidential information, in the file is open to interested persons during normal office hours, may be hand copied, or copies will be furnished following payment of reasonable costs in accordance with fees established by the Department.~~

~~The files are kept on file at the Division of Purchase and Contract for a period of one year. Thereafter, they are available from the State Records Center for a period of four years.~~

Statutory Authority G.S. 143B-10(f).

.1906 APPLICATIONS FOR ADDITION TO MAILING LIST

~~Applications of bidders included for inclusion on mailing lists are generally retained for five two years.~~

Statutory Authority G.S. 143B-10(f).

.1907 TERM CONTRACTS

A copy of each current and expired term contract may be seen upon request if still retained in the Division of Purchase and Contract or the State Records Center.

Statutory Authority G.S. 143B-10(f).

.1909 CANVASSING BID FILES

A summary of actions taken in canvassing bids and awarding contracts may be seen is available upon request, request, if still retained in the Division of Purchase and Contract or the State Records Center.

Statutory Authority G.S. 143B-10(f).

SUBCHAPTER 5C - SURPLUS PROPERTY

SECTION .0100 - GENERAL PROVISIONS

Editor's Note: 1 NCAC 4G .0100 - .0500 have been transferred to 1 NCAC 5C .0100 - .0500, Effective November 1, 1995.

.0101 RESPONSIBILITY

The Department of Administration is responsible for administering the sale and disposal of surplus within state government. The administration of this program has been delegated by the Secretary of Administration to the SPO

~~Auxiliary Services Director.~~

Statutory Authority G.S. 143-49; 143-64.1 to 143-64.5.

.0102 ORGANIZATION

There are two agencies within the Division of Purchase and Contract ~~Auxiliary Services~~ which administer the state's surplus property program. The state agency for state surplus property is responsible only for state government surplus property. The state agency for federal surplus property is responsible for disposal of federal surplus property.

Statutory Authority G.S. 143-49; 143-64.1 to 143-64.5.

SECTION .0200 - STATE SURPLUS PROPERTY

.0201 TRANSFER OR SALE/WRITTEN AUTHORIZATION

No state department, institution or agency shall transfer or sell any personal property owned by the state without written authorization of the SPO ~~Auxiliary Services Director~~.

Statutory Authority G.S. 143-49.

.0202 NOTIFICATION OF SURPLUS

State agencies notify the state surplus property agency of the Division of Purchase and Contract ~~Auxiliary Services~~ of any personal property which is surplus to their needs by properly completing the equipment disposal form. In doing so, agencies may suggest a minimum dollar value which they desire to receive from any disposition made, but the suggestion shall not govern.

Statutory Authority G.S. 143-49.

.0203 TRADE-IN

Under some conditions for some types of items it may be more advantageous to the state to seek to trade in used property against the purchase of a replacement. Before an agency makes any final decision to trade in an item, the SPO ~~Auxiliary Services Director~~ should be contacted for guidance.

Where a division requests bids for the purchase of a new item and it appears that a trade-in may be advantageous, the solicitation contains a provision requesting that a trade-in allowance be offered and prior approval by the SPO ~~Director of Auxiliary Services~~ is required.

Statutory Authority G.S. 143-49.

.0204 ORDER OF PRIORITY IN DISPOSITION

In the disposition of state surplus property, the division customarily gives first priority to transfer to other agencies of the state. Second priority is given to transfer to political subdivisions and qualified non-profit organizations within the

state. Property thus transferred must be for the use of the recipient agency, political subdivision or qualified non-profit organization with title being in such agency, unit or organization. In making such transfers, the price shall be one mutually agreeable to the owning agency and the recipient and approved by the division as being a fair market price based where possible on previous sales of similar products in the open market. State surplus property transferred to any political subdivision or non-profit organization must be retained by the unit or organization not less than 12 months before disposal, unless an earlier disposition is specifically authorized by the SPO ~~Auxiliary Services Director~~.

Statutory Authority G.S. 143-49.

.0208 DISPOSAL BY OTHER MEANS

Where state surplus property can be sold more advantageously by means other than sealed competitive bidding, either because of the nature of the property or the existence of unusual circumstances, the SPO ~~Director of Auxiliary Services~~ may utilize whatever means are considered in the state's interest.

Statutory Authority G.S. 143-49.

.0211 EXECUTION OF BIDS

The executor of a bid must sign his bid in pen or pencil in the space provided on the bid form and also print his name below the signature. Additionally, the executor must complete in the space provided, in pen, pencil, stamp, or gummed sticker, his full name and/or company name, social security no. or federal identification no., address, city, state, zip and phone number.

Statutory Authority G.S. 143-49.

.0217 FAILURE TO PAY

If the purchaser fails to pay in full for the property within 15 calendar days from the date of award, the property purchased will be promptly resold in such manner as the state may elect, and the defaulting purchaser charged with loss to the state, if any, together with all expense of the sale. If the purchaser does not remove the property purchased within 15 calendar days from the date of award, the Division of Purchase and Contract ~~General Services Division~~ reserves the right to retain the purchase price and resell the property a second time and retain all proceeds therefrom.

Statutory Authority G.S. 143-49.

.0218 BOND

The Division of Purchase and Contract ~~General Services Division~~ reserves the right to require any bidder presently or previously in default to post a bond prior to bidding or prior to consideration of his bid.

Statutory Authority G.S. 143-49.

.0220 TIMBER SALES AND PINESTRAW SALES

Timber and pine straw owned by state agencies are customarily disposed of by the state surplus property agency on a sealed competitive bid basis. A request for bid forms will be sent to any interested party upon request.

Timber and pine straw are generally sold on a lump-sum basis with payment to be made in full at the time of execution of a contract; and a high bidder may, in the discretion of the SPO Director of General Services, be required to post bond prior to award.

Statutory Authority G.S. 143-49.

.0222 PAYMENT

All payments must be in the form of cashier's or certified check or postal money order. Payment in full for all property purchased must be made within 15 calendar 40 working days from date of award, and all property purchased must be removed within 15 30 calendar days from date of award. No property may be removed by the purchaser prior to full payment of the purchase price. The terms bid opening date and date of award are considered to be one in the same. ~~Working days are considered to be Monday thru Friday (holidays excluded) while calendar days are actual.~~

Statutory Authority G.S. 143-49.

SECTION .0300 - STATE SURPLUS PROPERTY FORMS

.0303 NOTIFICATION: SALE OF SURPLUS PROPERTY

Form PC-37 is used by State Surplus Property ~~Auxiliary Services~~ to notify the agency and successful bidder of the sale and/or disposal of state surplus property.

Statutory Authority G.S. 150B-11.

.0304 NOTIFICATION: AWARD OF SURPLUS PROPERTY

Form PC-38 is used by State Surplus Property ~~General Services~~ to notify the successful bidder and agency of the award of bid on state surplus property. Bidders need not be present at bid opening.

Statutory Authority G.S. 150B-11.

SECTION .0400 - FEDERAL SURPLUS PROPERTY

.0403 COMPLIANCE AND UTILIZATION

(a) The state agency shall effect utilization reviews for compliance by donees with the terms, conditions, reservations and restrictions imposed by the Federal and state Government for any item of property having a unit acquisition

cost of five thousand dollars (\$5,000) three-thousand dollars (\$3,000) or more and any passenger motor vehicle.

(b) Compliance reviews shall include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property.

(c) Compliance reviews shall also include a survey of donee compliance with the statutory requirement that items of donated property acquired by the donee be placed into use within one year of acquisition and used for one year thereafter. However, for items with a unit acquisition cost of five thousand dollars (\$5,000) three-thousand dollars (\$3,000) or more and passenger motor vehicles, regardless of acquisition cost, except vessels 50 feet or more in length and aircraft with a unit acquisition cost of five thousand dollars (\$5,000) three-thousand dollars (\$3,000) or more, the following restrictions shall apply:

- (1) Property shall be used only for the purpose(s) for which acquired and for no other purpose(s).
- (2) There shall be a period of restriction which will expire after such property has been used for the purpose(s) for which acquired for a period of 18 months, after being placed in use, on all passenger motor vehicles and other items of property with a unit acquisition cost of five thousand dollars (\$5,000) three-thousand dollars (\$3,000) or more, except for such items as major equipment on which the state agency may designate a further period of restriction of up to three years and so indicates on the distribution document.
- (3) In the event property is not so used or handled as required above, but federal restrictions have expired, title and right to the possession of such property shall, at the option of the state agency, revert to the State of North Carolina and the donee shall release such property to such person as the state agency shall direct.

Statutory Authority G.S. 143-64.1 to 143-64.5.

SECTION .0500 - FEDERAL SURPLUS PROPERTY FORMS

.0508 AGREEMENT AND ACKNOWLEDGEMENT OF TRANSFER

Form ~~PC-FS-104 AA-123A~~ is used in the transfer of property to eligible donees ~~which has a government acquisition cost of less or more than three thousand dollars (\$3,000), except passenger vehicles.~~

Statutory Authority G.S. 150B-11.

.0509 AGREEMENT AND ACKNOWLEDGEMENT OF TRANSFER

~~Form AA-123B is used in the transfer of property to eligible donees which has a government acquisition cost of three thousand dollars (\$3,000) or more and all passenger vehicles.~~

Statutory Authority G.S. 150B-11.

SUBCHAPTER 5D - CONSULTANT CONTRACTS

SECTION .0100 - CONSULTANTS

.0101 APPLICABILITY

The Rules in this Section and Section .0200 are applicable to all agencies ~~of State government except local educational administrative units and Community Colleges.~~

The Rules in this Section and Section .0200 do not apply to contracts for attorneys employed by the North Carolina Department of Justice or by other agencies of state government pursuant to the provisions of G.S. 147-17, to contracts for physicians or doctors providing direct medical care for the clientele of any state agency, to contracts entered into by the General Assembly or its special study commissions, to contracts entered into by the Institute of Government to provide or obtain consulting or advisory services, to contracts to provide services without compensation to the provider of the services or to his employing agency or to contracts entered into by a state agency pursuant to specific statutory authority which provides, in the opinion of the Governor or his designee, a specific alternative procedure for the selection and award of such contracts.

Statutory Authority G.S. 143, Article 3C; 147-17.

.0102 DEFINITION

~~Services of a consultant of an advisory nature~~ Consultant services shall mean work or task(s) performed by State ~~state~~ employees or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services. This includes but is not limited to the organization, planning, directing, control, evaluation and operation of a program, agency or department. ~~Service contracts (as defined in Rule .0303 of this Subchapter) which are not of a consultant or advisory nature (as defined in this Rule) shall be subject to the procedures of Sections .0300, .0400, and .0500 of this Subchapter.)~~

State funds shall mean any and all money appropriated by the General Assembly of North Carolina or monies collected by or for the State ~~state~~ or any agency thereof pursuant to the authority granted in any of its laws.

Statutory Authority G.S. 143, Article 3C; 143-1.

SECTION .0200 - CONTRACTING PROCEDURE FOR CONSULTANTS

.0201 GENERAL STATEMENT OF POLICY

It is the policy of the State ~~state~~ that ~~state~~ agencies shall acquire consultant services only after it is determined that the function for which the consultant is retained cannot be

reasonably accomplished by employees of the agency seeking such services; that the use of a consultant is reasonably necessary to the proper operation of the ~~state~~ agency; that the estimated cost is reasonable as compared with the likely benefits or results; that funds are available for such contract; that the contract is in the best interest of the state; and that all rules and regulations of the Division of Purchase and Contract have been or will be complied with, all as determined by the Governor or his designee and the Division of Purchase and Contract. In acquiring such services, competition shall be sought whenever practicable as determined by the Division of Purchase and Contract. No agency ~~of state government~~ which is subject to the provisions of these rules may contract for services of a consultant nature except in accordance with the provisions of these rules.

Statutory Authority G.S. 143, Article 3C.

.0202 CONSULTING CONTRACTS WITH OTHER AGENCIES

It is the policy of the State ~~state~~ that whenever possible consultant services shall be obtained from other ~~state~~ agencies when the services available from other ~~state~~ agencies substantially meet the reasonable specifications of the requesting agency.

Statutory Authority G.S. 143, Article 3C.

.0203 REQUESTS FOR AUTHORITY TO CONTRACT WITH CONSULTANTS

Before receiving authorization to seek consultant services, an agency shall submit to the Division of Purchase and Contract written justification for its request for consultant services. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, what potential sources of consultant services if any the agency has identified and such additional information as the Governor or the Division of Purchase and Contract may require. If the agency is requesting authority to contract for consulting services outside of State ~~state~~ government, it shall also detail what potential sources of those services exist within State ~~state~~ government and explain why the desired services were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the agency head or his designee.

Statutory Authority G.S. 143-64.21; 143-64.22.

.0204 REVIEW OF AGENCY REQUESTS

The documents submitted by agencies requesting authority

to retain consultants will be reviewed by the Division of Purchase and Contract. Upon completion of this review the requesting agency will be advised, subject to such conditions as may be prescribed by the Governor or his designee, to:

- (1) ~~canvass~~ canvass additional sources within state government; or
- (2) solicit proposals from private contractors; or
- (3) execute a negotiated contract(s) without competitive proposals if the Division of Purchase and Contract and the Governor have determined that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the State ~~state~~ relative to the potential expenditure of funds.

Statutory Authority G.S. 143-64.20 to 64.22.

.0205 COMPETITIVE PROPOSALS

An agency which receives approval to solicit proposals for consultant services shall:

- (1) Prepare a request for proposals which must be approved by the Division of Purchase and Contract prior to dissemination among prospective service providers;
- (2) Circulate the request for proposals to such sources of consultant services as may be identified by the Division of Purchase and Contract as well as all sources identified by the requesting agency;
- (3) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal is opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable;
- (4) Upon receipt of proposals ~~the agency shall submit a copy of each proposal received to the Division of Purchase and Contract;~~
- (5) Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received; ~~received. The agency shall submit a memorandum to the Division of Purchase and Contract citing its criteria for selection and recommending a recipient of the contract.~~
- (6) Submit a memorandum to the Division of Purchase and Contract citing criteria for selection and recommending contract award.

The Division of Purchase and Contract shall evaluate all proposals received in accordance with the requirements of the request for proposals and shall consider the recommendations of the requesting agency. Upon completion of the

Division's analysis, the Division shall forward a recommendation to the Governor. The ~~Upon completion of this analysis~~ the requesting agency shall be notified in writing by the Governor or his designee that all proposals have been rejected or that the agency head is authorized to execute a contract(s) with an approved service provider(s).

Statutory Authority G.S. 143-64.20 to 64.23

.0206 NEGOTIATED CONSULTANT CONTRACTS

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to the Division of Purchase and Contract for review and approval prior to execution. Upon completion of the Division's analysis, the Division shall forward a recommendation to the Governor. Upon completion of this review the The requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed by the agency head.

Statutory Authority G.S. 143-64.20 to 64.23.

.0208 FORMAT

All contracts for consultant services shall be in writing, ~~and~~ in a format approved by the Division of Purchase and Contract Contract, and include the General Terms designated by the SPO. Contracts must be executed by the department head in the case of the executive departments of state government, by the chief executive officer of independent boards and agencies, by the President of the University of North Carolina for contracts to which the university or any of its constituent institutions is to be a party, or by agents of above named officials who have been specifically designated by those officials and whose names and positions have been filed with the Division of Purchase and Contract and whose designation has been approved by the Division of Purchase and Contract and the Governor or his designee.

Statutory Authority G.S. 143, Article 3C.

.0209 RELATIONSHIP OF CONSULTANT TO STATE

No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and ~~an independent contractor~~ the consultant.

Statutory Authority G.S. 143, Article 3C.

.0210 CONSULTANT CONTRACTS CONTRARY TO THIS SECTION

Any contract executed without the approval of the Division of Purchase and Contract and the Governor or his designee as provided in this Section shall be void, and no state funds shall be expended pursuant to any such contract. Any employee or official of the State of North Carolina who executes a contract without the approval of the Governor or

his designee shall be liable to repay any amount expended pursuant to such contract plus court costs.

Statutory Authority G.S. 143-64.23; 143-1; 143-32.

SECTION .0300 - SERVICE CONTRACTS

.0301 APPLICABILITY

~~These procedures for service contracts shall be applicable to all agencies of the State Government of North Carolina.~~

Statutory Authority G.S. 143-49; 143-53.

.0302 EXEMPTIONS

~~The following types of services shall be exempt from adherence to these procedures:~~

- ~~(1) services provided by individuals by direct employment contracts with the state;~~
- ~~(2) public utility services (gas, water and electricity);~~
- ~~(3) telephone, telegraph and cable services furnished by those companies;~~
- ~~(4) services provided which are subject to published tariff rates as established by the Interstate Commerce Commission;~~
- ~~(5) services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;~~
- ~~(6) contracts for construction of and structural changes to public buildings;~~
- ~~(7) personal services provided by a professional individual on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service, in which case it would be subject to the provisions of Sections .0100 and .0200 of the Subchapter.~~
- ~~(8) services provided directly by an agency of the state, federal or local government, or their employees when performing the service as a part of their normal governmental function;~~
- ~~(9) any other service designated to be exempt by the State Purchasing Officer, or his authorized representative.~~

Statutory Authority G.S. 143-49; 143-53.

.0303 DEFINITIONS

A service contract shall mean any agreement in which an independent contractor performs services requiring specialized knowledge, experience, expertise or similar capabilities for a state agency for compensation from state funds. The services may include (by way of illustration, not limitation)

~~services such as maintenance of buildings or equipment, auditing, film production, employee training and food services, provided that the service is not primarily for review, analysis or advice in formulating or implementing improvements in programs or services (in which case Sections .0100 and .0200 of this Subchapter, relating to consultants, shall be applicable). Contracts for rental of equipment, materials or supplies shall be deemed to be service contracts (but see Regulation .0506 of this Subchapter).~~

~~State funds shall mean any and all money appropriated by the General Assembly of North Carolina, or monies collected by or for the state or any agency thereof, pursuant to the authority granted in any of its laws.~~

Statutory Authority G.S. 143-49; 143-53.

SECTION .0400 - CONTRACTING PROCEDURE

.0401 GENERAL POLICY STATEMENT

~~It shall be general policy to acquire service contracts by seeking competition. The final decision making authority in regard to any phase of procurement or performance of any service contract is, and shall remain, the State Purchasing Officer or the Secretary of Administration. Such authority may be delegated to such agencies or individuals as they may designate but the right is reserved to retract such authority at any time as either or both may deem it to be in the best interest of the state. Any contract entered into in the name of the state and paid for by state funds by a state agency, or any state employee, or any member of a board or commission, which is contrary to an applicable rule, regulation or these procedures shall be void and of no effect.~~

Statutory Authority G.S. 143-49; 143-53; 143-58.

.0402 JUSTIFICATION

~~Before an agency of the state shall seek to obtain a contractual service, it shall make all of the following determinations: that funds are available to cover the total cost of the service; that the service is needed for the proper operation of the agency; that the desired level of quality of the service is adequate and reasonable for the purpose intended; that all rules, regulations and procedures of the Purchase and Contract Division have been or will be complied with; that obtaining the service is in the best interest of the state.~~

~~After all determinations listed above are made, they shall be incorporated into a letter (or memo) of justification. In addition to the previous items, the justification shall include an estimated cost for obtaining the service, as well as a cost comparison between the preferred method (or level) of service and any alternate means (or quality levels) that are available. Such justification will be in writing and will be placed in a permanent file at the agency. Upon request, a copy of the justification shall be sent to the State Purchasing~~

Officer or his representative.

Statutory Authority G.S. 143-49; 143-53.

.0403 TASK DESCRIPTION

When justification for the service has been completed, the agency shall prepare a complete task description, outlining in detail the services required. The task description shall, as a minimum, include the following: the date(s) of service; detailed specifications or type and level of work required; what the state will furnish; what the contractor will furnish; the method and schedule of payments to the contractor; any other terms, conditions, specifications or procedures bearing on the conduct of the work.

Statutory Authority G.S. 143-49; 143-53.

SECTION .0500 - COMPETITIVE PROCEDURES

.0501 GENERAL REQUIREMENTS

After preparation of justification and a task description, the agency shall solicit quotations, or proposals, from as many sources as possible. In order to get a better idea of the market, the agency should develop and maintain an "active bidder's mailing list" for each type of service. Such bidder's list may be compiled from previous knowledge, trade journals, lists prepared by other state agencies including the Division of Purchase and Contract, telephone directories, requests by vendors, etc.

Each contractor contacted shall be given a copy of the task description (or it should be read to him for phone quotes), as well as any other information necessary for him to prepare his quotation or proposal. All contractors shall be given the same information given to all other contractors, in order that no one is given preferential treatment, whether intentional or not.

After all quotes or proposals are received, the agency shall tabulate the results. Each contractor's offer should be carefully analyzed to ascertain compliance with the task description, terms and conditions. Before the award of the contract, the agency should make a determination through financial statements, references, etc., that the recommended contractor is capable of performing the work in a satisfactory manner.

The agency should prepare the proposed contract, or agreement, incorporating the task description therein. All terms and conditions should be such that the state's best interests are protected.

Statutory Authority G.S. 143-49; 143-53.

.0502 SERVICES COSTING UP TO \$500.00

Services costing up to five hundred dollars (\$500.00) may be handled by telephone quotes, written requests for quotes or requests for proposals. If all rules, regulations, and procedures have been complied with, the award of the contract is delegated to the requesting agency. Each

contract in this range must have written approval of the requesting agency's chief purchasing officer or his/her designated representative. No further approval is necessary.

Statutory Authority G.S. 143-49; 143-53.

.0503 SERVICES COSTING OVER \$500.00, BUT UNDER \$5,000

Services costing more than five hundred dollars (\$500.00) and less than five thousand dollars (\$5,000) must be sought by the agency by issuing a written formal request for proposals (RFP). The request for proposals should encompass all requirements as outlined in 1 NCAC 5D .0501. After receipt of proposals and compliance with all rules, regulations, and procedures, the agency should make its recommendation for award. This shall be submitted to the agency's chief executive officer or his/her designated representative. Upon his/her approval, no further review or approval is required. However, a copy of the executed contract must be submitted to the Purchase and Contract Division.

Statutory Authority G.S. 143-49; 143-53.

.0504 SERVICES COSTING OVER \$5,000

The procedure for request for proposals (RFP) and recommendation for their award will be the same as the procedures in 1 NCAC 5D .0503 with the following additions after approval by the executive officer or his/her representative: the justification memo, the request for proposals, a copy of all proposals received, the proposed contract, and the requesting agency's recommendation for award shall be submitted to the Purchase and Contract Division for its review. After the contractual service section makes its recommendation, all required supporting data will be submitted to the State Purchasing Officer for final determination of the successful bidder and award of the contract.

Statutory Authority G.S. 143-49; 143-53.

.0505 SINGLE SOURCE SERVICES

All agencies of the state shall make every effort to eliminate "sole source contracts" whenever possible. Competition is the best means available to assure that the state receives the best service at the lowest possible cost. Whenever contracting with a sole source is inevitable, the agency shall obtain approval from the Division of Purchase and Contract to negotiate the contract with the vendor. Such contract(s) shall include a breakdown by the vendor itemizing the components of the proposed cost.

Statutory Authority G.S. 143-49; 143-53.

.0506 RENTAL AGREEMENTS

Contracts or agreements for rental of equipment, materials or supplies shall be handled under the same rules, regula-

tions and procedures applicable to commodity purchases in 1 NCAC 5B. Such needs should be coordinated with the purchaser in the Purchase and Contract Division who handles that commodity.

Statutory Authority G.S. 143-49(1),(2); 143-53(5).

.0507 GROUPING OF SERVICE PURCHASES

Whenever possible, an agency should group its requirements for services, particularly in the area of equipment and building maintenance. Grouping should be done where possible, whether the service is single source or open to competition.

Statutory Authority G.S. 143-49; 143-53.

.0508 GENERAL CONTRACTING REQUIREMENTS

(a) All contracts in excess of one hundred dollars (\$100.00) shall be in writing.

(b) Contractual service contracts (or agreements), as defined in 1 NCAC 5D .0300 and .0400, of any amount shall not be entered into for more than three years total, including extensions or renewals, without specific prior approval by the Purchase and Contract Division.

(c) All contractual agreements will be governed by the laws of North Carolina unless prior approval has been received from the Attorney General's Office.

(d) All contracts shall be cancelable upon a specified reasonable written notice at any time by the state for unsatisfactory performance or for the convenience of the state.

(e) All contracts shall provide for an option to require a performance bond. Performance bond will be required when deemed necessary by the state.

(f) No public official is to benefit from any contract with the state or any agency thereof.

(g) All contracts will stipulate that the contract is entered into in compliance with state and federal antitrust laws.

(h) A contractor shall furnish all worker's compensation, liability insurance and other insurance as may be required to protect himself and the state from claims which may result from the performance of the contract.

(i) Payment schedule will be specified in contract. No payment shall normally be made for any portion of the work unless that portion of the work has been satisfactorily completed.

(j) No contract (or any interest therein) with the state shall be assignable.

(k) No contract will be used for any advertising by the contractor without prior approval of the Purchase and Contract Division.

(l) No price adjustments will be made unless the procedure therefor is set out in the original contract.

Statutory Authority G.S. 143-49; 143-53.

.0509 REQUEST FOR PROPOSALS

The request for proposals (RFP) is to include, but not be limited to, the following:

- (1) specifically describe the task and desired results of the service;
- (2) identify agency liaison personnel and any agency resources that are available to the contractor;
- (3) state when the contractor will begin the work, plus an estimate of the time necessary to accomplish the work or the contract termination date;
- (4) specify applicable procedures concerning billing, documentation requirements, progress reports, etc.;
- (5) designate that a minimum of two copies of the proposal be submitted;
- (6) inform the potential contractors of the criteria to be used in evaluating the proposals:
 - (a) the cost, including state personnel and equipment utilized;
 - (b) the contractor's competence, citing direct and indirect experience in the services to be rendered;
- (7) require potential contractor to include the following information with proposals:
 - (a) a description of the firm's qualifications;
 - (b) a list of agencies or businesses, with names of contact persons, for whom similar work has been done;
 - (c) the cost of the service broken down by components;
 - (d) the proposed methodology for accomplishing the work (if not furnished in the request for proposals).

Note: Any questions of substantial import or having economic impact received from potential contractors should be in writing and all responding answers must also be in writing. All questions and answers must be provided all contractors for preparing their proposal. A bidder's conference may be provided in lieu of the above.

Statutory Authority G.S. 143-49; 143-53.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend rules cited as 1 NCAC 39 .0101 and .0201.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 pm on November 30, 1995 at the Administration Building, Commission Room 5034, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action:

1 NCAC 39 .0101 - deletes items over which the state has no

control and makes definitions conform with the Department of Environment, Health, and Natural Resources (DEHNR). 1 NCAC 39 .0201 - makes existing criteria consistent with DEHNR and adds criteria needed as a result of G.S. 146.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling R. Glen Peterson, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003. Phone: (919) 733-7232.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 39 - DEPARTMENT OF ADMINISTRATION'S MINIMUM CRITERIA

SECTION .0100 - PURPOSE

.0101 PURPOSE

The purpose of these minimum criteria is to establish threshold levels for minor operations or small routine facility projects in this Rule which no filing of environmental documents under G.S. 113A shall be required. The primary emphases of these minimum criteria are to:

- (1) insure that protection is provided to the environment in the State Government Center and at other properties under the control of the Department of Administration throughout the state;
- (2) insure that environmental impacts are considered prior to approving activities on the state's sensitive areas, defined as those which are delineated or protected under one or more of the following:
 - (a) Wetlands by the U.S. Army Corps of Engineers under 33 CFR 328.3 and 40 CFR 230.3;
 - (b) National Historic Preservation and Conservation Act and National Executive Order 11593 and State Executive Order 16 administered by the North Carolina Department of Cultural Resources;
 - (c) ~~Prime Agricultural and Forest Lands identified under P.L. 97-98 and State Executive Order 96;~~ (d) National Natural Landmarks as designated under the Historic Site Act at 16 USC 461;
 - (e) ~~International Biospheric Reserves designated by the United Nations under the UNESCO Act, P.L. 575-2, statutory 712;~~
 - (d) (f) State Park Lands designated under G.S. 113-44.9;
 - (e) (g) State Game Lands administered under G.S. 113-264 and 306(d);
 - (f) (h) State Forest Lands administered under G.S. 113-22 and 29;
 - (g) (i) State Nature Preserves and Dedicated Natural Areas administered under G.S. 113A-164.1;

- (h) (j) Primary and Secondary Nurseries designated in accordance with ~~under~~ 15A NCAC 3R .0003; .0003 and 15A NCAC 10C .0503, and Critical Habitat Areas designated in accordance with 15A NCAC 3I .0001; and 15A NCAC 10I .0001(a)(5);
 - (i) (k) State High Quality Outstanding Resource Waters designated in accordance with ~~under~~ 15A NCAC 2B .0216 .0201(d); this includes waters classified as WS-I, WS-II, SA and ORW (Outstanding Resource Waters); ~~by the Environmental Management Commission;~~
 - (j) (l) State Natural and Scenic Rivers designated under G.S. 113A-30;
 - (k) (m) North Carolina Coastal Reserves designated under G.S. 113A-129.1;
 - (l) (n) State Lakes administered under G.S. 146-3; and
 - (m) (o) Lands which contain animal or plant species protected by the Federal Threatened and Endangered Species Act (administered by the U.S. Fish and Wildlife Service), State Endangered and Threatened Wildlife and Wildlife Species of Special Concern Act (G.S. 113-331 administered by the North Carolina Wildlife Resources Commission), State Plant Protection and Conservation Act (G.S. 106-202.12 administered by the North Carolina Department of Agriculture);
- All the laws or rules in this Rule are incorporated by reference and include subsequent amendments. Copies are available at the Department of Environment, Health, and Natural Resources; and
- (3) permit the implementation of the routine operations, maintenance, repair, or construction tasks which the state is required to undertake without undue delay or expense.

Statutory Authority G.S. 113A-11.

SECTION .0200 - NON-MAJOR ACTIVITIES

.0201 NON-MAJOR ACTIVITIES

The following list of criteria shall be considered as descriptive of routine operations, small construction projects, and routine maintenance projects which do not require the filing of an Environmental Impact Statement, Environmental Assessment, or a Finding of No Significant Impact:

- (1) Any action which involves relocation of staff members into a site using existing State buildings or leased buildings for which the building occupancy classification is not changed.
- (2) Routine disposal operations of hazardous chemicals, asbestos, or other environmentally sensitive operations for which a written procedure has been established, reviewed by appropriate authority, and determined to be in keeping with state or federal law.

- (3) Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.
- (4) Demolition of or additions, rehabilitation and/or renovations to a structure not listed in the National Register of Historic Places or less than 50 years of age.
- (5) Purchase by the Department of Administration for Department of Administration's use of real estate for which the use of the real estate does not vary from its intended purpose or function at the time of purchase or is consistent with local land use plans.
- (6) The use of chemicals for boiler feedwater treatment, cooling tower water treatment, pesticides, herbicides, cleaning solvents, and other chemical products which may be considered environmentally sensitive, provided the materials are stored and utilized in keeping with the applicable Material Safety Data Sheet (MSDS).
- (7) The handling of asbestos incident to a repair, maintenance, or minor construction project provided that the asbestos material is removed, stored, disposed of, and handled in accordance with published Department of Administration's procedures for processing asbestos.
- (8) New construction involving all of the following:
 - (a) A footprint of less ~~Less than 10,000 square feet;~~
 - (b) ~~Less than two hundred thousand dollars (\$200,000) cost;~~
 - (b) (e) Less than one acre of previously undisturbed ground unless the site is ~~A location that is not a National Register archaeological~~ Archaeological site; and
 - (c) (d) The use of the structure does not involve the handling and/or the storage of hazardous materials.
- (9) Routine grounds maintenance and landscaping.
- (10) Routine repair of existing parking lots.
- (11) Installation of outdoor sculpture(s) or exhibits.
- (12) Granting of leases, easements, or permits authorizing use of public land for any of the following:
 - (a) Installation of aerial and sub-aqueous pipes or pipelines for the transportation of potable water, and any cable line or line for the transmission of electrical energy, not requiring a certificate of environmental compatibility and public convenience from the North Carolina Utilities Commission, telephone or telegraph messages, and radio and television communications.
 - (b) Communication towers not located in sensitive areas as defined in Rule .0101(2) of this Chapter.
- (c) Construction of a road in accordance with accepted design practices and in compliance with North Carolina Department of Transportation standards and specifications, involving less than 25 cumulative acres of ground surface not located in sensitive areas.
- (d) Filling below the mean high water mark when such filling has been approved by the U.S. Army Corps of Engineers or the North Carolina Division of Coastal Management.
- (e) Sewer line installations not exceeding the minimum criteria of the permitting agency and not located in sensitive areas.
- (f) Ground water withdrawals not exceeding the minimum criteria of the permitting agency and not located in sensitive areas.
- (g) Where the proposed ~~private~~ use of the public land does not exceed the minimum criteria established by the agency recommending the lease, easement, or permit.
- (h) Piers and boat docks on all State Lakes when conducted in accordance with 15A NCAC 12C .0300.
- (i) Structures or piers and boat docks involving less than 11 slips.
- (j) Granting of easements for existing structures in accordance with G.S. 146.
- (13) Exchange or purchase of land where no agreement exists for the private land to be developed for use in any way that results in a change in the natural cover or topography prior to the exchange or purchase.
- (14) Timber harvest in accordance with the National Forest Service or the North Carolina Division of Forest Resources Management's Plans and recognized best management practices.

Statutory Authority G.S. 113A-11.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Pesticide Board intends to adopt rule cited as 2 NCAC 9L .1806.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 12:30 p.m. on January 9, 1996 at the Gov. James B. Hunt, Jr. Horse Complex, 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Action: This rule defines crop advisors in North Carolina and allows these individuals to take advantage of the Worker Protection Standard crop advisor exemptions contained in federal regulations which

were adopted by reference by the North Carolina Pesticide Board. These crop advisors are exempted from certain provisions of the Worker Protection Standard only while performing crop advisor tasks which are also defined in this proposed action.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to John L. Smith, Secretary, North Carolina Pesticide Board, P.O. Box 27647, Raleigh, NC 27611.

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds.

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .1800 WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

.1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in Sections 170.104 and 170.204 of the Worker Protection Standard, the following definitions will be in effect throughout 2 NCAC 9L .1800:

- (1) "Crop Advisor" means any currently certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed in the subcategory "Demonstration and Research Pest Control" as defined in 2 NCAC 9L .0504(9), but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.
- (2) "Crop Advisor Tasks" include assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

Statutory Authority G.S. 143-458(a).

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alcoholic Beverage Control Commission intends to adopt rules cited as 4 NCAC 2R .0305; 2S .0109, .0904, .1021; 2T .0308 - .0309, .1104 - .1108; amend rules cited as 4 NCAC 2R .0303, .1708, .1710, 1801 - .1802; 2S .0102 - .0103, .0105 - .0106, .0228, .0234 - .0235, .0402 - .0404, .0511 - .0513, .0516, .0519, .0525, .0614, .0708, .0901 - .0903, .1005, .1008,

.1011; 2T .0101 - .0102, .0201, .0206, .0301, .0303 - .0305, .0502, .0601 - .0602, .0604, .0606, .0707 - .0709, .0711 and repeal rules cited as 4 NCAC 2S .0209; 2T .0202, .0302, .0409 - .0411.

Proposed Effective Date: June 1, 1996.

A Public Hearing will be conducted at 10:00 am on February 9, 1996 at the Commission Hearing Room, 3322 Garner Road, Raleigh, NC.

Reason for Proposed Action: To respond to petitions for rulemaking from industry; to update product approval procedures; to delete certain burdensome requirements for mixed beverages applicants and permittees; to set forth additional requirements for certain unique permit applications; to establish guidelines for tastings and samplings; to establish requirements for fuel alcohol plants; and to make miscellaneous technical and conforming changes to existing rules.

Comment Procedures: Written comments concerning proposed rule changes should be submitted no later than February 9, 1996. Oral comments may be presented at the hearing. Written comments and notices of intention to make oral comment should be directed in advance to Ann S. Fulton, General Counsel, PO Box 26687, Raleigh, NC 27611-7687, (919) 779-0700.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

.0303 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS

(a) Distribution of Rules and Statutes. A copy of the Commission's Rules and Chapter 18B of the General Statutes will be distributed at no charge to each local ABC board, each ALE agent, ABC officer and local law enforcement officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Reprints of Statutes and Rules. Bound reprints of the ABC laws are available as follows: Purchasing Copies of the ABC Laws. Copies of the ABC laws are available to any interested person who contacts the Commission at the following address or phone number:

North Carolina Alcoholic Beverage Control Commission
3322 Garner Road
P.O. Box 26687
Raleigh, NC 27611-6687

(919) 779-0700

The following items are available and should be purchased together for complete access to the ABC laws of this State:

- (1) ~~Chapter 18B of the North Carolina General Statutes, at a cost of seven dollars (\$7.00).~~ Chapter 18B, containing the statutes governing alcoholic beverages, along with related statutes, is available from the Commission, at:

3322 Garner Road,

PO Box 26687,

Raleigh, NC 27611-6687

Phone: (919) 779-0700.

This reprint is available for ten dollars (\$10.00). Payment by cash or check must be made prior to receiving the reprint.

- (2) ~~Title 4, Chapter 2 of the North Carolina Administrative Code, containing all the rules of the Commission, at a cost of seven dollars and fifty cents (\$7.50).~~ Title 4, Chapter 2 of the North Carolina Administrative Code, containing all the rules of the Commission, is available from:

Barclay's Law Publishers

PO Box 3066

South San Francisco, CA 94083-3066

1 (800) 888-3600

Payment by check or cash must be made prior to receiving copies of either publication.

(c) Copies of Individual Rules or Statutes. For a fee of twenty-five cents (\$0.25) per page, copies of rules, amendments and general statutes are available to any person contacting the Commission at the address and phone number in Paragraph (b) of this Rule.

(d) Public Inspection of Records. Inspection of records and documents in the possession and custody of the Commission is governed by the provisions of Chapter 132 of the North Carolina General Statutes. Fees for copying public records shall be twenty-five cents (\$0.25) per page.

Statutory Authority G.S. 12-3.1; 18B-207; 132-1 through 132-1.3; 132-6.

.0305 TRANSCRIPT FEES; TAPES

(a) Availability. Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party.

(b) Transcript costs shall include the cost of preparing the original for the Commission. An attorney requesting a transcript on behalf of a party shall be a guarantor of payment for the costs. Costs for the preparation of a transcript shall be determined under the supervision of the Commission's administrator. An advance security deposit may be required of the party requesting the transcript to cover the prospective costs. The security deposit shall be applied to the actual cost and any excess shall be returned to the party submitting the deposit.

(c) Copies of tapes of oral proceedings are available upon written request at a cost of three dollars (\$3.00) per tape.

Statutory Authority G.S. 12-3.1(c); 18B-207.

SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES

.1708 MAXIMUM QUANTITIES ALLOWED TO BE SOLD

Employees of local boards are expressly prohibited from selling more than ~~five~~ eight liters of fortified wine or spirituous liquor or more than ~~five~~ eight liters of the two combined to a person at any one time, except as authorized under G.S. 18B-403 and G.S. 18B-404.

A copy of all Purchase/Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase/Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

Statutory Authority G.S. 18B-207; 18B-403; 18B-404; 18B-807.

.1710 CREDIT CARD SALES

A local board may allow customers to purchase alcoholic beverages with ~~credit~~ credit, debit and ATM cards so long as all the following conditions are met:

- (1) The local board files with the Commission a written request for approval to implement the use of ~~credit~~ credit, debit and ATM cards, and furnishes in that request the following:
 - (a) proposed date of implementation;
 - (b) proposed bank or institution for clearing;
 - (c) proposed discount rate and transaction fees; and
 - (d) whether instant verification equipment will be ~~used~~ used.
- (2) The local board must receive written authorization from the Commission to allow ~~credit~~ credit, debit and ATM card ~~sales~~ sales.
- (3) ~~The minimum alcoholic beverage purchase that may be charged to a credit card is twenty dollars (\$20.00).~~

Statutory Authority G.S. 18B-203(b); 18B-702(e); 18B-807.

SECTION .1800 - PURCHASE-TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES

.1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR

(a) Local Board to Issue. Whenever a person desiring to purchase more than 20 liters of unfortified wine, or more than ~~five~~ eight liters of either fortified wine or spirituous liquor or ~~five~~ eight liters of the two combined, applies to a local board for a Purchase-Transportation Permit, the local board shall issue the purchaser such a permit, following the guidelines of G.S. 18B-403.

(b) Form. The Purchase-Transportation Permit shall be

issued on a printed three-part form and shall specify the following information on the face of the permit:

- (1) the name and location of the store from which the purchase is to be made;
- (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;
- (3) destination of the alcoholic beverages including name and address of location;
- (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;
- (5) time and date of commencement and conclusion of special occasion, if any;
- (6) quantity and type of alcoholic beverages purchased;
- (7) signature of local ABC official issuing the permit;
- (8) name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

(c) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser will give the store from which the alcoholic beverages are purchased.

Statutory Authority G.S. 18B-207; 18B-303(a); 18B-403.

.1802 MIXED BEVERAGE PERMIT/INVOICE FORM

(a) Providing Form. A local board in a jurisdiction in which the sale of mixed beverages is lawful shall provide to a mixed beverages permittee ordering and purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of liquor by the permittee.

(b) Contents of Form; Copies. Each Purchase-Transportation Permit/Invoice Form shall be printed in triplicate and shall show on the face of the form the information required by ~~S .0502 of these Rules~~ NCAC 2S .0502. The local board shall retain one copy in its permanent records for a period of three years and shall give one copy of the permit/invoice to the mixed beverages permittee or designated employee to accompany the liquor during transport.

Statutory Authority G.S. 18B-205; 18B-207; 18B-404(b).

SUBCHAPTER 2S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0100 - DEFINITIONS: PERMIT APPLICATION PROCEDURES

.0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission at the following address, or by telephoning the Commission between 8:00 a.m. and 5:00 p.m., Monday through Friday:

North Carolina ABC Commission
3322 Garner Road
P.O. Box 26687

Raleigh, North Carolina 27611-6687

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he wants permits, and he shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) ~~corporate~~ corporate, company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation, limited liability company or limited partnership, the name and address of the registered agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by virtue of duly executed and registered power of attorney; and
- (9) a detailed diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages;
 - (C) locations where alcoholic beverages may be served or consumed.

In addition, an applicant shall state, under oath, that he is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memo-

random of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner; that he intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and that he is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by virtue of a duly executed and registered power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. This requirement may be waived upon a showing that the permittee will suffer undue financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages may be sold and consumed, the Commission will consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with proper control, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. In its discretion the Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit should also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by licensed retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place that has been approved by the Commission. No alcoholic beverages, shall be sold, served, or delivered by these outlets outside the enclosed establishment, ~~nor in grandstands, stadiums or bleachers at public gatherings.~~ except as provided in this Rule.

As used in this Rule, the term "enclosed establishment"

shall include a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at special events to be held on fairgrounds, ~~golf courses,~~ ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in seating areas such as ~~box~~ grandstand or stadium seats only under the following conditions:

- (1) ~~table~~ service of food and non-alcoholic beverages ~~are~~ is available to patrons in ~~box~~ seats;
- (2) ~~no alcoholic beverages are delivered to the box seats area until after orders have been taken; and~~
- (2) ~~(3)~~ box-seat seating areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location at the terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the Commission recognizes that allocation of space is controlled by the airport authority. Therefore, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and Rule .0519 of this Subchapter.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business will qualify for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods shall include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1008.

.0103 CORPORATIONS AND LIMITED LIABILITY COMPANIES HOLDING PERMITS

Any corporation or limited liability company holding an ABC permit in this State that seeks permits for any additional business location shall have the manager of the new location file the appropriate application and fee, and qualify under G.S. 18B-900(a).

Statutory Authority G.S. 18B-207; 18B-900; 18B-902(a); 18B-903(d).

.0105 SPECIAL REQUIREMENTS FOR RESTAURANTS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a restaurant for a Brownbagging, on-premise Fortified Wine or Mixed Beverages Permit, or a Malt Beverages Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), a business shall have an inside dining area set aside for the service of meals that contains seating for at least 36 persons. Food shall be available at all times that alcoholic beverages are being served.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a restaurant, each is typical of a bona fide restaurant and the Commission may consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke the permits listed in Paragraph (a):

- (1) The facility has a printed menu listing full meals with substantial entrees;
- (2) The facility has complete cooking and refrigeration equipment;
- (3) The greatest portion of the food sold is prepared in the facility's own kitchen and prepackaged food is only an incidental part of the sales;
- (4) The greatest portion of the food sold is consumed on the premises;
- (5) There are separate kitchen and service staffs;
- (6) Seating for dining customers is primarily at tables;
- (7) Only a small portion of the premises is devoted to activities unrelated to the service and consumption of food; and
- (8) Sales of food are significantly greater than sales of nonalcoholic beverages, especially nonalcoholic beverages sold as "set-ups."

(c) Requirements for Application. For a restaurant to obtain a permit listed in Paragraph (a), the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all owners, officers, directors, members, or shareholders owning 25 percent or more of the stock or other interest in the business, and the manager; if, however, a corporation or limited liability company holds any other ABC permit, application by the manager shall be sufficient; and
- (2) a copy of the restaurant's menu or list of food ~~served;~~ served.
- (3) ~~photographs of sufficient detail to show the following:~~
 - (A) ~~entire kitchen, including all equipment;~~
 - (B) ~~all dining areas, showing seating arrangements, including patios or outdoor areas where alcoholic beverages may be sold or consumed;~~

- (C) ~~bars, counters, mixing stations;~~
- (D) ~~locked storage area or areas for storage of alcoholic beverages;~~
- (E) ~~front exterior of premises or if establishment is located in an office building, mall or other larger structure, the main entrance.~~

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(6); 18B-1008.

.0106 SPECIAL REQUIREMENTS FOR HOTELS

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a hotel for a Brownbagging or a Mixed Beverages Permit, or a Malt Beverage Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), an establishment shall have on or closely associated with its premises a full-service restaurant providing at least 36 seats. The restaurant may or may not be owned by the same person who owns the hotel. (If the restaurant is owned by a person different from the owner of the hotel, permits shall not be issued to the restaurant unless it qualifies under Rule .0105 of this Section).

(b) For a hotel to obtain one of the permits listed in Paragraph (a), the applicant shall submit to the Commission, the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all owners, officers, directors, members, shareholders owning 25 percent or more of the stock or other interest in the business, and the manager; if, however, a corporation or limited liability company holds any other ABC permit, application by the manager is sufficient; and
- (2) a copy of the restaurant's menu or a list of food ~~served;~~ served.
- (3) ~~photographs of sufficient detail to show the following:~~
 - (A) ~~entire kitchen including all equipment;~~
 - (B) ~~all permanent dining areas, showing seating arrangements, including patio or outdoor areas where alcoholic beverages might be served or consumed;~~
 - (C) ~~bars, counters and mixing stations;~~
 - (D) ~~locked storage area or areas; and~~
 - (E) ~~front exterior of hotel and restaurant.~~

(c) Locations Where Sales Permitted. Brownbagging by patrons, consumption of alcoholic beverages and sales of mixed beverages are allowed at any time during lawful hours in the restaurant and in any lounge or other place that is customarily open to the general public and that is associated with the restaurant. These lounges and other places need not be directly connected to the restaurant as long as the services of the restaurant are available to the lounge at all times that alcoholic beverages are being served. Sales and consumption of mixed beverages are allowed in banquet

rooms, convention rooms, suites and similar places not usually open to the general public only during scheduled events and only to persons attending those events. Portable bars may be used for the sale or mixing of mixed beverages in those rooms.

(d) **Diagram of Premises.** The diagram of the premises submitted with the application for a permit under this Rule and the diagram approved by the Commission when the permit is issued shall be marked to indicate which spaces are considered part of the restaurant and lounge or other places associated with the restaurant and customarily open to the general public, and which spaces are considered banquet rooms, convention rooms, meeting rooms, suites, and similar places where mixed beverages are to be sold only during scheduled events.

(e) **Managers' Receptions.** Hotels operating lodging, restaurant and lounge facilities under one set of ABC permits may offer lodging guests up to two alcoholic beverages per guest per day in the price of the room package under the following conditions:

- (1) The reception or social hour is held on the licensed premises of the hotel;
- (2) The hotel issues a voucher for the beverages that can be used by the guest to obtain the beverage of his choice;
- (3) Nonalcoholic beverages shall also be offered to lodging guests during the function; and
- (4) The hotel must account for the beverages by an internal accounting procedure to insure that the price of each beverage included in the room rate package is the same price as is being charged other patrons in the lounge or restaurant for the same beverage. This procedure must be acceptable to the Commission's Audit Division.

(f) **Guest Room Cabinet Permits; Application Requirements.** Applications for a Guest Room Cabinet permit will be accepted only from hotels with Mixed Beverages permits, or from hotels simultaneously applying for Mixed Beverages permits, in the following counties: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake.

In addition to the general requirements for permit applications in this Rule and in Rule .0102 of this Section, a hotel applying for a Guest Room Cabinet permit shall submit the following items along with the completed application form and appropriate fee:

- (1) List of lodging rooms by room number in which cabinets will be placed;
- (2) Total number of lodging rooms and total number of rooms set aside that will not have a cabinet;
- (3) Description of cabinets to be installed by the hotel. A manufacturer's brochure describing the cabinet will be sufficient, or the permittee may submit photographs and a written description of the lock used on the cabinet;
- (4) Written policies developed by the permittee regarding the procedures that will be imple-

mented by the hotel to:

- (A) insure no one under 21 is able to obtain a key to the cabinet;
- (B) control inventory;
- (C) insure price lists for items sold from cabinets are easily readable;
- (D) dispose of all opened alcoholic beverage containers sold from cabinets after guest has checked out;
- (E) maintain adequate numbers of ice and soft drink vending machines elsewhere on the premises.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(4); 18B-1001(13); 18B-1008; S.L. 1991, c. 565, s. 7.

.0109 CERTIFICATION OF A SPECIAL ABC AREA

Before the ABC Commission may issue any ABC permit to an establishment located in a "Special ABC Area" as defined in G.S. 18B-101(13a), that "Special ABC Area" must be certified as follows:

- (1) If the "Special ABC Area" is a municipal corporation, and is to be established pursuant to G.S. 18B-603(f2)(i), the mayor, town clerk or town manager shall certify to the Commission that the vote establishing the "Special ABC Area" was conducted in accordance with the provisions of G.S. 18B-600, et. seq. and such person shall also certify to the Commission that the "Special ABC Area" complies with all of the requirements of G.S. 18B-101(13a).
- (2) If the "Special ABC Area" is an unincorporated area and is to be established pursuant to G.S. 18B-603(f2)(ii),
 - (a) The meeting at which the vote purporting to establish the "Special ABC Area" is held shall be called in accordance with all rules and by-laws of the private association or club located in the "area"; and
 - (b) Notice of that meeting shall be given to all association members, all club members, all lot owners in the "area", and all home owners in the "area," in compliance with the rules and by-laws of the private association or club conducting the vote, and
 - (c) At the meeting at which the vote is held, there shall be a map of the proposed "Special ABC Area" displayed and a copy of that map shall be attached to the ballot. This map shall show the proposed "area" with such specificity so as to allow the boundaries of that area to be easily determined by the Commission or other interested persons; and
 - (d) If the vote passes, the Board of Directors of the association or club that conducted the vote shall submit a certified copy of the map referenced in

Subitem (2)(c) of this Rule, a certified copy of the ballot, a certified result of the vote, a certification that the vote was held in accordance with Subitem (2)(a) and (b) of this Rule, and a certification that the "Special ABC Area" created complies with all of the provisions of G.S. 18B-101(13a) including a certification of the approximate acreage of the "area", the number of permanent residents of the "area," and the date when municipal services were first provided in the "area".

Statutory Authority G.S. 18B-101(13a); 18B-207; 18B-603(f2).

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

.0209 USE OF PROFANITY PROHIBITED

~~No permittee or his employees shall use or permit the use by any other person of loud, profane or indecent language.~~

Statutory Authority G.S. 18B-207; 18B-1005(a)(6).

.0228 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION

(a) Malt Beverages; On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, or by the pitcher.

The ~~brand~~ product name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets. Covers for these faucets bearing a ~~brand~~ product name may be used if the ~~brand~~ name appearing on the cover corresponds with the ~~brand~~ name on the knob of the faucets that are to be used for that ~~brand~~ product.

(b) Malt Beverages; Off-Premises. Malt beverages may be sold by persons holding a retail off-premise permit only in the unopened original container that was filled by the product manufacturer.

(c) Wine; On-premise. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the glass, or mixed with non-alcoholic beverages.

Wine served in carafes or by the glass may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the State Commissioner of Health Services.

~~The vintner, brand and type of wine products~~ dispensed by the carafe or glass, except for the house wine, shall appear on the wine list, ~~and where the wine is dispensed from bulk containers, the vintner, brand and type shall be shown on the knobs of draught faucets.~~ list.

(d) Use of Siphons. The use of siphons or other types of dispensers is allowed if the malt beverage or wine contents are dispensed directly from the original containers.

Statutory Authority G.S. 18B-206; 18B-207.

.0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS

(a) Neither a private club permittee nor his employee shall:

- (1) allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club; or
- (2) grant membership to the private club to any person earlier than three days from the receipt of his application for membership.

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty.

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club ~~mixed beverages~~ permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

Statutory Authority G.S. 18B-207; 18B-1008.

.0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS

A private club permittee may offer reciprocal memberships to bona fide members of other private clubs under the following conditions:

- (1) Reciprocity may extend only to members of private clubs holding Mixed Beverages or Brownbagging permits issued by the Commission.
- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files.
- (3) Private clubs entering into such agreements shall be located in different ~~counties~~ cities.
- (4) A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a bona fide member of the reciprocal club each time he enters the facility.

Statutory Authority G.S. 18B-207; 18B-1008.

SECTION .0400 - ADDITIONAL REQUIREMENTS FOR BROWNBAGGING PERMITTEES

.0402 PRIVATE CLUBS: POSSESSION OF ALCOHOLIC BEVERAGES

- (a) Quantity. No private club brownbagging permittee

shall allow a member or guest of ~~the club~~ a member to possess more than ~~five~~ eight liters of spirituous liquor or ~~five~~ eight liters of fortified wine, or ~~five~~ eight liters of the two combined; more than 80 liters of malt beverages (nine cases of 355 milliliter cans plus nine 355 milliliter cans, or seven cases of 473 milliliter cans plus one 473 milliliter can); or more than 20 liters of unfortified wine upon the premises.

(b) Label Required. A permittee shall ensure that each container brought onto the premises is labeled immediately with the member's name substantially as it appears on the membership roster and that containers brought by guests are labeled with the names of the guest and the sponsoring member.

(c) Possession by Permittee Not Holding Mixed Beverages Permit. A permittee not holding a Mixed Beverages Permit or his employee may maintain custody over a member's or guest's alcoholic beverages and locker key provided that during custody, the member or guest is present on the premises. The member's or guest's alcoholic beverages shall be used exclusively by the member and his bona fide guests, and the alcoholic beverage containers and locker key shall be returned to the member or guest before he leaves the premises.

(d) Furnishing Alcoholic Beverages Limited. Neither the permittee nor a member shall furnish or have furnished alcoholic beverages to other members or bona fide guests of members unless the member owning the beverages is physically present upon the premises.

Statutory Authority G.S. 18B-207; 18B-1001(7); 18B-1006(b).

.0403 PRIVATE CLUBS: STORAGE OF ALCOHOLIC BEVERAGES

(a) A private club brownbagging permittee shall see that alcoholic beverages are stored in compliance with the following conditions:

- (1) All alcoholic beverages stored at the club shall be kept in individual lockers that are labeled with the members' names as they appear on the membership roster; lockers shall remain locked when the member is not on the premises;
 - (2) Each locker shall contain a lock that can be opened only with a key, and the key shall be possessed by the individual member when that member is not present on the premises of the club;
 - (3) No member shall store, whether in one or more lockers, more than ~~five~~ eight liters of fortified wine or spirituous liquor, or ~~five~~ eight liters of the two combined; ~~five~~ eight liters of malt beverages; or ~~five~~ eight liters of unfortified wine upon the premises;
- Note: For example, one member may store the above mentioned quantities of alcoholic beverages in the aggregate in one or more lockers,

such as a beverage locker and a sports equipment locker on one premises, provided that beverage containers and lockers are labeled as required, and when he is not on the premises, the member has exclusive possession of the key or keys.

- (4) Alcoholic beverages belonging to different members shall not be stored in the same locker, except that a husband and wife may store alcoholic beverages in the same locker as long as the total quantity does not exceed the quantities stated in Subparagraph (3) of this Paragraph.

(b) The permittee and his employee shall be responsible for returning to a member when he leaves the premises all malt beverages and unfortified wine brought to the club by the member in excess of the amounts that may be legally stored at the establishment by the member.

(c) All alcoholic beverages left on the premises of the club contrary to the provisions of this Rule shall be destroyed by the permittee or his employee.

Statutory Authority G.S. 18B-207; 18B-301(b)(3); 18B-1001(7); 18B-1008.

.0404 RESTAURANTS: HOTELS: DISPLAY: CONTROL OF BEVERAGES

(a) A restaurant or hotel holding a Brownbagging Permit shall ensure that all fortified wine and liquor is possessed inconspicuously by patrons when they are not in a private dining area.

(b) Every person possessing fortified wine or spirituous liquor in restaurants and hotels with Brownbagging Permits shall at all times retain control of his alcoholic beverages.

Statutory Authority G.S. 18B-207; 18B-1001(7).

SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES

.0511 PRE-MIXING DRINKS

(a) Except as provided in this Rule, neither a mixed beverage permittee nor his employee shall pre-mix mixed beverages or prepare any mixed beverage before receiving an order for the beverage from a customer.

(b) A mixed beverages permittee may pre-mix mixed beverages upon receiving Commission approval provided the following conditions are complied with:

- (1) No spirituous liquor may be used in the pre-mixing of mixed beverages except spirituous liquor on which the mixed beverages charge imposed by G.S. 18B-804(b)(8) has been paid. All spirituous liquor used for pre-mixing of mixed beverages shall be dispensed into the approved pre-mixing system from a container to which a mixed beverages tax stamp is affixed;
- (2) All pre-mixing shall be done pursuant to a recipe that has been approved by the Commission.

- That recipe shall state the exact percentage and type or types of spirituous liquors and other alcoholic beverages used in the mixture; and
- (3) ~~Pre mixing shall be limited to those approved recipes for which the permittee prepares and sells at least five gallons per week. The Commission shall withdraw its approval for pre mixing of any recipe for which this minimum standard is not maintained;~~
- (3) (4) Only equipment and systems approved by the Commission shall be employed in the pre-mixing and dispensing of mixed ~~beverages;~~ beverages.
- (5) ~~A permittee that is authorized to pre mix mixed beverages shall maintain at all times an accurate inventory reflecting withdrawals from his spirituous liquor stock for purposes of pre mixing that specifies:~~
- (A) ~~the brand and container size of each item withdrawn;~~
- (B) ~~the date and time of withdrawal; and~~
- (C) ~~the date and time partially used containers are returned to storage.~~

Statutory Authority G.S. 18B-207.

.0512 STORAGE AND DISPOSAL OF SPIRITUOUS LIQUOR CONTAINERS

(a) Storage. All containers of alcoholic beverages possessed by a permittee for resale in mixed beverages shall be stored on the licensed premises. ~~premises in a separate area out of view of the patrons of the establishment, except as provided in Paragraph (b) of this Rule.~~

(b) ~~Container Display. A permittee may keep at each mixing station on the premises a reasonable number of containers of each brand of spirituous liquor likely to be used at that station, but no more than one container of each brand shall be open at one station at one time. A mixing station is a counter or other place where a bartender mixes drinks to be served to patrons. Generally, each bar counter is considered a single mixing station, but a counter may contain more than one mixing station if it is so long that more than one bartender is needed to serve the patrons at that counter. In that case the counter is normally considered to have as many mixing stations as there are bartenders at that counter. Each portable bar is considered a single mixing station.~~

(b) (e) Keys Required. Any lock used to secure the designated a storage area for alcoholic beverages shall be capable of being unlocked with a key that is available on the premises at all times.

(d) ~~Official Inspections. The designated storage area shall be open to inspection by the Commission or law enforcement officers pursuant to G.S. 18B-502.~~

(c) (e) Empty Containers. As soon as a container of spirituous liquor is empty, the permittee or his employee shall immediately and permanently deface the mixed beverages tax stamp and dispose of the bottle.

(f) ~~Inventory Records. During the first year of operation, the permittee shall maintain on a daily basis, an accurate inventory reflecting additions to and withdrawals from stock that specifies:~~

- (1) ~~brand and container size of each item withdrawn;~~
- (2) ~~date of withdrawal; and~~
- (3) ~~date partially used containers are returned to storage.~~

~~This inventory shall be kept on a form approved by the Commission.~~

(d) (g) Guest Room Cabinet Permittees. A hotel that has been issued a Guest Room Cabinet Permit may store spirituous liquor and premixed cocktails purchased for resale from guest room cabinets in the same storage area with alcoholic beverages purchased for resale in mixed ~~beverages,~~ as provided in Paragraph (a) of this Rule beverages. A hotel shall not, however, place on display at mixing stations any 50 milliliter containers of liquor that were purchased for resale from cabinets. Empty or partially empty containers of alcoholic beverages purchased by a room guest from a cabinet shall be disposed of by the permittee after the room guest has checked out of the hotel.

Statutory Authority G.S. 18B-207; 18B-502; 18B-1001(13).

.0513 PROHIBITED ACTS: HANDLING AND STORAGE OF LIQUOR

Neither a mixed beverages permittee nor his employee, whether on or off the premises, shall:

- (1) add any alcoholic beverage to any container of spirituous liquor purchased for resale in mixed beverages;
- (2) transfer from one spirituous liquor container to another or remove from any liquor container the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to the container;
- (3) destroy, alter or deface the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to a liquor container before the container has been emptied;
- (4) possess a counterfeit mixed beverages stamp, place a counterfeit mixed beverages stamp on any liquor container, or knowingly possess any container with a counterfeit stamp;
- (5) store any spirituous liquor purchased for resale in mixed beverages in any place other than the ~~approved storage area of the premises specified in the purchase-transportation permit;~~
- (6) place or have ~~in the approved storage area or possess elsewhere~~ on the licensed premises any container of spirituous liquor not bearing a mixed beverages tax stamp except for liquor brought onto the premises by a host of a special occasion pursuant to G.S. 18B-1001(8) and G.S. 18B-1001(9);

- (7) dilute or otherwise tamper with the contents of any container of alcoholic beverages;
- (8) give or sell to any patron any container of spirituous liquor that was purchased for resale as mixed beverages, whether the container is full or partially full; provided, however, this prohibition shall not be construed to prohibit a room guest from removing from the hotel a container of alcoholic beverages purchased from a guest room cabinet;
- (9) possess any empty container of spirituous liquor purchased for resale in mixed beverages if the mixed beverages tax stamp on that container has not been permanently defaced;
- (10) possess or sell on the premises any brand of spirituous liquor that has not been approved by the Commission for sale in North Carolina or that was not purchased by the permittee pursuant to an approved special order;
- (11) purchase any spirituous liquor for resale in mixed beverages other than as authorized by a valid purchase-transportation permit;
- (12) conceal or otherwise fail to indicate truthfully and accurately in any records required to be kept by the permittee the sale of any alcoholic beverages on the licensed premises; or
- (13) make any other incomplete, inaccurate, false or misleading statements in any report or record required by these Rules.

Statutory Authority G.S. 18B-207; 18B-404; 18B-1001(13); 18B-1007; 18B-1008.

.0516 PRIVATE CLUBS: MEMBERS' LIQUOR KEPT SEPARATE

In a private club with both a Mixed Beverages Permit and a Brownbagging Permit, the permittee shall comply with the following requirements:

- (1) The permittee shall not allow a member or guest to possess on the premises more than five eight liters of fortified wine or spirituous liquor, or five eight liters of the two combined, or more than 80 liters of malt beverages other than draft malt beverages in kegs;
- (2) The permittee shall ensure that each container of alcoholic beverages brought onto the premises by a member or guest is labeled immediately with the member's name or the guest's and sponsoring member's names;
- (3) Neither a permittee nor a member shall furnish or have any person furnish a member's alcoholic beverages to another member or a guest of a member unless the member owning the beverage is present on the licensed premises;
- (4) Other than to label a container, or during private meetings or parties held under a Special Occasion Permit, neither a permittee nor an employee shall

possess or maintain custody over a member's alcoholic beverages or a member's storage locker key, whether or not the member is present on the licensed premises.

Note: This Paragraph prohibits the employees of the private club from handling a member's alcoholic beverages in any way whatsoever other than to put on the member's name label or when a private function is being held for a private group under a Special Occasion Permit, pursuant to G.S. 18B-1001(8). It is a violation of this Rule for a member's alcoholic beverages to be kept at or behind the bar where mixed beverages are prepared and sold.

Statutory Authority G.S. 18B-207; 18B-1006(b); 18B-1008.

.0519 RESTAURANTS: INCOME FROM SALES

(a) For the purposes of further defining a restaurant, as provided in G.S. 18B-1000(6), the term "substantially engaged in the business of preparing and serving meals" means that ~~more than fifty~~ not less than forty percent of the establishment's food and beverage sales are from the sale of food and non-alcoholic beverages.

(b) In determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following sales may be included:

- (1) food prepared in the permittee's kitchen and served as a meal to be consumed on the premises or as a "take-out" order;
- (2) prepackaged food sold to accompany the meal;
- (3) non-alcoholic beverages sold to accompany the meal.

(c) In determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following items may not be included:

- (1) mixed beverages, including the mixer;
- (2) any other alcoholic beverages;
- (3) grocery items not ordered and purchased with meals;
- (4) cover charges.

Statutory Authority G.S. 18B-207; 18B-1000(6); 18B-1008.

.0525 GUEST ROOM CABINETS; INVENTORY AND RECORDS

A guest room cabinet permittee shall maintain on the premises complete and accurate inventory and sales records of all liquor purchased for resale in cabinets in accordance with the following requirements:

- (1) ~~During the first year of operation with a Guest Room Cabinet permit, inventory records for guest room cabinet liquor shall be maintained as required by Rule .0512(f)(1) and (2) of this Section.~~
- (2) Sales records of guest room cabinet liquor shall be kept on a monthly basis in accordance with the requirements of Rule .0520 of this Sec-

tion.

- (2) (3) Purchase-transportation permits for liquor to be sold from guest room cabinets shall be maintained by the permittee on the premises for a period of three years.

Statutory Authority G.S. 18B-207; 18B-1001(13).

SECTION .0600 - SPECIAL REQUIREMENTS FOR CONVENTION CENTERS, COMMUNITY THEATRES, SPORTS CLUBS, AND NONPROFIT AND POLITICAL ORGANIZATIONS

.0614 SPORTS CLUB: REQUIREMENTS FOR RECEIVING AND HOLDING PERMITS

To be eligible to receive and to hold ABC permits as a sports club, in addition to the requirements imposed by G.S. 18B-1000(8), an establishment shall:

- (1) operate a golf ~~course or a tennis court~~ course, two or more tennis courts, or both on its premises, and
- (2) derive at least 15% of its club activity fees on an annual basis from sources other than receipts for food.

Statutory Authority G.S. 18B-207; 18B-1000(5a); 18B-1008.

SECTION .0700 - SPECIAL OCCASIONS PERMITS

.0708 TYPES OF PERMITS REQUIRED

The owner or operator of any commercial facility or commercial establishment renting or furnishing the premises thereof for a private function where the host of the function will possess more than ~~five~~ eight liters of fortified wine or spirituous liquor, or ~~five~~ eight liters of the two combined, shall either:

- (1) apply for and obtain a Special Occasion Permit, as required by G.S. 18B-1001(8) and G.S. 18B-902; or
- (2) require the person in charge of the private function to apply for and obtain a Limited Special Occasion Permit under the provisions of G.S. 18B-1001(9) and 18B-902.

Statutory Authority G.S. 18B-207; 18B-301(c); 18B-1001(8),(9).

SECTION .0900 - WINE AND BEER TASTINGS

.0901 TASTINGS AND SAMPLINGS; GENERAL

(a) "Tasting" means an educational event offered by an industry member, retailer or other person, structured in such a way that attendees are given an opportunity to taste a variety of malt beverage or wine products and are provided information on the qualities, production and history of the products featured in the event.

(b) "Sampling" means the offer by a retailer to a customer of small amounts of malt beverage or wine products

in a manner designed to promote the purchase of that product by the customer.

~~(c) A retail wine or malt beverage permittee may conduct tastings of wine or malt beverages, as appropriate. A tasting or sampling may be held on the a retailer's premises only if he holds the appropriate on-premises permit. Tastings and samplings shall be conducted in conformity with all ABC laws.~~

Statutory Authority G.S. 18B-207.

.0902 TASTINGS HELD FOR NON-PERMITTEES

Where the legal sale of those beverages is permitted, an industry ~~member member, retailer or other person~~ may furnish wine or malt beverages for tastings for consumers provided that:

- (1) The tasting is conducted for promotional purposes;
- (2) ~~No alcoholic beverages are sold, no sales or orders are solicited, and no order blanks are placed in or about the premises;~~
- (2) (3) If the tasting is held on the premises of a retail permittee, and an industry member participates, the industry member may purchase the products to be used from the retailer so long as the purchase price is no higher than the retailer's ordinary retail price;
- (3) (4) If wine or beer is furnished by the industry member for a consumer tasting held in conjunction with a retailer, any excess brought to the tasting is removed by the industry member; and
- (4) (5) If a tasting is conducted by an industry member in conjunction with a retailer, the industry member makes no payment to or on behalf of the retailer for promoting and advertising the tasting.

Statutory Authority G.S. 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b).

.0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR RETAILERS: INDUSTRY SAMPLES

(a) Samples. An industry member may give samples of wine or malt beverages to a retail permittee authorized to sell that beverage under the following circumstances:

- (1) The industry member may give the retailer up to three gallons per ~~brand of malt beverages beverage product~~ and up to three liters per brand of wine product; and
- (2) The retailer has not previously purchased those ~~brands products~~ products from the industry member.

(b) Tastings. The industry member may give the retailer samples by the glass of any products he offers for sale. Such a tasting may be conducted on the industry member's premises or at any other location approved by the Commission for that purpose. A tasting under this Paragraph shall not be conducted in conjunction with a meal, a party, or any other social event but shall be for business purposes only.

Statutory Authority G.S. 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b).

.0904 RETAILER SAMPLINGS

(a) Limitations. A retailer holding the appropriate on-premise malt beverage or wine permits may provide to its customers samples of those products in the following quantities:

- (1) not more than one ounce of each wine being sampled;
- (2) not more than three ounces of each malt beverage being sampled.

(b) Industry participation. An industry member may assist a retailer in providing samples of the industry member's products. Such assistance may be in the form of providing labor and product, but the industry member shall not make any payment to or on behalf of the retailer for promoting and advertising the sampling. Any product supplied by the industry member that is not used in the sampling shall be removed from the retailer's premises.

Statutory Authority G.S. 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b).

SECTION .1000 - ADVERTISING

.1005 PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS

(a) General Restrictions. An advertisement or product label shall not contain:

- (1) any statement, design, device or representation that is false or misleading in any material particular;
- (2) any statement that is disparaging of a competitor's products;
- (3) any statement, design, device or representation which depicts nudity or is obscene or indecent;
- (4) any statement, design, device or representation of or relating to analysis, standards or tests, irrespective of falsity, which is likely to mislead the consumer;
- (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer. Nothing in this Section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package";
- (6) any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government, unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state or federal

- (7) permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;
- (7) any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, or any statement, picture or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of this product contributed to such athlete's athletic achievements;
- (8) any picture or illustration depicting the use of alcoholic beverages in a scene which is undignified, immodest or in bad taste;
- (9) any offer of a prize or award upon the completion of any contest in which there is a requirement to purchase the advertised product, provided that however, no label or advertisement shall promote a game of chance gambling or a an illegal lottery;
- (10) any subject matter or illustrations inducing persons under 21 years of age to drink;
- (11) any statement, picture or illustration inconsistent with the spirit of safety or safe driving programs;
- (12) any scene that would be contrary to state laws and rules governing sale, storage and consumption of alcoholic beverages;
- (13) any statement concerning a brand an alcoholic beverage product that is inconsistent with any statement on the labeling thereof;
- (14) any statement, design or device representing that the use of a brand an alcoholic beverage product has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression;
- (15) any statement or representation that the product was manufactured in or imported from a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor;
- (16) any statement, design, device or pictorial representation of or relating to or capable of being construed as relating to the armed forces of the United States or the American Flag, state flag, or any emblem, seal, insignia or decoration associated with any such flag of armed forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer into believing that the product has been endorsed, made or used by, produced for or under the supervision of or in accordance with the specifications of the government, organizations, family or individual with whom the flag, seal, coat of arms, crest or

- (17) insignia is associated; or words such as "high test," "high proof," "full strength," "extra strong," or similar descriptive terms, or direct or indirect references to the intoxicating effect of the product.

(b) Prohibited Statements in Regard to Wine. In addition to the applicable prohibited statements as set forth in Paragraph (a) of this Rule, an advertisement or label for wine shall not contain:

- (1) any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form:
"Bonded Winecellar No. __," "B.W.C. No. ____."
"Bonded Winery No. __," "B.W. No. ____."
No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under United States Government or any state government supervision or in accordance with United States Government or any state government specifications or standards;
- (2) any statement, design or representation ~~which relates to alcoholic content~~ or which tends to create the impression that a wine is "unfortified" or has been "fortified" or has intoxicating qualities, or contains spirituous liquor (except for a reference to spirituous liquor in a statement of composition where such statement is required by these Rules to appear as part of the designation of the product); or
- (3) statement of age or dates, or any statement of age or representation relative to age (including words or devices in any brand name or trademark), except that:
 - (A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; or
 - (B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.
The statement of any bottling date shall not be deemed to be representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in ____" (inserting the year in which the wine was bottled). No date, except as provided in this Section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto and in direct conjunction therewith, in the same size and kind of print-

ing there shall be stated an explanation of the significance of such date. Provided, that if any date refers to the date of establishment of any business, firm or corporation such date shall be stated without undue emphasis and in direct conjunction with the name of the person, firm or corporation to whom it refers.

(c) Prohibited Statements in Regard to Spirituous Liquor. In addition to the applicable prohibited statements in Paragraph (a) of this Rule, an advertisement for spirituous liquor shall not contain:

- (1) words "bond," "bonded," etc; any statement containing the words "bond," "bonded," or "bottled in bond," "aged in bond" or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the spirituous liquor advertised, and are stated in the advertisement in the manner and form in which they appear upon the label;
- (2) statements of age; any statement, design or device directly or by implication concerning age or maturity of any brand or lot of spirituous liquor unless a statement of age appears on the labels of the advertised product; When any such statement, design or device concerning age or maturity is contained in any advertisement, it shall include, in direct conjunction therewith and with substantially equal conspicuousness, all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label, or an advertisement for rum which is four years or more old, may contain general inconspicuous age, maturity or other similar representation, e.g., "aged in wood," "mellowed in fine oak casks";
- (3) the word "pure" except as part of the bona fide name of a permittee; or
- (4) the terms "double distilled," "triple distilled" or any other similar term.

Statutory Authority G.S. 18B-105(b).

.1008 ADVERTISING OF MALT BEVERAGES AND WINE BY RETAILERS

(a) Interior Advertising.

- (1) Point-of-Sale. Retail malt beverage and wine permittees may utilize any amount of point-of-sale advertising for malt beverage and wine products offered for sale in the establishment. This advertising may be supplied by the industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 4 NCAC 2T .0713(c) of this Chapter for use as

- point-of-sale advertising.
- (2) Price Boards. Retail malt beverage and wine permittees may display inside price boards showing the ~~brand product~~ names and prices of malt ~~beverage beverages~~ and ~~wine products~~ wines offered for sale in the establishment.
 - (3) Menus and Beverage Lists. Retail on-premise malt beverage and wine permittees may place on the menu and beverage lists the ~~brand product~~ names and prices of malt ~~beverage beverages~~ and ~~wine products~~ wines offered for sale in the establishment. Menus and beverage lists may be supplied by an industry member provided the menu or beverage list is not printed with the retailer's food menu.
 - (4) Retailer Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. Advertising specialty items may be provided to a retailer by an industry member as provided in 4 NCAC 2T .0713(b)(8) of this Chapter.
 - (5) Window Displays. Retail malt beverage and wine permittees may arrange a reasonable number of malt beverage or wine products in a window display.
 - (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt beverages or wine on the outside of the establishment.
 - (7) T-shirts and Other Wearable Items. A retailer's employees shall not wear alcoholic beverage brand identified ~~t-shirts clothing or items of any kind~~ while working on the retailer's licensed premises.
 - (8) Removal of Objectionable Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is objectionable or contrary to public interest and orders its removal.
- (b) Exterior Advertising.
- (1) Outside signs on the premises.
 - (A) Malt Beverages. Retail malt beverage permittees may display the term "beer" or "cold beer" or "draught beer" on a single, non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises.
 - (B) Wine. Retail wine permittees may display the term "wine permit-off premise" or "wine per wine mit-on premise" or a substantially equivalent term on a single non-mechanical outside

sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises. Instead of the sign described in this Paragraph, retail wine permittees primarily and substantially engaged in off-premise sales of wine may display the term "Wine Shop" or "Wine and Cheese" or a substantially equivalent term on a single non-mechanical sign. The letters and figures on the sign shall not be more than 18 inches in height and the sign shall be attached to the building on the licensed premises.

- (C) Restriction. Nothing in this Section shall be construed to allow price advertising or additional signs advertising malt beverages and wine on the outside of premises holding retail permits. Outside signs alluding to malt beverages or wine by slang descriptions such as "brew," "suds," "six-pack," "vino" or similar terms are prohibited.

- (D) Exceptions; Menus; Trade Names. The placement in a window or on the exterior of the retailer's building of a food menu that also contains a list of alcoholic beverages by brand and price shall not be construed as a violation of this Rule. Additional exceptions may be granted by the Commission in the case of corporate names or franchise trade names.

- (2) Billboards. Retail permittees shall not advertise malt beverage or wine products or the availability of alcoholic beverages by means of a billboard or outdoor sign except as provided in this Section.

- (3) Aerial Displays. Retail permittees shall not advertise malt beverage or wine products or the availability of alcoholic beverages by means of an aerial display or an inflatable item that is tethered.

- (c) Removal of Objectionable Signs. A permittee shall remove any sign, display, or advertisement in or about his licensed premises if the Commission finds it is objectionable or contrary to public interest and orders its removal.

- (d) Media Advertising. A retail malt beverage or wine permittee may advertise price and ~~brand product~~ name of malt ~~beverage beverages~~ and ~~wine products~~ wines offered for sale by means of circular, newspaper, magazine, radio and television.

Statutory Authority G.S. 18B-105(b).

.1011 ADVERTISING OF SPIRITUOUS LIQUORS

- (a) ABC Stores. An ABC store may have one or more outside signs ~~located on the premises~~ for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. A local board that desires to place an identifying sign off its

property must submit to the Commission the following items with a request for approval:

- (1) Statement of necessity for the sign;
- (2) Description of the sign, to include size, height, and size of letters, and the message; and
- (3) Description of location of sign and its relation to the ABC store it seeks to identify.

Signs may contain directional markings such as arrows, and may give estimated distance to store and may state "ABC Store" or "_____ County ABC Store", but shall not contain symbols such as bottles or glassware. No billboard advertisement shall be purchased by a local board that announces the location of a store or stores along the highways or roads of the State.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of a billboard or sign the brand name or availability of spirituous liquor.

(d) Broadcasting. No retail permittee shall advertise by radio or television or any transmission to radio or television the brand name or availability of spirituous liquor.

(e) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team;
- (2) refer to the availability of or offer any alcoholic beverages by mail; or
- (3) utilize case card loaders.

~~All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission for approval prior to their display in an ABC store.~~

Statutory Authority G.S. 18B-105.

.1021 REFUND OFFERS; MALT BEVERAGES

(a) General. Refund offers may be used to advertise malt beverages.

(b) Conditions. A refund offer is an offer to a consumer for a rebate of money or merchandise, other than alcoholic beverages, from a non-resident vendor or manufacturer of malt beverages. Refund offers are allowed subject to the following conditions:

- (1) A refund may be offered only on purchases of a manufacturer's original unopened packages or containers of malt beverages from a retailer with a malt beverage permit.
- (2) A refund may be offered only by a non-resident vendor or a manufacturer of malt beverages.

(3) A refund may be offered only when the redemption form is part of or attached to a package or container of malt beverages, or when the redemption form is available on a tear pad at the point of purchase. Any refund offer that is attached to the package shall be placed there by the non-resident vendor or manufacturer, or the wholesaler of the non-resident vendor or manufacturer who offers the refund.

(4) A refund offer shall apply throughout the state.

(5) A refund offer shall include an expiration date.

(6) A refund offer shall explain the redemption procedure and specify the expiration date and length of time before the refund is sent to the purchaser. Refund offers shall be redeemed by either mailing or sending the redemption form to the non-resident vendor or manufacturer who offers the refund or its designated redemption agent. The redemption agent shall not be a retail or wholesale permittee.

(c) Commercial Bribery; Cooperative Advertising. No retailer or employee of a retailer shall accept and no industry member shall pay any fee for the display or use of refund offers. A retailer's name shall not appear on any refund offer.

(d) Advertising Refund Offers. Refund offers may be advertised by newspapers, magazines or direct mail, but no redemption form may appear in such advertisements.

(e) Redemption of Refund Offer by Retailers. No retailer or employee of a retailer may redeem a refund offer without first making a retail purchase of the brand for which the refund is offered.

Statutory Authority G.S. 18B-105(b).

SUBCHAPTER 2T - INDUSTRY MEMBERS: RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP CHANDLERS: AIR CARRIERS: FUEL ALCOHOL

SECTION .0100 - DEFINITIONS: APPLICATION PROCEDURES

.0101 DEFINITIONS

The following terms shall have the following meanings when used in this Chapter:

- (1) "Brand," in relation to wines, means the name under which a wine is produced and shall include trade names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes and types of wines sold under the same brand label shall be considered a single brand. Differences in packaging such as a different style, type or size of container are not considered different brands.
- (2) "Industry member" means any wholesaler, salesman, brewer, winery, bottler, importer, distiller,

rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or solicits orders for alcoholic beverages, whether or not licensed in this state.

- (3) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit issued pursuant to the authority of G.S. 18B-1001, but shall not include a non-profit or political organization that has been issued a Special One-Time permit pursuant to the provisions of G.S. 18B-1002(a)(2) or (5).
- (4) "Representative" means any vendor representative, as that term is defined in G. S. 18B-1112, or any other person selling or soliciting orders for alcoholic beverages on behalf of a manufacturer, bottler, vendor, or importer.
- (5) "Vendor" means any nonresident malt beverage vendor or nonresident wine vendor, as those terms are defined in G.S. 18B-1113 and 18B-1114.
- (6) "Wine" means both fortified wine and unfortified wine, as those terms are defined in G.S. 18B-101(7) and (15).
- (7) "Supplier" means a brewery, winery, nonresident vendor, importer, or bottler, as those terms are defined in Article 11 of Chapter 18B of the General Statutes.

Statutory Authority G.S. 18B-101; 18B-207; 18B-1101 through 18B-1104; 18B-1107; 18B-1108; 18B-1110; 18B-1112 through 18B-1114.

.0102 APPLICATION PROCEDURES

(a) Before any winery, brewery, distiller, wholesaler, importer, bottler, representative, distiller representative, salesman, or vendor sells, solicits orders for, or manufactures, bottles or imports any alcoholic beverage in this State, that person shall first file written application for the appropriate permit and pay the required fees, as described in G.S. 18B-902.

(b) Who Files. Application for permits shall be filed by those individuals listed in G.S. 18B-900(c). Each person shall provide in the application, under oath, the following information:

- (1) name, address, and residence of applicant;
- (2) address of location of business for which permit is desired, and county and state in which business is located;
- (3) ~~corporate~~ corporate, company or partnership name;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation, limited liability company or limited partnership, the name and address of the registered agent or employee authorized to serve as process agent;
- (8) if a nonresident, intending to operate a business

in the State of North Carolina, the name and address of person appointed as attorney-in-fact by virtue of a duly executed and registered power of attorney; and

- (9) if the application is for a vendor representative permit, authorization from the commercial permittee to represent it.

In addition the applicant shall certify, under oath, that he has not been convicted of a felony within three years, an alcohol or drug law violation within two years, nor had any permit authorizing the sale, importation or manufacture of alcoholic beverages revoked by this State, any other state, or the federal government revoked within the past three years.

(c) Salesmen, Representatives, Vendors To State Companies. All salesmen, representatives, distiller representatives, and vendors shall further state on the permit application the name of every manufacturer, importer, wholesaler, or vendor that the applicant will represent in the State of North Carolina.

(d) Resident Wholesalers. In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule, every applicant for a permit to sell malt beverages or wine at wholesale shall submit with the permit application ~~a distribution agreement~~ the designations(s) from its suppliers specifying the brands authorized to be sold by the wholesaler and the specific territory in which the product may be sold.

Statutory Authority G.S. 18B-207; 18B-900; 18B-902; 18B-1109(b); 18B-1200 through 18B-1216; 18B-1303(a).

SECTION .0200 - PRODUCT APPROVALS: LISTING PROCEDURES: PRODUCT LISTS

.0201 MALT BEVERAGE AND WINE PRODUCT APPROVALS: LISTING IN STATE

(a) All malt beverage and wine products offered for sale by an industry member shall first be approved by the Commission. Thereafter, any approved ~~malt beverage~~ product sold in this State shall conform to the analysis of the ~~samples submitted~~ product.

(b) ~~Samples. Any industry member who submits to the Commission a malt beverage product for approval for sale in the State shall furnish, without cost to the Commission, a sample of the product in a marketable container.~~ Responsibility for Approval. Responsibility for obtaining product and label approval is upon the vendor, winery, brewery, bottler or importer seeking authority to sell its products in this state.

(c) Procedure for Listing. To receive consideration by the Commission for a new malt beverage or wine product, an industry member shall submit appropriate label or product information on forms approved by the Commission and shall comply with the following procedures:

- (1) ~~All items~~ Label Approval forms shall be submit-

ted in duplicate with a list of all container sizes being offered;

- (2) All Original labels for each size container, including all labels that will appear on the container, shall be submitted in duplicate and attached to the application Label Approval form;
- (3) A copy of the Federal Label Approval Form shall be submitted for each set of labels;
- (4) Payment of a non-refundable analysis fee in the amount of twenty-five dollars (\$25.00) shall accompany the application of each new item submitted; except if the industry member submits a certified laboratory analysis of the product, payment of a non-refundable administrative fee in the amount of ten dollars (\$10.00) shall be submitted.

(d) If an analysis of a each product is submitted which shall provide at least the following information in English a certified statement of the alcohol content by volume, accompanied by a check in the amount of \$10.00 for each analysis submitted.

- (1) alcohol by volume (maximum six percent);
- (2) total sulphur dioxide content (maximum 25 ppm);
- (3) gallo tannins (maximum 100 ppm);
- (4) calories per 360 milliliters (12 ounces), and
- (5) specific gravity. If no product analysis is available for submission, the applicant shall submit two samples of the product in marketable containers. The applicant shall pay the costs of any tests required, and will be notified of such costs. No analysis or approval of any product will be provided until the Commission has received the appropriate fees associated with the tests required for that product.
- (6) For fortified wine, a certified statement of the identity and quantity of any added brandy shall be included in the analysis. Note: Upon request by the Commission, the applicant shall submit a sample of at least 500 milliliters of any brandy used to fortify a wine product being submitted for approval as a fortified wine.
- (7) No product or label will be approved unless a territorial designation has been filed by the supplier of that product pursuant to G.S. 18B-1203(a) or 18B-1303(a), if the supplier is subject to the requirements of either Article 12 or Article 13 of Chapter 18B of the General Statutes.

(d) ~~(e)~~ All forms required for the listing, analysis and approval of any malt beverage product or label approval shall be stapled together and forwarded to the ABC Commission, Product Compliance Division, 3322 Garner Road (zip 27610), P.O. Box 26687, Raleigh, North Carolina 27611-6687.

Statutory Authority G.S. 18B-203(a)(5); 18B-206; 18B-207;

18B-1203(a); 18B-1303(a).

.0202 WINE APPROVALS: LISTING IN STATE

~~(a) Except as provided for special orders, before any wine is offered for sale in this State, it and the label used upon the container shall first be approved by the Commission. The Commission shall provide blank Wine Analysis forms upon request. Thereafter, any approved wine sold shall conform to the analysis of the samples submitted.~~

~~(b) Sample of Wine Required. An industry member shall submit, without cost to the Commission, a sample of any wine that is the subject of application for listing for inspection and analysis.~~

~~(c) The steps required to receive consideration by the Commission for a new wine listing are:~~

- ~~(1) submit all items on the form in duplicate, fortified and unfortified wines listed on separate forms;~~
- ~~(2) submit all labels in duplicate attached to the form;~~
- ~~(3) submit a 500-milliliter (or a larger size if 500 milliliter is not available) bottle of each product offered for examination;~~
- ~~(4) list all sizes being offered on the form;~~
- ~~(5) submit a copy of the Federal Label Approval;~~
- ~~(6) submit a check in the amount of twenty-five dollars (\$25.00) for each new item submitted, except if a verified laboratory analysis of the product is submitted, a check in the amount of ten dollars (\$10.00);~~
- ~~(7) staple together all forms submitted with each item and forward to the North Carolina Alcoholic Beverage Control Commission, 3322 Garner Road, P.O. Box 26687, Raleigh, North Carolina 27611-6687.~~

~~(d) If an analysis of a product is submitted, it shall provide at least the following information in English:~~

- ~~(1) alcohol by volume (percent);~~
- ~~(2) total acidity (g/100 cc as tartaric acid);~~
- ~~(3) total sulphur dioxide content (ppm);~~
- ~~(4) volatile acidity, exclusive of sulphur dioxide (g/100 cc as acetic acid);~~
- ~~(5) alcohol-free soluble solids (degrees/Brix degrees/Balling); and~~
- ~~(6) identity and quantity of any added chemical preservative.~~

Statutory Authority G.S. 18B-203(a)(5); 18B-206; 18B-207.

.0206 NEW FILING REQUIRED UPON TRANSFER OF BRAND

When any malt beverage or wine brand or product is transferred from one nonresident vendor, manufacturer or importer to another, the new vendor, manufacturer or importer shall, within 30 days of the acquisition of the brand or product, submit the following items to the Commission the following items for each product:

- (1) label approval ~~application forms (BWL008)~~ form in duplicate, with all original labels for all sizes attached;
- (2) ~~copies a copy of the~~ Federal Label Approval ~~forms in duplicate form~~;
- (3) if no analysis is on file with the Commission, a certified laboratory analysis of the product, in English, showing alcohol content by volume, with a check in the amount of ten dollars (\$10.00); and
- (4) the wholesaler territorial designations for the brand and product that were in effect on the date the product was acquired by the vendor, manufacturer or importer.

Compliance with this Rule is mandatory notwithstanding the fact that the product has been previously approved by the Commission.

Statutory Authority G.S. 18B-203(a); 18B-206; 18B-1203; 18B-1303(a); 18B-1305(d).

SECTION .0300 - PACKAGING AND LABELING OF MALT BEVERAGES AND WINE

.0301 PACKAGING REQUIREMENTS

No wine or malt beverages shall be ~~sold~~, sold or offered for sale ~~sale~~, or possessed for the purpose of sale in this State unless:

- (1) The alcoholic beverage product is packaged, marked, branded, sealed and labeled in conformity with these Rules; and
- (2) The label on each product truthfully describes the contents of the container in accordance with standards of identity, and the industry member responsible for labeling or product approval furnishes the Commission with adequate proof that a valid certificate of label approval for the label has been obtained from the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department;
- (3) The product has been approved for sale in this State.

Statutory Authority G.S. 18B-206(a); 18B-207.

.0302 LABELS TO BE SUBMITTED TO COMMISSION

(a) ~~All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form."~~

(b) ~~Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler and importer of the product.~~

Statutory Authority G.S. 18B-206(a); 18B-207.

.0303 LABEL CONTENTS

Malt beverage and wine labels shall contain the following information in a legible form:

- (1) Brand name of product;
- (2) Name and address of ~~brewer or bottler~~; manufacturer or bottler, or name and address of importer if product is imported into the United States;
- (3) Class or type of product (~~e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage~~); and
- (4) ~~Net Contents.~~ contents, except that no net contents need appear on the label if it is blown, branded or burned in the container.

Statutory Authority G.S. 18B-206(a); 18B-207.

.0304 RETAILER PRIVATE LABELS

(a) ~~All wine labels shall contain the following information, in a legible form:~~

- (1) ~~brand name of product;~~
- (2) ~~class and type, in conformity with Section .0400 of this Subchapter;~~
- (3) ~~name and address of manufacturer, or bottler, except as otherwise provided in these Rules;~~
- (4) ~~on blends consisting of foreign and domestic wine, if any reference is made to the presence of foreign wine, the exact percentage by volume of the foreign wine; and~~
- (5) ~~net contents (unless blown or otherwise permanently inscribed in the container).~~

(b) ~~Exception for Retailer's Private Brand.~~ In the case of wine bottles or malt beverage containers packaged for a retailer or other person under his private brand, the name and address of the ~~bottler~~ bottler, manufacturer, or importer need not be stated on the ~~brand~~ main product label but may be stated on another label affixed to the container, if the name and address of the person for whom bottled or packed appears on the main label. The net contents shall be stated on the brand label or on a separate label affixed in immediate proximity thereto on the same side of the container in readily legible form, unless blown or otherwise permanently inscribed in the container.

(c) ~~Imported Wines.~~ ~~The name and address of the importer of a foreign wine need not be stated on the brand label if it is stated upon another label affixed to the container.~~

Statutory Authority G.S. 18B-206(a); 18A-207.

.0305 ALL CONTAINERS TO HAVE LABEL

(a) General Requirement. Every container of wine or malt beverages, including bottles, barrels, casks, kegs, cans or other closed receptacles, irrespective of size or of the material from which made, that is sold or offered for sale in this State or that is used for the transportation, importation or sale of malt beverages or wine shall bear a brand product label (~~or a brand label~~ and other permitted labels) labels containing the information required by Rules .0303

and .0304 Rule .0303 of this Section.

(b) Serving Tanks. A keg or serving tank from which malt beverages are dispensed through a tap into glasses or pitchers for sale to the public at a brewpub need not contain the information required by Rule .0303 of this Section, but shall bear the health warning statement prescribed by 27 C.F.R. Part 16.

(c) Closed Take-Out Containers. A closed take-out container or "growler" used at a brew-pub as a container for malt beverages shall be labeled to show the product name, class or type, and manufacturer's name. This information may appear in any legible format and need not be submitted to the Commission for approval.

Statutory Authority G.S. 18B-206(a); 18B-207; 27 C.F.R. Part 16.

.0308 LABEL REVISIONS

Revisions in the following items on a label shall require the supplier to submit the revised labels to the Commission on a Label Approval Form as prescribed in Rule .0201 of the Subchapter:

- (1) Change in manufacturer or importer;
- (2) Change in statement of class or type;
- (3) Change in net contents; or
- (4) Changes to the design or in the graphics of any part of a label.

Statutory Authority: G.S. 18B-203(a)(5); 18B-206(a); 18B-207.

.0309 CONTAINERS FOR WINE

The sale of wine in any unsealed container or in any container originally designed for a product other than wine, the design or shape of which would tend to mislead the consumer as to the nature of the contents, is prohibited. All wine containers shall be made of glass or other nonmetallic materials except for bulk on-premises containers approved by the Commission.

Statutory Authority G.S. 18B-206; 18B-207.

SECTION .0400 - STANDARDS OF IDENTITY FOR WINE: CONTAINERS

.0409 PROHIBITED PRACTICES

(a) The production, importation or sale within this State of any product as or under the designation of wine that fails to conform to the standards prescribed in these Rules, or of any imitation or substandard wine is prohibited.

(b) Imitation Wine. Imitation wine includes:

- (1) any wine containing synthetic materials;
- (2) any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit or other agricultural products;
- (3) any class or type of wine, the taste, aroma, color or other characteristics of which have been

acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal wines of any such class or type are acquired without that treatment; or

(4) any wine made from must concentrated at any time to more than 80 degrees (Balling).

(c) Substandard wine includes:

- (1) any wine having a volatile acidity in excess of the maximum prescribed therefor in these Rules;
- (2) any wine for which no maximum volatile acidity is prescribed in these Rules having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20 degrees Centigrade);
- (3) any wine for which a standard of identity is prescribed in these Rules that through disease, decomposition or otherwise fails to have the composition, color and clean vinous taste and aroma of normal wines conforming to that standard;
- (4) wine of any class or type containing added water or a sugar and water solution in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed in these Rules;
- (5) any wine containing monochloroacetic acid or any other substance or preservative prohibited by the United States Food and Drug Administration or the Federal Alcoholic Tax Unit; or
- (6) any wine containing deleterious, harmful or impure substances or elements or an improper balance of elements.

(d) Coined Names

- (1) Mixture of Wines. The sale in this State of wines identified on labels or in advertisements by a type or brand designation that implies mixtures of wines for which standards of identity are established in these Rules, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Claret," "Burgundy," etc., is prohibited.
- (2) Combinations of Alcoholic Beverages. The sale in this State of wines or combinations of wine and other alcoholic beverages that contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine" or similar combinations is prohibited.

Statutory Authority G.S. 18B-206(a); 18B-207.

.0410 CONTAINERS

(a) Unsealed Container Prohibited. The sale of wine in any unsealed container or any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to

~~the nature of the contents is prohibited. All wine containers shall be made of glass or other nonmetallie materials except for bulk on premises containers approved by the Commission.~~

~~(b) Distinguishing Mark Different from Retailer. The sale of wine in containers that have the blown, branded or burned name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler or bottler or any other person different from the person whose name is required to appear on the brand label is prohibited.~~

Statutory Authority G.S. 18B-206; 18B-207.

.0411 SEIZURE OF SUBSTANDARD WINE

~~Imitation, substandard or misbranded wine offered for sale in violation of the ABC laws may be seized and disposed of.~~

Statutory Authority G.S. 18B-206(a); 18B-207; 18B-503.

SECTION .0500 - INDUSTRY MEMBERS: GENERAL PROVISIONS

.0502 RECORD KEEPING REQUIREMENTS: SALES TICKETS

(a) In addition to records required to be kept by the North Carolina Department of Revenue, all industry members shall maintain on the licensed premises a copy of every original sales ticket or receipt that relates to sales of alcoholic beverage products, ~~equipment, accessories,~~ advertising specialty items, or advertising novelties.

(b) Sales Ticket Required. Wholesalers or their salesmen shall, at the time of each sale and delivery of malt beverages or wine to a retailer, provide on every retail sales ticket the following information:

- (1) date of sale;
- (2) name of establishment;
- (3) location;
- (4) quantity of each ~~brand of malt beverages beverage~~ or wine product sold;
- (5) unit price;
- (6) total price;
- (7) amount received;
- (8) invoice number; and
- (9) route, if applicable.

All sales tickets shall be endorsed at the time of sale by the retailer or authorized agent and by the wholesaler with the usual signature of each.

All sales tickets shall be retained by the wholesaler for a period of three years and shall be filed alphabetically, by sales route, or chronologically by date of sale.

Statutory Authority G.S. 18B-207.

SECTION .0600 - SALES AND DELIVERIES OF MALT BEVERAGES AND WINE

.0601 APPROVED PRODUCTS ONLY

Except as provided in Subchapter 2S, Rule .0223, no wholesaler shall sell any product that has not been approved by the Commission for sale in this State. It is a wholesaler's responsibility to determine whether or not a product has been approved by the Commission before it sells or offers for sale any alcoholic beverage.

Statutory Authority G.S. 18B-207; 18B-1005.

.0602 SALES AND PURCHASE RESTRICTIONS: RECORDS

(a) No wholesaler of malt beverages shall sell malt beverages to any person who does not hold a retail or wholesale Malt Beverage permit, and no wholesaler of wine shall sell any fortified wine or unfortified wine to any person who does not hold the appropriate retail or wholesale Fortified or Unfortified Wine ~~Permit, except, Permit,~~ Culinary Permit or Ship Chandler's Permit, except that a wholesaler may furnish or sell wine or malt beverages to his employees for the sole use of the employees.

(b) No retail malt beverage or wine permittee shall purchase those alcoholic beverages from anyone other than a licensed wholesaler.

(c) No malt beverage wholesaler shall sell, ship, or distribute any brand of malt beverages to any retail permittee located outside the territory described in that wholesaler's distribution agreement for the product filed pursuant to G.S. 18B-1303(a).

(d) All persons holding retail Malt Beverage or Wine Permits shall keep the sales tickets and delivery receipts furnished by the wholesaler, pursuant to Rule .0502 of this Subchapter, as well as all other records of purchases of malt beverages and wine, filed separate and apart from all other records. Delivery receipts shall set forth terms of sale for each separate transaction between the retailer and the wholesaler and shall include for each separate sale:

- (1) date of sale;
- (2) trade name of retail establishment;
- (3) location;
- (4) quantity of each brand of alcoholic beverage sold;
- (5) unit price;
- (6) total price;
- (7) amount paid; and
- (8) invoice or receipt number.

(e) The retailer shall retain for inspection copies of all tickets and receipts on the premises for three years.

(f) A retail permittee who operates multiple locations may maintain beer and wine invoices at one central location upon written application to and approval by the Commission.

Statutory Authority G.S. 18B-207; 18B-1107; 18B-1109; 18B-1303(a).

.0604 COLLECTION OF AMOUNT OF SALE

(a) Each wholesaler shall collect the full amount of the

sale price in cash or bona fide check at the time of or prior to delivery of alcoholic beverages to a retailer except as provided in this Rule. No wholesaler shall extend credit for any period of time to any retailer who purchases malt beverages or wine from him.

Note: For purposes of this Section, the term "check" shall include the electronic transfer of funds from a retailer to a wholesaler. Prior to an electronic fund transfer, the retailer shall enter into a written agreement with the wholesaler specifying the terms and conditions for the electronic fund transfer as payment for alcoholic beverages. All such agreements shall provide that the wholesaler may initiate the electronic fund transfer at any time after delivery of alcoholic beverages. The electronic fund transfer must be initiated before the end of the business day following delivery. Any agreement authorizing electronic fund transfers shall be voluntary on the part of all parties. The wholesaler may not bear any share of the retailer's cost related to electronic fund transfers, including costs of information generated by third parties related to such transfers. Nothing in this Rule shall operate to suspend any of the requirements concerning sales tickets and record keeping as provided in Rule .0502 of this Subchapter.

(b) Collections for sales and deliveries upon military reservations, however, shall not be required at the time of the transaction.

(c) A route salesman may accept one payment for all deliveries made by him on the same day to the same permittee if deliveries are made to two or more of the permittee's retail premises on the same route. Payment in such cases shall be collected by the salesman for all such deliveries no later than at the last store account on the route. Nothing in this Rule shall be construed to authorize a route salesman to collect payment from a permittee at an office location unless the office is located on the premises where a delivery is made.

Statutory Authority G.S. 18B-207; 18B-1116.

.0606 PLATFORM SALES

Wholesalers may sell malt beverages or wine to any person holding the appropriate retail permits at the wholesaler's place of business except that no malt beverages may be sold to any retailer whose business is located outside the wholesaler's territory for the brands being sold. Such a transaction shall be known as a platform sale.

Statutory Authority G.S. 18B-207.

SECTION .0700 - ALCOHOLIC BEVERAGES: RETAILER/INDUSTRY MEMBER RELATIONSHIP: TRADE PRACTICES

.0707 INDUCEMENTS (TIED HOUSE)

No industry member ~~shall~~ shall, either directly or indirectly:

- (1) acquire or hold any interest in any license or

permit with respect to the premises of a retail permittee;

- (2) acquire any interest in real or personal property owned, occupied, or used by a retail permittee in the conduct of his business;
- (3) furnish, give, rent, lend, or sell to a retail permittee any equipment, fixtures, signs, supplies, money, services, or other things of value except as otherwise provided in these Rules;
- (4) pay or credit a retail permittee for any advertising, display, or distribution service;
- (5) guarantee any loan or the repayment of any financial obligation of a retail permittee;
- (6) extend credit to a retail permittee, except as otherwise provided in these Rules;
- (7) require a retail permittee to take and dispose of a certain quota of any alcoholic beverages;
- (8) acquire any interest in a mortgage or deed of trust on the retailer's business or property;
- (9) pay for the display of advertising on any signs or scorecards manufactured by a third party for a retailer;
- (10) furnish free warehousing by delaying delivery of alcoholic beverage product or by providing ~~refrigerated~~ vehicles for a retailer; or
- (11) purchase advertising on signs, scoreboards and programs at ballparks, racetracks, and coliseums from the retail concessionaire, unless the retailer is a city or county, and an exemption has been granted pursuant to G.S. 18B-1116(b).

Statutory Authority G.S. 18B-207; 18B-1116(a).

.0708 COMMERCIAL BRIBERY

(a) No industry member shall ~~make secret~~ provide, either directly or indirectly, gifts or payoffs to purchasing agents, clerks, bartenders, salesmen or other employees of retail permittees.

(b) No industry member shall ~~give~~ give, either directly or indirectly, any bonus, premium or compensation to any retailer or an officer, employee or agent of the retailer.

Prohibited acts include:

- (1) monetary inducements ("push money") given to retailers or their employees;
- (2) total or partial payment of a retailer's employee's salary;
- (3) sales or advertising promotion contests in which a retailer's employees are offered or awarded prizes, such as trips abroad, cash, or automobiles that are totally or partially financed by an industry member;
- (4) payments or gratuities to groups or associations of retailer's employees;
- (5) other gifts such as trips, appliances, or other items given to retail corporate officers; or
- (6) participation in a retailer's sales or management meetings, conventions or outings by sponsoring

or underwriting any events in connection with the meeting, convention or outing, unless such participation is limited to the providing of a hospitality suite with light hors d'oeuvres and beverages, and the price paid for the suite is not greater than that paid by any other participant in the meeting, convention or outing.

Statutory Authority G.S. 18B-207; 18B-1116(a).

.0709 CONSIGNMENT SALES: CONDITIONAL SALES: RETURNS

(a) Consignment Sales Prohibited. No industry member shall sell, offer for sale, or contract to sell to any retail permittee, nor shall any retail permittee purchase, offer to purchase, or contract to purchase from any industry member any alcoholic beverages on consignment or under conditional sale, or with the privilege of return, or on any basis other than a bona fide cash sale. For the purposes of this Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retailer to retain title to alcoholic beverages until those products are sold.

(b) Privilege of Return. No industry member and retailer shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that he cannot sell. Any acceptance of returned merchandise will be considered a strong indication that the "privilege of return" existed at the time of sale, and a repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

(c) Sales Conditioned on the Acquisition of Other Merchandise. No industry member shall make any agreement with any retailer to accept as an agreement incident to present or future sales other alcoholic beverages that the retailer wants to remove from his inventory. The exchange of alcoholic beverages for equal quantities of the same ~~type and brand~~ product in containers of another size and style is not considered an acquisition of "other" alcoholic beverages and, therefore, is not prohibited where the return is otherwise permissible.

(d) Exceptions. This Rule shall not apply to the following transactions:

- (1) returns of malt beverages or wine for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as mutilated or damaged labels or containers, error in delivery, product deterioration, or a bona fide discontinuance of the retailer's business;
- (2) exchanges of malt beverage products for equal quantities of the same ~~brand, type, product, in identical~~ size and container style, so long as the manufacturer's code date on the products will expire within 14 calendar days of the date of

exchange, and the quantity exchanged does not exceed 20 cases of each brand per 14 day period. For the purposes of this Rule, the term "exchange" means to replace product for product and does not authorize the wholesaler to accept returned malt beverage products for cash or credit;

- (3) returns of wine or malt beverage products from a seasonal retailer who is open only a portion of the year if the products are likely to spoil during the off-season. For purposes of this Rule, a "seasonal retailer" is defined as one that closes its business completely for a period of at least eight weeks during the summer or winter months. Returns from a seasonal retailer may be for cash or credit.

Note: The return or exchange of wine products is governed by this Rule and the regulations under the Federal Alcohol Administration Act found in Title 27 of the United States Code of Federal Regulations, Part 11 (27 CFR Sec. 11.1 through 11.46), and nothing in these Rules shall be construed to authorize the return or exchange of wine products if the transaction is prohibited by federal law.

Authority G.S. 18B-207; 18B-1116; 27 C.F.R. 11.1 through 11.46.

.0711 PROHIBITED TRADE PRACTICES

(a) General. It shall be a violation of these Rules for any industry member, whether or not licensed in this state, or any officer, director, employee or affiliate, to either directly or indirectly lend, give, furnish or offer to any retail permittee or his employee, or to the owner of the premises on which the business of a retailer is conducted, or for any retail permittee, employee, or owner to demand, require or accept from any industry member, any money, services, furniture, fixture, equipment, sign, glasses, barware, supplies or other thing of value, except as provided in these Rules.

(b) Prohibited Services. By way of illustration, but not limitation, the following services shall not be furnished, given, provided or made available to a retail permittee by an industry member, even if the retailer is charged or billed for the services for their market value:

- (1) installing, repairing or maintaining equipment, outdoor signs or other fixtures;
- (2) promoting a retailer in advertising;
- (3) reconciling inventory for a retailer;
- (4) breaking down empty boxes, cases or cartons;
- (5) providing labor or employees to assist a retailer in the retailer's promotional events;
- (6) loaning or renting aerial displays or outdoor inflatables to a retailer for use, whether on or off the retailer's licensed premises;
- (7) pricing or repricing a product without the retailer's consent;
- (8) warehousing, by:

- (A) making ~~refrigerated~~ vehicles available to the retailer; or
 - (B) delaying delivery from a manufacturer, importer, nonresident vendor or warehouse in order to enable the retailer to take advantage of promotional prices or for any other reason;
 - (9) providing shelving schematics that are customized for an individual retailer or group of retailers, whether based on total beer or wine sales records from one store or a group of stores, but an industry member may use its own sales statistics and records to develop a suggested shelf plan for alcoholic beverage products;
 - (10) affixing special retailer stamps or stickers to beer or wine packaging, but a wholesaler may affix signs, stickers, stamps, or tags indicating the product's price to a container, shelf or display of its products;
 - (11) entering delivery data on a retailer's in-store computer;
 - (12) providing data processing services;
 - (13) sponsoring sports leagues that are also sponsored by a retailer, or that use the facilities of a retailer for sporting events;
 - (14) guaranteeing the loan of a retailer;
 - (15) extending credit to a retailer;
 - (16) failing to require a deposit equal to that charged by the supplier on kegs and returnable bottles; or
 - (17) negotiating special prices for or financing of equipment.
- (c) Prohibited Things of Value. By way of illustration, but not limitation, the following things of value shall not be furnished, given, loaned, rented or sold to a retail permittee by any industry member:
- (1) aerial displays or tethered inflatables;
 - (2) parties given for retailers or groups of retailers' employees, unless otherwise allowed by the rules of the Commission;
 - (3) prizes at retailer conventions;
 - (4) advertising in a retailer periodical or advertising in a retailer publication designed for distribution to consumers;
 - (5) outside signs;
 - (6) cooperative advertising, including, but not limited to:
 - (A) providing or assisting retailer promotions, whether on or off the retailer's premises;
 - (B) participation with a retailer in the advertising of alcoholic beverages, the retailer's business or special events unless specifically approved by the Commission in the case of fundraisers for non-profit charitable organizations;
 - (C) underwriting the cost of T-markers, scorecards or scoreboards by the purchase of advertising from a third party; or
 - (D) customizing point-of-sale advertising materials,

novelties, glassware, consumer specialties or product displays by printing or having printed the retailer's name, slogan or logo on the item, unless otherwise specifically allowed in the rules of the Commission;

- (7) making discounts, rebates or refunds to a retailer on the condition that the retailer use the discount, rebate or refund to pay off a loan;
- (8) equipment, fixtures or furnishings; or
- (9) clothing, except as provided in Rule .0713 of this Section.

Statutory Authority G.S. 18B-207; 18B-1116(a)(3),(b).

SECTION .1100 - FUEL ALCOHOL PERMITS

.1104 DEFINITIONS

The following terms shall have the following meanings when used in Rules .1105 through .1107 of this Section:

- (1) "Fuel Alcohol Plant" means an establishment which holds an alcohol fuel producer's permit (federal operating permit) and a state Fuel Alcohol permit issued pursuant to G.S. 18B-1105(b) to operate a distillery and produce and store distilled spirits for use as fuel alcohol.
- (2) "Denaturing" means rendering fuel alcohol unfit for beverage purposes by adding the ingredients as described in one of the formulas listed in Rule 4 NCAC 2T .1107.
- (3) "Fuel alcohol" means distilled spirits of at least 140 proof produced by a fuel alcohol plant for use only as fuel.
- (4) "Fuel alcohol in process" means distilled spirits produced by a fuel alcohol plant which have not yet been distilled to the proof level required to qualify them as fuel alcohol.

Statutory Authority G.S. 18B-207; 18B-1105(b).

.1105 GENERAL RESTRICTIONS

- (a) A fuel alcohol permittee may not sell, or otherwise transfer any fuel alcohol or fuel alcohol in process to any person except as provided in this Section.
- (b) Fuel alcohol produced by the permittee may be used only as fuel.
- (c) A permittee may remove only denatured fuel alcohol from his plant premises.
- (d) A fuel alcohol permittee shall not possess any distilled spirits on the licensed premises other than denatured fuel alcohol and fuel alcohol in process.
- (e) The permittee's fuel alcohol plant must be secured by lock and key unless the permittee or his employee is on the premises.
- (f) A fuel alcohol permittee shall not possess more fuel alcohol in process on the licensed premises than his operational still or stills are capable of processing at one time.
- (g) Fuel alcohol may not be removed from the permittee's

plant premises in any container smaller than five gallon capacity.

Statutory Authority G.S. 18B-207; 18B-1105.

.1106 STORAGE AND PACKAGING

All distilled spirits possessed by a permittee on the licensed premises must be packaged and stored in accordance with the following requirements:

- (1) Each container used in the storage and packaging of fuel alcohol must be five gallon size or larger.
- (2) Each container of fuel alcohol must be labeled to reflect the formula used for denaturing.
- (3) Each container of fuel alcohol must reflect the words "POISON - DENATURED FUEL ALCOHOL, NOT FIT FOR BEVERAGE USE OR HUMAN CONSUMPTION".
- (4) Fuel alcohol in process must be stored in 55 gallon or larger containers and labeled as "Fuel Alcohol In Process". The label shall also show the approximate proof of the fuel alcohol in process.

Statutory Authority G.S. 18B-207; 18B-1105.

.1107 DENATURING

All fuel alcohol produced by a permittee must be immediately denatured at the time of manufacture by placing the ingredients listed in one of the following formulas into each container before the container is filled with fuel alcohol in process:

- (1) Formula I - For every 100 gallons of ethyl alcohol (fuel alcohol) add two gallons or more of either:
 - (a) gasoline;
 - (b) kerosene; or
 - (c) methyl isobutyl ketone.
- (2) Formula II - For every 100 gallons of ethyl alcohol (fuel alcohol) add one-eighth ounce of denatonium benzoate N.F. (Bitrex) and two gallons of isopropyl alcohol.

Statutory Authority G.S. 18B-207; 18B-1105.

.1108 RECORD KEEPING

A fuel alcohol permittee shall maintain records of:

- (1) the quantity, by batches, of fuel alcohol produced;
- (2) the quantity and type of ingredients used to produce each batch of fuel alcohol;
- (3) the quantities of fuel alcohol on hand;
- (4) the quantities and types of materials added to denature each batch of fuel alcohol; and
- (5) the disposition of all fuel alcohol produced and not on hand.

Statutory Authority G.S. 18B-207; 18B-1105.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce, Division of Community Assistance intends to amend rules cited as 4 NCAC 19L .0401, .0403, .0407, .0501 - .0502, .0505, .0802, .0805, .0901, .0906 - .0907, .0911, .1002, .1004, .1009, .1301 - .1303, .1701 - .1703; and adopt rules cited as 4 NCAC 19L .1801 - .1803.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 1:30 p.m. on November 30, 1995 at 1307 Glenwood Avenue, Suite 250, Conference Room A, Raleigh, NC 27605.

Reason for Proposed Action: The proposed action is necessary to enable the Division of Community Assistance to facilitate the implementation of the Community Development Block Grant Program in aid of which the rules were adopted.

Comment Procedures: Oral or written comments will be accepted until December 15, 1995. Written comments should be sent to Bill McNeil, Director, Division of Community Assistance, P.O. Box 12600, Raleigh, NC 27605-2600. Oral comments should also be directed to Bill McNeil at (919) 733-2850.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 19L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0400 - DISTRIBUTION OF FUNDS

.0401 GENERAL

(a) The Division shall designate specific due dates or open periods of time for submission of grant applications under each category except for ~~Housing Development and Urgent Needs~~. ~~Housing Development and Urgent Needs~~ applications may be submitted at any time, but other grant application submission dates or submission periods will be announced by the Division.

(b) In cases where the Division makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a grant award, the Division may compensate that applicant at the earliest time sufficient funds become available or with a grant in the next funding cycle.

(c) Applicants can apply for funding under the grant categories of Community Revitalization (except that no applications will be accepted for 1996 funding), Housing Development, Community Entrepreneurial Empowerment,

and Urgent Needs and Infrastructure beginning with the 1997 program year funding. Applicants shall not apply for Contingency funding. Contingency awards will be made to eligible applicants in any category. ~~Community Revitalization.~~

(d) Beginning with the 1996 program year, applications will be not accepted for the Community Revitalization or Infrastructure categories but will instead be accepted every other year. In the years when applications will be not accepted, the Division will fund Community Revitalization and Infrastructure applicants from the previous year until funds are exhausted.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0403 SIZE AND USE OF GRANTS MADE TO RECIPIENTS

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization: Concentrated Need and Infrastructure subcategories - eight hundred fifty thousand dollars (\$850,000) and Scattered Site subcategory - five hundred thousand dollars (\$500,000); Housing Development - two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - six hundred thousand dollars (\$600,000); Contingency - six hundred thousand dollars (\$600,000); Community Entrepreneurial Empowerment implementation grant - one million dollars (\$1,000,000). ~~and Entrepreneurial Empowerment planning grant - twenty thousand dollars (\$20,000).~~ Applicants shall not have a project or combination of projects under active consideration for funding which exceeds one million two hundred fifty thousand dollars (\$1,250,000), except for Urgent Needs projects. Beginning with 1997 funding, applicants ~~Applicants~~ in the Community Revitalization category shall choose to apply for either a concentrated needs award, ~~or an infrastructure award,~~ or a scattered site award, but no more than one from the same HUD allocation.

(b) No local government may receive more than a total of one million two hundred fifty thousand dollars (\$1,250,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local governments may also receive up to six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and funds for one demonstration project in addition to other grants awarded during the same time period.

(c) Community Revitalization basic category applicants may spend no more than 15 percent of their total grant amount to finance local option activities. Local option activities are eligible activities which do not need to be directly related to proposed projects except in the infrastructure subcategory; however, job creation activities are not eligible local option activities. Local option activities will not be competitively rated by the Division, but may be limited to specific eligible activities. Each local option

project must show that:

- (1) At least fifty-one percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons, except that CDBG funds may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) The Division may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning and administrative budgets without prior Division approval. In no case, may applicants budget and expend more than 18 percent of the sum of funds requested and program income for administrative and planning activities for each project.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate grant amounts for each applicant, the Division may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; 42 U.S.C. 5301.

.0407 GENERAL APPLICATION REQUIREMENTS

(a) Local governments shall submit applications as prescribed by this Rule in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the Division to rate them against the selection criteria. In addition, the following may be considered: information from any source which regards the eligibility of the applicant or application; the legality or feasibility of proposed activities; the applicant's compliance with application procedures specified in this Subchapter or the accuracy of the information presented in the application; evaluation of proposed projects by on-site review; and category-specific information described in Sections .0500, .0800, .1200, and .1300 of this Subchapter. All applicants shall address their projects to one of the following grant categories: Community Revitalization (either concentrated needs, ~~infrastructure~~ or scattered site) and Infrastructure beginning with 1997 program year funds, Housing Development, Urgent Needs, or Community ~~or Entrepreneurial Empowerment.~~ Applicants may apply in more than one grant category, providing the total grant

application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in sufficient detail to be adequately rated.

(b) Applications must be received by the Division's administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(c) Applicants must provide citizens with adequate opportunity for meaningful involvement in the development of Community Development Block Grant applications. Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the Division is aware of an applicant's failure to meet these citizen participation requirements, the Division may not rate the application.

(d) The Division may submit all CDBG applications and environmental review records as required by the National Environmental Policy Act ~~and the State Environmental Policy Act~~ to the State Clearinghouse of the Department of Administration for review and comments. The Division may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

(e) The applicant shall certify to the Division that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state requirements are available for public inspection from the Division.

(f) Applicants must comply with the Housing and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, and Executive Orders.

(g) Application requirements described in this Rule .0407 do not apply to demonstration grants and Urgent Needs grants, except for Paragraphs (a), (d), (f) and (g) of this Rule.

(h) For multi-family rental housing activities, the applicant must state in the application the standards it has adopted for determining affordable rents for such activities.

(i) Applicants that receive CDBG funding for projects may charge the cost of application preparation to prior CDBG programs or to the current program provided that procurement procedures consistent with 24 CFR 85.36 are followed. No more than three thousand five hundred dollars (\$3,500) may be charged to the CDBG program for application preparation.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.483.

SECTION .0500 - COMMUNITY REVITALIZATION PROJECTS

.0501 DESCRIPTION

(a) The Community Revitalization category includes activities in which a majority of funds is directed towards

improving, preserving or developing residential areas. All eligible CDBG activities may be undertaken for the purpose of community revitalization.

- (1) Applications for funding may involve single or multiple activities, addressing one or more needs in the area except for infrastructure (no longer a subcategory after 1996) and scattered site subcategories which addresses one need.
- (2) All community revitalization activities, except for scattered site activities, must be carried out within defined project areas.
- (3) Community Revitalization funds are distributed to eligible units of local government on a competitive basis. Community Revitalization projects will be evaluated against other Community Revitalization project proposals.

(b) The Community Revitalization category includes a subcategory for scattered site housing activities which are directed towards one hundred per cent low and moderate income benefit or the prevention or elimination of slums or blight. Scattered site projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities.

- (1) Scattered site activities may be carried out in any location throughout the applicant's jurisdiction and need not be carried out in an area of concentrated need.
- ~~(2) No local funds are required or expected to be contributed to scattered site housing rehabilitation projects.~~
- (2) (3) Scattered site funds are distributed to eligible units of local government on a competitive basis, and projects will be evaluated against other scattered site project proposals.

(c) The Community Revitalization category includes a subcategory for public infrastructure projects within a definable project area. Projects will be evaluated against other infrastructure project proposals. (This subcategory expires after the 1996 program year.)

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.0502 ELIGIBILITY REQUIREMENTS

(a) Applications for concentrated needs subcategory funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons, except that CDBG funds proposed for local option activities may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the

national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applications that do not meet these eligibility requirements will not be rated or funded. In designing projects which meet these requirements, applicants must appropriately ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

(b) Applicants for scattered site subcategory funds must show that:

- (1) Rehabilitation activities of occupied and vacant units must benefit 100 percent low and moderate income persons; and
- (2) CDBG funds proposed for ~~rehabilitation~~, acquisition, clearance, and disposition of vacant units will address the national objective of preventing or eliminating slums or blight.

(c) Applicants shall have the capacity to administer a CDBG program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.0505 SELECTION CRITERIA

Projects will be evaluated and rated in accordance with the annual statement of program design as approved by HUD.

Rating factors are:

- (1) benefit to low and moderate income persons,
- (2) project severity of need,
- (3) project treatment of need,
- (4) appropriateness and feasibility of proposed project activities, and
- (5) local commitment of funds and ~~of~~ community efforts.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.483.

SECTION .0800 - URGENT NEEDS/CONTINGENCY PROJECTS

.0802 ELIGIBILITY REQUIREMENTS

Urgent Needs grant applicants must certify to all three ~~four~~ of the following eligibility requirements:

- (1) the need addressed by the application must have arisen during the preceding 18-month period and represent an imminent threat to public health or

safety;

- (2) the need addressed by the application must represent a unique and unusual circumstance that does not occur frequently in a number of communities in the state;
- (3) the applicant does not have sufficient local resources, and state or federal resources are not available to alleviate the urgent need; ~~and~~
- (4) ~~at least 51 percent of the CDBG funds proposed for the project must benefit low and moderate income persons.~~

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(3); 24 C.F.R. 570.483.

.0805 SELECTION CRITERIA

Selection of Urgent Needs grant recipients will be based upon availability of funds and eligibility requirements as presented in Rule .0802 of this Subchapter. Preference will be given to applicants that can show that at least 51 percent of the CDBG funds proposed for the project will benefit low and moderate income persons.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.483.

SECTION .0900 - GRANT ADMINISTRATION

.0901 GRANT AGREEMENT

(a) Upon approval of the application by the Division, a written grant agreement will be executed between the recipient and the Division. These Rules, the approved application, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) The grant agreement in its original form and all modifications thereto shall be kept on file in the office of the recipient in accordance with Rule .0911 of this Section.

(c) The Division may condition the grant agreement until the recipient demonstrates compliance with all applicable laws and regulations. In the case of Housing Development and Community Entrepreneurial ~~Entrepreneurial~~ Empowerment projects the grant agreement may be conditioned until legally binding commitments have been obtained from all participating entities.

(d) Neither CDBG nor non-CDBG funds involved in a project may be obligated, nor may any conditioned project activities begin until the Division releases in writing any and all applicable conditions on the project. Recipients may incur costs prior to release of conditions with prior Division approval in accordance with Rule .0908 of this Section.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0906 FINANCIAL MANAGEMENT SYSTEMS

Recipient financial management systems shall provide for accurate, current and complete disclosure of the financial results of each grant program in accordance with fiscal

control and reporting requirements set forth in G.S. 159, Article III, the Local Government Budget and Fiscal Control Act. Recipients shall meet the following requirements:

- (1) All grant funds shall be expended in accordance with a budget ordinance or project ordinance adopted under G.S. 159-8 and G.S. 159-13.2 respectively;
- (2) A recipient may deposit or invest all or part of the cash balance of any grant fund; however, all interest earned shall be returned to the Department in accordance with Rule .0907(c) of this Section;
- (3) Investment deposits shall be secured as provided in G.S. 159-31(b);
- (4) The recipient shall designate as its official depositories one or more banks or trust companies in the State in accordance with G.S. 159-31(a);
- (5) All budgetary accounting for appropriations of grant funds shall be in accordance with the procedures for incurring obligations and disbursements as set forth in G.S. 159-28;
- (6) Each recipient shall establish an accounting system in accordance with G.S. 159-26;
- (7) The recipient's finance officer, and each officer, employee, or agent who handles or has in his custody more than one hundred dollars (\$100.00) of grant funds at any time, or who handles or has access to the recipient's inventories, shall be bonded in accordance with G.S. 159-29;
- (8) Each recipient shall maintain records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;
- (9) A system for procedures for procurement and property management shall be provided in accordance with Rule .0908 and Rule .0909 of this Section;
- (10) All cash receipts must be deposited with, or to the credit of, the finance officer. This includes program revenues, reimbursements of travel, vendor payments or other items previously recorded as expenditures, and all other grant moneys from the Department;
- (11) Recipients must develop a systematic method to assure timely and appropriate resolution of audit findings and recommendations;
- (12) Recipients shall require subgrantees to adopt the standards set forth in this Rule;
- (13) Recipients shall comply with the Office of Management and Budget Circular A-87, entitled Cost Principles for State and Local government. In applying OMB A-87 the term "federal agency" shall mean the Department;
- (14) Recipients shall record the receipt and expenditure of project revenues from taxes, special assessments, levies, fines, etc., in accordance with

generally accepted accounting principles;

- (15) Subrecipients shall comply with the Office of Management and Budget Circular A-110, entitled Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

Authority G.S. 14-234; 143B-10; 143B-431; 159, Article III; 24 C.F.R. 570.489; 24 C.F.R. 570.496; 42 U.S.C.A. 5304(b),(d),(e).

.0907 PROGRAM INCOME

(a) Definition. Program Income is defined as gross income earned by the recipient from grant supported activities. Such earnings may include, but not be limited to, sale of property, interest received from a loan program, and the return of sales taxes on purchases made during the program. Receipts derived from the operation of a public work or facility, the construction of which was assisted by this program, do not constitute program income.

(b) Unless the grant agreement provides otherwise, recipients shall have no obligation to the Department with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. Recipients must however, follow the procedures set forth in Rule .0909 PROPERTY MANAGEMENT STANDARDS.

(c) All interest earned on grant funds prior to distribution shall be returned to the Department, except recipients may keep one hundred dollars (\$100.00) per year for administrative expenses in accordance with 24 CFR 570.489(c)(2).

(d) Recipients shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with the grant agreement.

(e) Unless otherwise required, program income generated by a pre-1986 grant may be retained by the recipient. Program income is identified by the grant year in which the activities which generated the program income were funded. Pre-1986 program income shall be added to funds committed to a current project and used for activities approved in the project's application. Pre-1986 program income shall be expended prior to requesting additional funds from the Department or shall be used in future CDBG projects.

(f) Program Income generated by grants made in 1986 or afterwards shall be returned to the Department except when:

- (1) the recipient shall propose at the time of application or at the time the program income is anticipated, a use or uses for the projected program income, and
- (2) the Department determines that, at the time of the proposal, the use of the projected program income meets federal requirements prohibiting the state from recapturing the program income; or
- (3) the recipient, designated at the time of the

preliminary grant award as a "severely distressed county" pursuant to G.S. 105-130.40(c), or a city in such a county, wishes to retain the program income to establish a local economic development revolving loan fund. Any activities that are eligible under Title I of the federal Housing and Community Development Act of 1974, as amended, and that meet at least one of the three national objectives of the Housing and Community Development Act may be undertaken. If the designation, pursuant to G.S. 105-130.40(c), as a "severely distressed county" is removed from a county, projects having received at least a preliminary grant award prior to the removal of the designation may continue to retain program income resulting from that grant as provided in this subsection. Provisions of 4 NCAC 19L .0913 apply at the time of closeout; or

- (4) the program income is generated from an Entrepreneurial Empowerment project, and the Department has approved the plan for re-use of program income.

(g) Income after closeout and not subject to Rule .0907(e) and (f) of this Subchapter.

- (1) Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement, program income of twenty-five ~~ten~~ thousand dollars (\$25,000) ~~(\$10,000)~~ or more received annually subsequent to the CDBG Program closeout shall be used for any eligible activity pursuant to Rule .0301 of this Subchapter. Recipients must receive Division approval in writing prior to obligation of program income under this Paragraph to determine if the proposed use is plainly appropriate to meeting the recipient's needs and objectives. When income received is less than twenty-five ~~ten~~ thousand dollars (\$25,000) ~~(\$10,000)~~ annually, the recipient may spend the funds at the end of the 12 month period according to its own needs; and
- (2) Accurate records shall be kept on all program income and reported annually to the Division when the annual amount exceeds twenty-five ~~ten~~ thousand dollars (\$25,000) ~~(\$10,000)~~ and to determine when the twenty-five ~~ten~~ thousand dollars (\$25,000) ~~(\$10,000)~~ threshold is exceeded subsequent to grant closeout.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(b)(4).

.0911 RECORDKEEPING

(a) The Secretary of the Department of Commerce, the Secretary of the Department of Housing and Urban Development, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files,

and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this Subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) All Community Development Program records that are public under G.S. 132 shall be made accessible to interested individuals and groups during normal working hours, and shall be maintained at all times at the recipient's local government office, unless the recipient is authorized in writing by the Division to keep the records elsewhere.

(c) Financial records, supporting documents and all other reports and records required under this Subchapter, and all other records pertinent to the Community Development Program shall be retained by the recipient for a period of three years from the date of the closeout of the program, except as follows:

- (1) Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later;
- (2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition;
- (3) Records for any displaced person shall be retained for three years after he/she has received final payment;
- (4) Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with Subparagraph (3) of this Section, whichever is later; and
- (5) If a litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(d) All records shall be sufficient to determine compliance with the requirements and primary objectives of the Community Development Block Grant Program and all other applicable laws and regulations. All accounting records shall be supported by source documentation and shall be in compliance with Rule .0906 of this Section.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(d)(2), (e); 24 C.F.R. 570.490.

SECTION .1000 - COMPLIANCE REQUIREMENTS

.1002 CITIZEN PARTICIPATION

(a) Each applicant and recipient shall provide citizens with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the program. Each applicant and recipient shall provide adequate information to citizens, hold public hearings, provide for timely responses to citizens' complaints, and certify that it is following a

detailed Citizen Participation Plan as in Paragraphs (b) through (h) of this Rule. All public hearings shall be held by the governing board of the applicant or recipient.

(b) Citizen participation in the application process.

(1) Each applicant for CDBG funds shall:

- (A) Solicit and respond in a timely manner to views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas where activities are proposed. Applicants shall respond in writing to written citizen comments. Responses shall be made within ten calendar days of receipt of the citizen comment.
- (B) Provide technical assistance to facilitate citizen participation, where requested. The technical assistance shall be provided to groups representative of persons of low- and moderate-income that request such assistance in developing proposals. The level and type shall be determined by the applicant.
- (C) Provide adequate notices of public hearings in a timely manner to all citizens and in such a way as to make them understandable to non-English speaking persons. Hearings must be held at times and locations convenient to potential or actual beneficiaries and with accommodations for the handicapped. A notice of the public hearing shall be published at least once in the nonlegal section of a newspaper having general circulation in the area. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. The notice of public hearing to obtain citizens' views after the application has been prepared, but prior to the submission of the application to the Division, shall contain a description of the proposed project(s) including the proposed project location, activities to be carried out, and the total costs of activities.
- (D) Schedule hearings to obtain citizens' views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low- and moderate-income persons, members of minority groups, handicapped persons, and residents of blighted neighborhoods and project areas.
- (E) Conduct one public hearing during the planning process to allow citizens the opportunity to express views and proposals prior to formulation of the application, except that applicants in the Urgent Needs category are exempt from holding this public hearing.
- (F) Conduct one public hearing after the application has been prepared but prior to submission of the application to the Division.

(2) Submitting objections to the Division.

- (A) Persons wishing to object to the approval of an application by the Division shall submit to the Division their objections in writing. The Division will consider objections made only on the following grounds:
 - (i) The applicant's description of the needs and objectives is plainly inconsistent with available facts and data,
 - (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant, and
 - (iii) The application does not comply with the requirements of this Subchapter or other applicable laws.
- (B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the facts and data upon which the objection is based.
- (c) Citizen Participation Plan. Recipients shall develop and adopt, by resolution of their governing board, a written citizen participation plan developed in accordance with all provisions of this Rule and which:
 - (1) provides for and encourages citizen participation with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blight areas and of areas in which CDBG funds are proposed to be used;
 - (2) provides citizens with reasonable and timely access to local meetings, information, and records relating to the recipient's proposed and actual use of funds;
 - (3) provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in accordance with Part (b)(1)(B) of this Rule;
 - (4) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program in accordance with Paragraphs (b), (f), and (g) of this Rule;
 - (5) provides a procedure for developing timely written responses to written complaints and grievances within ten calendar days of receipt of the complaint. The procedure shall include all provisions of Paragraph (d) of this Rule; and
 - (6) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.
- (d) The recipient shall develop and adopt a written complaint procedure to respond to citizen complaints

involving the CDBG program. The complaint procedure shall be applicable through the life of the grant and available to the general public. It shall specify that the recipient will respond in writing to written citizen complaints within ten calendar days of receipt of the complaint. The procedure shall include a phone number for further information or clarification on the complaint procedure and shall identify any local procedures or appeals process that would normally be used by the recipient to address citizen complaints. The complaint procedure shall also state that if a citizen lodging a complaint is dissatisfied with the local response, then that person may direct the complaint to the North Carolina Division of Community Assistance.

(e) Citizen participation during program implementation. Citizens shall have the opportunity to comment on the implementation of a Community Development Program throughout the term of the program. Recipients shall solicit and respond to the views and proposals of citizens in the same manner as in Part (b)(1)(A) of this Rule.

(f) Citizen participation in the program amendment process.

(1) Recipient procedures.

(A) Recipients proposing amendments which require prior Division approval in accordance with Rule .0910 of this Subchapter will be required to conduct one public hearing prior to submission of the amendment to the Division in the same manner as in Part (b)(1)(C) of this Rule.

(B) Each recipient shall respond to citizen objections and comments in the same manner as in Part (b)(1)(A) of this Rule.

(2) Submitting Objections to the Division.

(A) Persons wishing to object to the approval of an amendment by the Division shall make such objection in writing. The Division will consider objections made only on the following grounds:

(i) The recipient's description of needs and objectives is plainly inconsistent with available facts and data,

(ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the recipient, and

(iii) The amendment does not comply with the requirements of this Section or other applicable laws and regulations.

(B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the facts and data upon which the objection is based.

(g) Citizen participation in the program closeout process.

(1) Recipients shall conduct one public hearing to

assess program performance during the grant closeout process and prior to the actual closeout of the grant in the same manner as in Part (b)(1)(C) of this Rule.

(2) Recipients shall continue to solicit and respond to citizen comment in the same manner as in Part (b)(1)(A) of this Rule until such time as the grant program is closed.

(h) Persons may submit written comments to the Division at any time concerning the applicant's or recipient's failure to comply with the requirements contained in this Subchapter.

(i) All records of public hearings, citizens' comments, responses to comments and other relevant documents and papers shall be kept in accordance with Rule .0911 of this Subchapter. All program records shall be accessible to citizens in accordance with Rule .0911(b) of this Subchapter.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(2); 24 C.F.R. 570.486.

.1004 ENVIRONMENTAL REVIEW

Applicants and recipients shall comply with the policies of the National Environmental Policy Act of 1969 and all other applicable provisions of Federal and State law which further the purposes of such act (as specified in 24 C.F.R. Part 58). This Subchapter incorporates by reference 24 CFR Part 58, including subsequent amendments and editions. Copies of this federal regulation are available for public inspection from the Division of Community Assistance. Single copies are available from this Division in Raleigh, North Carolina, for one dollar (\$1.00) each.

(1) Applicants and recipients shall assume the responsibilities for environmental review, decision-making, and other actions which would otherwise apply to the Secretary, under NEPA and other provisions of law which further the purposes of NEPA in accordance with section 104(f)(4) of Title I of the Housing and Community Development Act of 1974, as amended and the implementing regulations at 24 C.F.R. Part 58.

(2) Applicants and recipients shall meet the requirements of the following Federal laws and regulations:

(a) The National Environmental Policy Act of 1969 ("NEPA", 42 U.S.C. 4321 et seq., P.L. 91-190) which establishes national policy, goals, and procedures for protecting, restoring and enhancing environmental quality;

(b) Environmental Review Procedures for Title I Community Development Block Grant Programs, (24 C.F.R. Part 58), which sets forth the procedures for carrying out the environmental responsibilities under NEPA;

(c) Executive Order 11988, Floodplain Management, May 24, 1977 (42 F.R. 26951 et seq.);

- (d) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 F.R. 26961 et seq.);
 - (e) The Coastal Zone Management Act of 1972, (16 U.S.C. 1451 et seq.), as amended;
 - (f) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349), as amended, particularly concerning sole source aquifers;
 - (g) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended;
 - (h) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.), as amended;
 - (i) The Clean Air Act (42 U.S.C. 7401 et seq.);
 - (j) The Fish and Wildlife Coordination Act of 1958 as amended, (16 U.S.C. 661 et seq);
 - (k) The Federal Water Pollution Control Act (P.L. 92-500);
 - (l) HUD environmental criteria and standards (24 C.F.R. Part 51), and the Council on Environmental Quality Standards at 40 C.F.R. Part 1500-1508;
 - (m) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended;
 - (n) Procedures for the Protection of Historic and Cultural Properties, 36 CFR 800;
 - (o) Executive Order 11593, Protection and Enhancement of the Cultural Environment. May 13, 1971 (36 F.R. 8921 et seq.);
 - (p) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et seq.); as amended by the Archaeological and Historic Preservation Act of 1974; and
 - (q) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), as amended.
- ~~(3) Applicants and recipients shall submit adequate information in a form prescribed by the Division on the environmental impact of each project so that the Division can determine project compliance with the requirements of the North Carolina Environmental Policy Act of 1971 (SEPA) (G.S. 113A Article 1). A determination by the Division that the project complies with the requirements of SEPA will be made before the Department will release funds to the recipient.~~
- (3) (4) The applicant and recipient shall meet the requirements of the following State laws and rules where they are applicable to the provisions of this Subchapter:
- (a) Chapter 113A of the General Statutes of North Carolina, entitled Pollution Control and Environment;
 - (b) G.S. 143-215.108 which designates the Environmental Management Commission as the issuing authority for air quality permits;
 - (c) G.S. 143-215.1 which governs water pollution permits and designates the Environmental Management Commission as the issuing authority;
 - (d) G.S. 121-12, Protection of Properties on the

National Register, which requires consideration of project impact on any property listed in the National Register; and

- (e) G.S. 70-1 through 70-3, Indian Antiquities laws, which urges private landowners to refrain from excavation and other actions leading to the destruction of Indian archaeological sites on their property. It also requires local governments to report the discovery of artifacts and refrain from further excavation or construction when excavating or constructing on public lands.
- (4) (5) It is the responsibility of the recipient to obtain all air pollution and water pollution permits for a CDBG program pursuant to Subparagraph (4) of this Rule.
- (5) (6) All records and data shall be maintained pursuant to Rule .0911 of this Subchapter.

Authority G.S. 143-215.1; 143-215.108; 143B-10; 143B-431; 24 C.F.R. Part 58; 24 C.F.R. 570.487; 42 U.S.C.A. 4321 through 4370; 42 U.S.C.A. 5304(b)(4).

.1009 HOUSING REHABILITATION

(a) Grant assistance may be used for housing rehabilitation activities eligible under Rule .0301 of this Subchapter.

(b) Housing shall be rehabilitated at least to Section 8 Housing Quality Standards, as defined in 24 C.F.R. 882.109.

(c) Replacement construction and construction elements that are exposed during rehabilitation, shall be done in compliance with the North Carolina State Building Code, Volumes I, IB, II, III and IV.

(d) Section 8 Housing Quality Standards shall not be applicable when work is funded under Local Option Activities as described in Rule .0403(c) of this Subchapter.

(e) Housing rehabilitation activities must comply with the following standards required under this Subchapter:

- ~~(1) Architectural barriers (Rule .1007);~~
- (1) (2) Lead-based paint (Rule .1011); and
- (2) (3) Equal opportunity (Rule .1001).

(f) The recipient shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of CDBG assistance to substantially rehabilitate property.

(g) Homes inhabited by disabled or elderly persons must be analyzed as to the physical needs of such persons. Improvements such as widened doorways, ramps, level entry and doorways, and grab bars in bath areas must be installed if appropriate.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.487; 42 U.S.C.A. 5305(a).

SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

.1301 DESCRIPTION

Grants under this category will support the development of develop housing opportunities for low- and moderate-income persons. The Division may limit the use of program funds to specific eligible activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.1302 ELIGIBILITY REQUIREMENTS

(a) Applications for Housing Development funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applicants that do not meet these requirements will not be rated or funded.

(b) Applicants shall have the capacity to administer a Community Development Block Grant Program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant Programs, and the applicant's fiscal accountability as demonstrated in other state or federal Programs or local government financial reports; and
- (2) the rate of expenditure of funds in previously funded Community Development Block Grant Programs.

~~(c) Housing Development projects will be rated by the Division against the following specific criteria:~~

- ~~(1) 85% of the project rating is based upon the project design including the feasibility of the project, its financial design, the capacity and experience of the applicant and other parties involved, the amount of leveraging other funds, the suitability of the site and surrounding amenities, and the demand from the market; and~~
- ~~(2) 15% of the project rating is based upon the benefit to low and moderate income persons both immediate and long-term.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482; 24 C.F.R. 570.483.

.1303 SELECTION CRITERIA

(a) Selection criteria will be announced by the Division prior to accepting applications for this category. The Division may accept applications on a continuous basis ~~for development grant~~ at any time after the announcement of selection criteria.

(b) Housing Development projects will be rated by the

Division against the following specific criteria:

- (1) 85% of the project rating is based upon the project design including the feasibility of the project, its financial design, the capacity and experience of the applicant and other parties involved, the amount of leveraging other funds, the suitability of the site and surrounding amenities, and the demand from the market; and
- (2) 15% of the project rating is based upon the benefit to low and moderate income persons both immediate and long-term.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

SECTION .1700 - COMMUNITY EMPOWERMENT PROJECTS

.1701 DESCRIPTION

Grants under the Community Entrepreneurial Empowerment Category will improve economic opportunities for low- and moderate-income persons.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.1702 ELIGIBILITY REQUIREMENTS

Applications for Community Entrepreneurial Empowerment funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applicants that do not meet these requirements will not be rated or funded.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482; 24 C.F.R. 570.483.

.1703 SELECTION CRITERIA

Selection criteria will be announced by the Division 45 days prior to accepting applications for the Community Entrepreneurial Empowerment Category. The Division may accept applications during a specified open period after the announcement of selection criteria. Criteria for awards are:

- (1) community need,
- (2) community impact,
- (3) project design, and
- (4) financial feasibility.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

SECTION .1800 - INFRASTRUCTURE PROJECTS

.1801 DESCRIPTION

Beginning with the 1997 program year funding, local governments may apply for projects that involve infrastructure only. The Infrastructure category includes activities in which funds are directed towards improving, preserving or developing residential areas through the extension or installation of public infrastructure.

- (1) Applications for funding must address the single need of public infrastructure.
- (2) All infrastructure activities must be carried out within defined project areas.
- (3) Infrastructure funds are distributed to eligible units of local government on a competitive basis. Infrastructure projects will be evaluated against other Infrastructure project proposals.
- (4) Infrastructure applicants may spend up to 15 percent of their total grant amount to finance local option activities as specified in the application guidelines.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.1802 ELIGIBILITY REQUIREMENTS

- (a) Applications for infrastructure funds must show that:
 - (1) At least 51 percent of the CDBG funds proposed for each project will benefit low- and moderate-income persons; and
 - (2) CDBG funds proposed for each activity will meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applications that do not meet these eligibility requirements will not be rated or funded. In designing projects which meet these requirements, applicants must appropriately ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

(b) Applicants shall have the capacity to administer a CDBG program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.1803 SELECTION CRITERIA

Projects will be evaluated and rated in accordance with the annual statement of program design as approved by HUD.

Rating factors are:

- (1) benefit to low and moderate income persons,
- (2) project severity of need,
- (3) project treatment of need,
- (4) appropriateness and feasibility of proposed project activities, and
- (5) local commitment of funds or community efforts.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.483.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Services for the Blind/Commission for the Blind intends to amend rules cited as 10 NCAC 19C .0209, .0408 - .0410, .0504, .0509 - .0512, .0602, .0604, .0702 - .0703.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. - 12:00 p.m. on November 30, 1995 at the Division of Services for the Blind, GMS Campus, Fisher Building, 309 Ashe Avenue, Raleigh, NC 27606.

Reason for Proposed Action: Terminology update, clarification of grievance procedures, update operator classification system section, bring procedures in line with General Statutes.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. All comments must be received in the Division by 5:00pm on December 15, 1995. Any person may request information, permission to be heard, or copies of the proposed regulations, by writing or calling John DeLuca, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, NC 27606, (919) 733-9822.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19C - BUSINESS ENTERPRISES PROGRAM

SECTION .0200 - LICENSING AND PLACEMENT

.0209 FILLING OF VACANCIES

(a) A listing of available concession stand locations will be made available to all licensees. This listing will provide information about the location, and will also specify any particular work experience, education, or abilities which may be required at that location.

(b) Licensees who wish to be assigned to any of the locations listed may make application through the appropriate regional division office responsible for administering the concession stand program.

(c) Transfers and promotions, will be based on the following procedures:

- (1) A notice of available facilities will be sent to each licensee on the last working day of the month. The notice will provide a short description of the vacancy and who to contact for more information.
- (2) All applications must be post-marked by the 10th of the following month and mailed to the Chief of Business Enterprises at the State Office, 309 Ashe Avenue, Raleigh, N.C. 27606.
- (3) Interviews will be conducted on the second Friday of the month which follows the application deadline.
- (4) At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant will calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant will have five working days to review the point total and request any adjustments.
- (5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7)) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) will be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it will be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program will be awarded the location.
- (6) Applicants will be notified as soon as possible after their interview whether or not they have been awarded a location. (Notified by phone, followed up in writing).
- (7) Upon being awarded a location, the applicant has 30 days to fill the vacancy, unless the Division and the applicant agree to another time frame. The location may not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location will not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day waiting period does not apply.
- (8) If an applicant is awarded a facility and does not accept the position, the applicant will not be able to apply for another position for one year. An applicant may withdraw his application up to two days prior to his interview and avoid the penalty. Applicants who apply for and are awarded more than one location will not be penalized as long as they accept one award.
- (9) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, the applicant may be required to repeat the necessary on-the-job-training. The Interview Committee may also recommend refresher course training as necessary to assure qualified management.
- (10) Licensees/operators not selected have the right to file an administrative appeal as provided for in Subchapter 19C Section .0400. The fifteen-day limit to file an appeal will begin from the date informed by telephone of the results of the award.
- (11) An applicant must have operated a Business Enterprises location for six months prior to the cut-off date for calculating financial performance according to standards to be considered an operator otherwise, he will be in licensee status.
- (12) If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving will be used to calculate points in the Financial Performance Section.
- (13) Financial analyses of facilities will be done every two years. The analysis is on the facility not the operator; however, if an operator enters a facility and makes major changes, he may request a new analysis after at least four months in the new facility, or the Rehabilitation Supervisor may order a new analysis. If an applicant's financial analysis is more than two years old but less than two and one half years old and the applicant's performance is neither above 100% nor below 85% on either measure, the financial analysis will be considered current.
- (14) An applicant who does not hold the appropriate license for the vacancy may be awarded the facility contingent

upon successfully completing the necessary training. Applicants who hold the correct level of license but have not operated a facility at that level for at least two years may be required, at the discretion of the Interview Committee, to complete refresher training.

- (15) An operator may not sit on the Interview Committee for a location for which he is applying. If the Vice-Chairman and the Chairman of the ~~Food Service Committee~~ Elected Committee of Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this Rule, those three must pick another ~~Food Service Committee~~ Elected Committee of Vendors member to sit on the Interview Committee.
- (16) The schedule for interviewing and awarding vacancies may be changed at certain times of the year to accommodate holidays, too many applications to be processed in one day, and the end-of-year close-out.
- (17) Applicants will be reimbursed for their expenses to come to the interview at the state's established rates. The Business Enterprises Program will only reimburse for two interviews per year. After that, applicants must bear their own expenses for coming to interviews. Licensees who have active Rehabilitation cases should be reimbursed through the Rehabilitation program.

(d) Criteria To Be Used In Determining Points:

(1) Sanitation:

- (A) Ten point maximum,
- (B) One point for each sanitation grade point above ninety,
- (C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years,
- (D) Five points will be subtracted for any adjusted B grade in the last two years,
- (E) The Business Enterprises Counselor will determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. Operator must inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. It is the operator's responsibility to make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that they can calculate an accurate grade.

(2) Seniority:

- (A) Five point maximum.
- (B) Seniority points will be awarded as follows:

Years in Business Enterprises Program - Points

0 to 4.99	- 0 points
5 to 9.99	- 1 point
10 to 14.99	- 2 points
15 to 19.99	- 3 points
20 to 24.99	- 4 points
25 and over	- 5 points

- (C) Seniority is defined as the amount of time in full month increments an individual has been working in the Business Enterprises Program as a licensee or operator. A licensee/operator must work 51% of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program will be the end of the month when the vacancy is advertised.

(3) Performance According to Financial Analysis/Operating Standards:

- (A) 50 Points Maximum,
- (B) Applicants will receive 20 points for meeting their sales standard,
- (C) Applicants will receive 20 points for meeting their gross profit percentage standard,
- (D) Applicants will receive 5 points for meeting or exceeding 92.5% of their sales optimum
- (E) Applicants will receive 5 points for meeting or exceeding 92.5% of their gross profit percentage optimum,
- (F) Points according to Financial Analysis/Operating Standards in this Section will be calculated as follows:
 - (i) Use sales and gross profit figures for the twelve month period ending with the last day of the same month in which the vacancy is advertised. This is the cut-off date for financial performance calculations.
 - (ii) Take the facility's average monthly sales for the past twelve months, and calculate what percentage of the optimum it is. If it is over 85%, the applicant gets 20 points; if it is 92.5% or more, the applicant gets an additional 5 points.
 - (iii) Take the facility's gross profit percentage for the last twelve months and calculate what percentage of the optimum it is. If it is over 85%, the applicant gets an additional 5 points. Example - The Level II facility in the XYZ Building has a sales standard of three thousand dollars (\$3,000) per month with an optimum of three thousand five hundred and twenty-nine dollars (\$3,529) per month. Its gross profit percentage standard is 40% with an optimum of 47%. The actual performance for the past twelve months of the facility is three thousand five hundred dollars (\$3,500) per month in sales and a 42.3% gross profit

percentage. Three thousand five hundred dollars (\$3,500) in sales is 99.1 % of the optimum sales and a 42.3 % gross profit percentage is 90 % of the optimum gross profit. The applicant would receive 20 points for meeting his sales standard 5 points for exceeding 92.5 % of his sales optimum and 20 points for meeting his gross profit percentage standard. Out of a possible 50 points for financial performance, the applicant would get 45 points.

- (4) Customer and Building Management Relations:
 - (A) Five points will be deducted for each substantiated customer complaint in the past two years, up to a maximum of 10 points.
 - (B) If the applicant has more than three substantiated customer complaints, he will not be considered for the award. A substantiated complaint is a written complaint which results in a letter to the operator with a copy to the operator's personnel file. The operator has the right to appeal the letter at the time the letter is placed in the operator's personnel file. No building management complaint can be used against an operator prior to June 1, 1993.
- (5) Oral Exam/Interview:
 - (A) 30 points maximum.
 - (B) Interview will be face to face (no conference calls).
 - (C) Interviews will be conducted on the second Friday of the month which follows the month applications are due.
 - (D) All applicants must be interviewed.
 - (E) Oral Exam/Interview will be conducted by:
 - (i) the Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief.
 - (ii) the Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and
 - (iii) the Vice-Chairman of the ~~Food Service Committee~~ Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.
 - (F) The Oral Exam part will consist of 10 questions drawn either from a pool of standard questions or developed by the interview committee prior to the interview. The oral exam questions will relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee will evaluate the applicant's response to each question in the oral exam and assign either zero, one, one and a half or two points to the applicant's answer. There will be at least one question involving a calculation and a talking calculator will be provided, although applicants are recommended to bring their own. The oral exam will yield a possible 20 points.
 - (G) The interview part will consist of a variety of questions in a give and take format. Each member of the Interview Committee will evaluate the applicant's response to the interview questions and will award up to ten points at his/her discretion. The interview part must include the following elements: a review of the applicant's net profit percentage and statement of revenues and expenses for the past 12 months; a comparison of the applicant's performance to various statewide averages such as average gross and net profit percentages, salary costs, sales per hours open, sales per building population, etc.; two "philosophy of business" type questions designed to promote a general discussion and allow the Interview Committee the opportunity to evaluate the applicant's experience, maturity, expertise, and ability; a discussion of work experience outside of the Business Enterprises Program. Since points are awarded for seniority, time in the Business Enterprises Program will not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants are encouraged to bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.
 - (H) Each interviewer will award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer will be averaged and added to the applicant's points from the other Sections.
- (6) Licensees and trainees:
 - (A) A licensee who has no previous experience in the North Carolina Business Enterprises Program will be assigned 35 points in the Financial Analysis/Operating Standards category. While a trainee is in training, he will be graded on sanitation at the Rehabilitation Center and at each on-the-job training site to compile a training sanitation grade for use in assigning points in the sanitation category.
 - (B) A licensee with previous Business Enterprises experience will be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records will be considered, if available. If no previous sanitation records are available, the applicant has the option of taking the Food Service Sanitation Test offered by the Rehabilitation Center or through the Business Enterprises Program. If the licensee scores a 90 % or above on the test, he will be given three points in the Sanitation Section.
 - (C) Applicants must have satisfactorily completed Level I training or have a Level I license to be interviewed.

(7) Maximum Point Scale:

	OPERATOR	LICENSEE
FAOS Performance	50	36 35
Interview	30	30
Sanitation	10	10
<u>Seniority</u>	<u>5</u>	<u>5</u>
Customer relations	up to minus <u>0</u>	0
	<u>10 points</u>	
	95	75

An applicant must score at least 60 total points to be awarded a location.

Statutory Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107a et seq., as amended.

SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE

.0408 PURPOSE

The purpose of the administrative appeal procedure is to provide a means of appeal to each ~~licensed operator~~ operator/operator/licensee who is dissatisfied with an action of the division arising from the operation or administration of the concession stand program.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107a et seq., as amended.

.0409 POLICY

(a) Every ~~operator~~ operator/operator/licensee has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This policy shall be covered fully during orientation procedures for new ~~operators~~ operators/licensees.

(b) When presenting an appeal, an ~~operator~~ operator/operator/licensee may be accompanied by a person or persons of his choice.

(c) The filing of a complaint with the division shall indicate consent by the blind ~~operator~~ operator/operator/licensee for the release of such information as is necessary for the conduct of the administrative appeal.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107a through 107f as amended.

.0410 PROCEDURE

(a) The ~~operator~~ operator/operator/licensee shall discuss the problem with the division staff person taking the action with which the ~~operator~~ operator/operator/licensee is dissatisfied and request specific action in writing to resolve the grievance. This discussion must be held within 15 working days of the occurrence of the action challenged by the ~~operator~~ operator/operator/licensee. The ~~operator~~ operator/operator/licensee will receive a response within five working days following the discussion. Any decision made by agency personnel at this step is subject to supervisory review and approval.

(b) If the complaint is not resolved and the ~~operator~~

operator/licensee is not satisfied with the outcome of Paragraph (a) of this Rule, he has 15 working days to ask for a review by the concession stand operator relations committee in writing. Within five working days after asking for a review, the ~~operator~~ operator/operator/licensee will be notified of the date of the hearing, which must be held within 25 working days after the ~~operator's~~ operator's/licensee's request for a hearing. The committee will render its decision within 20 working days after the hearing.

(c) If the decision reached in step (b) of this Rule is not satisfactory to the ~~operator~~ operator/operator/licensee or the division staff person responsible for the initial action, the matter may be referred by the ~~operator~~ operator/operator/licensee or the division staff person to the director of the division. Any request for review shall be submitted within 15 working days after the concession stand operator relations committee has presented its recommendation. The party requesting the referral shall provide a written summary of the specific facts of the complaint and request for specific action to resolve the grievance, copies of which shall be provided at the same time to all other parties concerned. The director will make the decision for the division within 15 working days, and his decision will be announced immediately to all parties concerned.

(d) If the complaint is not resolved and the ~~operator~~ operator/operator/licensee is not satisfied with steps (a) through (c) of this Rule, then the ~~operator~~ operator/operator/licensee may file a complaint with the division requesting a full evidentiary hearing:

- (1) If a blind ~~operator~~ operator/operator/licensee requests a full evidentiary hearing, such request must be made within 15 working days after any adverse decision rendered through the procedures in this Rule.
- (2) A blind ~~operator~~ operator/operator/licensee must request a full evidentiary hearing in writing. This request must be transmitted to the director of the division personally or by certified mail, return receipt requested. This request may be transmitted through the ~~committee on the stand program~~ Elected Committee of Vendors in accordance with Section 395.14(b)(2) of the Randolph-Sheppard regulations. This hearing

shall be held in accordance with Article 3 of Chapter 150B of the North Carolina General Statutes, to the extent that such article does not conflict with these regulations pertaining to grievance procedures or any federal law or regulation.

- (3) A blind ~~operator~~ operator/licensee is entitled to legal counsel or other representation in a full evidentiary hearing; reasonable costs of such legal counsel may be shared or funded by the division, if the ~~operator~~ operator/licensee is unable to obtain such services at his own expense.
- (4) Reader services or other communication services shall be arranged for the blind ~~operator~~ operator ~~operator~~ operator/licensee should he so request. Transportation costs and per diem shall be provided also to the blind ~~operator~~ operator/licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the ~~operator~~ operator/licensee.
- (5) The hearing shall be held at a time and place convenient and accessible to the blind ~~operator~~ operator ~~operator~~ operator/licensee requesting a full evidentiary hearing. The blind ~~operator~~ operator/licensee shall be entitled to have the hearing held in the county of his residence unless he waives this right. A hearing held during regular division working hours will be deemed among the convenient times. The hearing shall be scheduled by the division within 15 working days of its receipt of such a request, unless the division and the blind ~~operator~~ operator/licensee mutually, in writing, agree to some other period of time. The blind ~~operator~~ operator/licensee shall be notified in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The blind ~~operator~~ operator/licensee shall be provided a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.
- (6) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Human Resources, shall be an impartial and qualified official who has no involvement either with the division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard concession stand program.
- (7) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings

necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

- (8) Both the blind ~~operator~~ operator ~~operator~~ operator/licensee and the division are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.
- (9) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
- (10) A transcript shall be made of the oral evidence and shall be made available to the parties. The division shall pay all transcript costs and shall provide the blind ~~operator~~ operator ~~operator~~ operator/licensee with at least one copy of the transcript.
- (11) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.
- (12) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation, and the agency policy. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after the receipt of the official transcript. The decision shall be mailed promptly to the blind ~~operator~~ operator ~~operator~~ operator/licensee and the division.

(e) If the dispute(s) is not resolved to the satisfaction of a blind ~~operator~~ operator ~~operator~~ operator/licensee after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the Department of Education for the convening of an arbitration panel.

(f) The results of the arbitration shall be considered the final agency action and the ~~operator~~ operator ~~operator~~ operator/licensee shall have exhausted his administrative remedies.

Statutory Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107a through 107f as amended.

SECTION .0500 - ELECTION; ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE STAND PROGRAM

.0504 ELECTION

The division will provide for biennial election among the operators in the program to elect a state committee of blind operators called the ~~Committee on the Stand Program~~ Elected Committee of Vendors. This ~~committee~~ Elected Committee of Vendors will be representative of all operators on the basis of factors such as geography and concession stand type, and will be proportionally representative of operators on federal and other property.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended.

.0509 ORGANIZATION AND OPERATION

(a) The officers of the ~~committee~~ Elected Committee of Vendors will be a chairman and a vice-chairman; they will be elected by the ~~committee~~ Elected Committee of Vendors from among ~~committee~~ Elected Committee of Vendors members.

(b) Vacancies in any of the elective offices will be filled by the ~~committee~~ Elected Committee of Vendors members for the unexpired term.

(c) The chairman will preside over all the meetings of the ~~committee~~ Elected Committee of Vendors. He will appoint subcommittees at such time as the business of the ~~committee~~ Elected Committee of Vendors may warrant, except for the Concession Stand Operator Relations Committee which shall be elected by the ~~committee on the Stand Program~~ Elected Committee of Vendors from its members. The chairman shall appoint temporary replacements to this subcommittee as needed to fill any vacancy until a new member may be elected. He may also appoint a temporary replacement for any Concession Stand Operator Relations Committee member who has filed an appeal and whose appeal is pending before the Concession Stand Operator Relations Committee. The chairman shall serve as non-voting ex officio member of all subcommittees.

(d) In the absence or disability of the chairman, the vice-chairman will assume all the duties of the chairman.

(e) The meetings will be conducted according to Roberts Rules of Order.

(f) A majority will constitute a quorum.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended.

.0510 MEETINGS

The ~~committee~~ Elected Committee of Vendors will meet quarterly and at such other times, as may be called by the chairman, with the consent of a majority of the ~~committee~~ Elected Committee of Vendors at the request of the division.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended.

.0511 FUNCTIONS

(a) The Elected Committee of Vendors ~~committee on the stand program~~ will actively participate with the division in

major administrative decisions and policy and program development decision affecting the overall administration of the concession stand program.

(b) The ~~committee~~ Elected Committee of Vendors will receive and transmit to the division appeals at the request of the operators and serve as advocates for such operators in connection with such appeals.

(c) The ~~committee~~ Elected Committee of Vendors will actively participate with the division in the development and administration of a system for the transfer and promotion of operators.

(d) The ~~committee~~ Elected Committee of Vendors will actively participate with the division in the development of training and retraining programs for operators.

(e) The ~~committee~~ Elected Committee of Vendors will sponsor, with the assistance of the division, meetings and instructional conferences for the operators in the concession stand program.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended.

.0512 SUBCOMMITTEES

Between regular meetings of the ~~committee~~ Elected Committee of Vendors, it will carry on its functions through the following subcommittees:

- (1) concession stand operator relations committee, whose functions are to receive and transmit appeals at the request of operators and serve as advocates for such operators in connection with such appeals;
- (2) committee on transfer and promotion of operators, whose function is to actively participate with the division in the development and administration of a system for the transfer and promotion of operators;
- (3) committee on training and retraining, whose functions are to actively participate with the division in the development of training and retraining programs and to assist the division in sponsoring meetings and instructional conferences for the operators.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107a et seq., as amended.

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

.0602 HOURS OF OPERATION

(a) The operator will be responsible for having the concession stand open for business on the days and during the hours specified in the permit.

(b) After a reasonable period of time as determined by the division, during which the division will work with the ~~stand operator~~ operator in developing a list of qualified relief workers, the operator will assume the responsibility

for securing a relief worker to work in his stand whenever the operator must be absent. Visually impaired persons should be given priority over all other persons hired by the operator.

(c) If an operator transfers to another location, or a new operator enters the program, the division will again develop with the operator a new or revised list of qualified relief workers.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.7; 20 U.S.C. sec. 107a et seq., as amended.

.0604 REPORTS

The ~~stand operator~~ operator has ~~two~~ four options for reporting revenues and expenses:

- ~~(1) The operator may furnish to the division all invoices, deposit slips, repair bills, or other documents according to the schedule of the business enterprises' accounting office;~~
- (1) The operator may send all invoices, deposit slips, repair bills, and other documents to the Division including overcash according to a schedule established by the Division's Accounting Office. All payroll functions are performed by the Division.
- ~~(2) The operator may keep his paid invoices and submit to the accounting office a written monthly report of cash purchases and expenses paid. The operator must organize and maintain invoices by month and have them available for audit.~~
- (2) The operator retains sales and deposit documentation and sends a summation of his purchases for resale and all expenses paid out of the facility to the Division monthly along with overcash. All payroll functions are performed by the Division.
- (3) The operator can perform all functions as in item two above and perform his own payroll functions.
- (4) The operator performs all functions of items two and three above and calculates their own profit and loss statement and sends only the set-aside due to the Division.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. sec. 107a et seq., as amended.

SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS

.0702 SET-ASIDE

(a) "Set-aside" and "Net Proceeds" is used as defined in 34 CFR 395.1.

(b) The division will set aside ~~no more than a total of twenty percent of the funds from the net proceeds of each stand operation to be used for the following purposes:~~

- (1) maintenance and replacement of equipment;
- (2) purchase of new equipment;
- (3) management services;
- (4) assuring a minimum return to operators;

- (5) the operators may use part of the set-aside for the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, if it is so determined by a majority vote of blind operators licensed by the division, after the division provides to each operator information on all matters relevant to the proposed purposes. ~~The percentage, to be determined in advance, will vary from facility to facility depending upon the nature and scope of the accounting services rendered by the Division of Services for the Blind to the individual facility.~~

(c) The charges in this Rule have been determined on the basis of records or expenditures made for each of these purposes over a reasonable period of time with allowances for reasonable charges for improving services, fluctuations in costs, and for program expansion. In accordance with 34 CFR 395.9, the method of determining the charges in this Rule has been determined by active participation of the committee on the stand program.

(d) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration.

(e) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis, will be refunded on a pro rata basis at the end of the fiscal year.

Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107a et seq., as amended.

.0703 DISTRIBUTION OF PROCEEDS

(a) The monthly income of the operator shall be the net profits of the concession stand for that month, less the funds which must be set aside.

(b) When the financial statements are completed at the end of each fiscal year, any differences between the net proceeds actually earned for the year and the amount of net proceeds paid during the year will be reconciled. If at the end of the year there is a net operating balance above what has already been paid to the operator, the operator will receive that balance. If, on the other hand, net proceeds received by the operator during the year exceed the net operating balance as reflected on the closing financial statements for the year, this overpayment will be deducted from the net proceeds earned during the next fiscal year before any net proceeds for that year are paid.

~~(c) In the event that more than one licensed operator is under contract to operate the same stand, net proceeds will be distributed as follows: The manager of a concession stand location, as designated by the division, will receive a percentage of the net proceeds earned by that stand as determined by the director of the division after consultation with the committee on the stand program. The remaining~~

percentage will be divided equally among all licensed operators, including the manager, under contract at that location.

(c) (d) An operator whose license has been suspended will not receive net proceeds generated during that period of time the license was suspended.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 20 U.S.C. sec. 107a et seq., as amended.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources - Division of Vocational Rehabilitation Services intends to amend rules cited as 10 NCAC 20A .0102; 20B .0204 - .0206, .0208 - .0210, .0218, .0222, .0224, .0226 - .0227; 20C .0205 and .0316.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 6:00 pm on November 30, 1995 at the Main Conference Room, Division of Vocational Rehabilitation Services, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, NC.

Reason for Proposed Action:

10 NCAC 20A .0102 - is being amended to add a definition of the "Division's Modification Review Committee".

10 NCAC 20B .0204 - .0206, .0208 - .0210, .0218, .0222, .0224, .0226 - .0227 - are being amended to clarify that the state plan includes the State Plan for Independent Living Services and to indicate that certain duties related to the appeals process, which were previously performed by the Division's Deputy Director, will now be performed by the Head of Casework Services as the Division no longer has a Deputy Director position.

10 NCAC 20C .0205 - is being amended to exempt additional services from the financial needs test and to make editorial changes in the language regarding individuals with disabilities.

10 NCAC 20C .0316 - is being amended to raise the amount allowed for residence modifications; to clarify requirements regarding modifications to mobile homes and vehicles; to establish requirements for the Division's participation in the purchase of a vehicle for modification purposes; and to indicate the role of the Division's Modification Review Committee in these processes.

Comment Procedures: Comments may be presented orally or in writing at the hearing. Oral statements may be limited at the discretion of the hearing officer. Written comments may also be submitted until December 15, 1995 to Jackie Stalnaker, Division of Vocational Rehabilitation Services, PO Box 26053, Raleigh, NC 27611. To obtain additional information or indicate need for alternative communication format contact Ms. Stalnaker in writing or by phone (919)

733-3364 or TDD (919) 733-5924. In addition, a fiscal note is available upon written request from the same address.

Fiscal Note: Rules 10 NCAC 20C .0205 and .0316 affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. The remainder of the rules do not affect state or local government funds.

CHAPTER 20 - DIVISION OF VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER 20A - GENERAL INFORMATION

SECTION .0100 - INFORMATION REGARDING RULES

.0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

- (1) "Division" means the Division of Vocational Rehabilitation Services of the Department of Human Resources.
- (2) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (3) "Division's Modification Review Committee" means a committee of Division staff from the State office appointed by the Division Director and chaired by the Head of Casework Services to review for approval or disapproval:
 - (a) amounts for residence, vehicle or job site modifications that exceed standard amounts specified in 10 NCAC 20C .0316; and
 - (b) purchase of vehicles as set forth in 10 NCAC 20C .0316.
- (4) ~~(3)~~ "Functional Capacity" means the ability to perform in the following areas:
 - (a) communication;
 - (b) interpersonal skills;
 - (c) mobility;
 - (d) self-care;
 - (e) self-direction;
 - (f) work skills; and
 - (g) work tolerance.
- (5) ~~(4)~~ "Individual with a severe disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
- (6) ~~(5)~~ "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits three or more functional capacities in terms of an employment outcome.
- (7) ~~(6)~~ "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full

or permanent remission.

- (8) ~~(7)~~ "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

Authority G.S. 143-545; 143-546; 150B-21.6; P.L. 102-569, s. 7(15) and s. 101(a)(5)(A); 34 C.F.R. Part 363.

SUBCHAPTER 20B - PROCEDURE

SECTION .0200 - CONTESTED CASES: ADMINISTRATIVE REVIEWS: APPEALS HEARINGS

.0204 DIVISION ACTIONS IN RESPONSE TO REQUEST

(a) Upon receipt of a request for an appeals hearing, the regional director shall immediately forward the original request to the Division's ~~deputy director~~ Head of Casework Services for appointment of a hearing officer to conduct the appeals hearing.

(b) If the individual has requested an administrative review in addition to an appeals hearing, the regional director shall:

- (1) make a decision to conduct the administrative review or appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's policies and procedures and the State Plan for Vocational Rehabilitation Services or Independent Living Services (as appropriate) ~~(state plan)~~; and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provisions of Rules .0205, .0208, and .0209 of this Section.

(c) The regional director shall send the applicant or client written acknowledgment of receipt of the request and inform the individual that additional information will be sent regarding the administrative review and/or appeals hearing.

(d) The regional director shall provide the Client Assistance Program with a copy of the request and the response to the request.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0205 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW

(a) If an administrative review is to be conducted, the regional director or designee shall:

- (1) set a date, time and place for the administrative review;
- (2) send written notification by certified mail to the applicant or client and the individual's parent, guardian or representative, as appropriate, of the date, time and place for the administrative review at least five days prior to the administrative review;
- (3) advise the applicant or client in the written notice that a hearing officer will be appointed by the ~~deputy director~~ Head of Casework Services to conduct a hearing if the matter is not resolved in the administrative review and that the applicant or client will also receive a written notice from the hearing officer regarding the formal appeals hearing which will be held after the administrative review; and
- (4) notify the Director of the Client Assistance Program (CAP) and other individuals to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.

(b) Prior to the administrative review, the regional director or designee shall review all previous decisions and casework related to the applicant or client and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the Division's CAP Director as appropriate.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0206 APPOINTMENT OF HEARING OFFICER

Upon receipt of the applicant's or client's request for an appeals hearing from the regional director, the ~~deputy director~~ Head of Casework Services shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative.

Statutory Authority G.S. 143-546; 150B-1; P.L. 102-569.

.0208 ADMINISTRATIVE REVIEW

(a) Within 15 days of the original request for an administrative review by the applicant or client, the regional director or designee shall hold the administrative review with the applicant or client; the individual's parent, guardian

or representative, as appropriate; the CAP Director, as appropriate; and other individuals deemed necessary by the regional director or designee.

(b) Within five working days of the administrative review, the regional director or designee shall make a decision and notify the applicant or client and others using the following procedures:

- (1) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
- (2) send the written report containing the decision to the applicant or client by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the ~~deputy director~~ Head of Casework Services and the CAP director; and
- (3) provide instructions to the applicant or client of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be canceled shall be included for the applicant's or client's signature if the individual agrees with the decision.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0209 RESPONSE TO ADMINISTRATIVE REVIEW DECISION

(a) If the applicant or client is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0208(b)(3) of this Section and submit it to the regional director within five days of receipt of the decision. The regional director shall inform the ~~deputy director~~ Head of Casework Services of the request to cancel the hearing immediately and forward the form to the ~~deputy director~~ Head of Casework Services who shall submit it to the hearing officer.

(b) If the hearing officer does not receive a written request from the applicant or client that the hearing be canceled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.

(c) If the hearing is canceled, the hearing officer shall send the applicant or client and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0207(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0210 ADMINISTRATIVE REVIEW BY HEAD OF CASEWORK SERVICES

In situations where the issue currently in controversy involves action taken by the central office of the Division, the ~~deputy director~~ Head of Casework Services or a designee of the ~~deputy director~~ Head of Casework Services shall be responsible for the duties prescribed for the regional director in these rules.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0218 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the ~~deputy director~~ Head of Casework Services a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The ~~deputy director~~ Head of Casework Services shall inform all parties of the disqualification and the reasons therefor.

(b) If a party to the case believes that the hearing officer of record cannot conduct the hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for the hearing officer to proceed with the hearing, another hearing officer shall be assigned by the ~~deputy director~~ Head of Casework Services to proceed with the case. However, if it is shown to the ~~deputy director~~ Head of Casework Services or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The ~~deputy director~~ Head of Casework Services shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0222 FAILURE TO APPEAR

(a) If the applicant or client fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.

(b) The applicant or client may submit a written request for rescheduling of the hearing to the ~~deputy director~~ Head of Casework Services. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The ~~deputy~~

~~director~~ Head of Casework Services may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or client.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0224 DIVISION DIRECTOR'S REVIEW AND FINAL DECISION

(a) The Division Director may review the hearing officer's decision and render the final decision.

(b) The Division Director's decision to review the hearing officer's decision shall be based on the following standards of review:

- (1) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?
- (2) Is the hearing officer's decision supported by substantial evidence, i.e., consistent with facts and applicable federal and state policy?
- (3) In reaching the decision, has the hearing officer given appropriate and adequate interpretation to such factors as:
 - (A) the federal statute and regulations as they apply to specific issue(s) in question;
 - (B) the state plan as it applies to the specific issue(s) in question;
 - (C) division procedures as they apply to the specific issue(s) in question;
 - (D) key portions of conflicting testimony;
 - (E) division options in the delivery of services where such options are permissible under the federal statute;
 - (F) restrictions in the federal statute with regard to such supportive services as maintenance and transportation; and
 - (G) approved federal or division policy as it relates to the issue(s) in question.

(c) If the Division Director decides to review the hearing officer's decision, the Director shall send the written notification and allow the submission of additional evidence as required by 34 C.F.R. 361.48(c)(2)(iv) and (vii). The written notification shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) Upon a determination to review the hearing officer's decision, the Division Director shall make the final decision and provide the written report thereof as required by 34 C.F.R. 361.48(c)(2)(viii) and (ix). The division director shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under P.L. 102-569, Section 102(d)(3)(C). The final decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return

receipt.

(e) The hearing officer's decision shall be the final decision under the conditions specified in 34 C.F.R. 361.48(c)(2)(v).

(f) The Division Director shall forward a copy of the final decision, whether issued under (d) or (e) of this Rule, to the ~~deputy director~~ Head of Casework Services, the CAP director, the regional director, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

Authority G.S. 143-546; 150B-1; P.L. 102-569, s. 102(d); 34 C.F.R. 361.48.

.0226 RECORD

(a) The official records of appeals hearings shall be maintained in the central office of the Division.

(b) Any person wishing to examine a hearing record shall submit a written request to the ~~deputy director~~ Head of Casework Services in sufficient time to allow the record to be prepared for inspection, including the removal of any confidential material.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

.0227 TRANSCRIPTS

Any person desiring a transcript of all or part of an appeals hearing shall contact the office of the ~~deputy director~~ Head of Casework Services. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48.

SUBCHAPTER 20C - PROGRAM RULES

SECTION .0200 - ELIGIBILITY

.0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206 of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services to clients eligible for services or to clients eligible for extended evaluation:

- (1) physical and mental restoration;
- (2) maintenance;
- (3) transportation;
- (4) occupational license;
- (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;
- (6) books, training supplies, and materials required

for courses in post-secondary educational facilities;

- (7) services to members of the ~~a handicapped~~ individual's family necessary to the adjustment or rehabilitation of the ~~handicapped~~ individual with disabilities;
 - (8) telecommunications, sensory, and other technological aids and devices;
 - (9) recruiting and training to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement, and other public service employment;
 - (10) post-employment services necessary to assist ~~handicapped~~ individuals with disabilities in maintaining suitable employment (other than those services in Paragraph (b) of this Rule which are provided without regard to financial need); and
 - (11) other goods and services expected to benefit a ~~handicapped~~ an individual with disabilities in obtaining employment or achieving the individual's independent living goals.
- (b) The financial needs test shall not apply as a condition for furnishing the following:
- (1) services exempt from the financial needs test under 34 C.F.R. 361.47;
 - (2) interpreter services for the deaf and foreign language interpreter/translator services for individuals who are unable to understand either verbal or written information presented by the Division;
 - (3) notetaker services for individuals enrolled in post-secondary training programs;
 - (4) ~~(3)~~ tuition for:
 - (A) on-the-job training;
 - (B) community rehabilitation program training;
 - (C) community college/college parallel programs up to the catalog rate;
 - (D) vocational training at:
 - (i) community college vocational programs up to the catalog rate; and
 - (ii) proprietary for profit vocational and trade schools up to a limit of four thousand dollars (\$4,000) per training program; and
 - (E) post-secondary education up to the maximum rate charged for the public university system.
 - (5) ~~(4)~~ fees required in post-secondary educational facilities up to the maximum rate charged for the public university system; ~~and~~
 - (6) ~~(5)~~ training supplies and materials required for training in division-operated facilities and the training programs listed in Paragraphs (b)(3)(4)(A) and (B) of this ~~Rule~~ Rule; ~~and~~
 - (7) in addition, for individuals in the independent living program, independent living skills training, attendant management training, and recreational therapy when these services are provided

by staff of the Division's Independent Living Program.

- (c) The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Paragraphs (b)(3)(4)(E) and (b)(4)(5) of this Rule when necessary to accommodate the special training needs of ~~severely handicapped~~ individuals with severe disabilities who must be enrolled in high-cost, special programs designed for ~~severely physically handicapped~~ students with severe physical disabilities.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.40; 34 C.F.R. 361.41; 34 C.F.R. 361.47; 34 C.F.R. 364.59.

SECTION .0300 - SCOPE AND NATURE OF SERVICES

.0316 OTHER GOODS AND SERVICES

- (a) ~~Modifications~~ Modification of a client's residence or vehicle is ~~clients' residences are~~ limited as follows:

- (1) A limit of ~~ten thousand dollars (\$10,000)~~ per client twelve thousand dollars (\$12,000) shall be placed on modification projects when the residence is owned by the client or the client's immediate family.
- (2) Modifications to a mobile home owned by the client or the client's family which is located on land owned by the client or client's family, except for those situations where exterior modifications are not permanently affixed to a parcel of rented or leased land and are moveable with the mobile home. Mobile home modifications shall not exceed eight thousand five hundred dollars (\$8,500) per client project. Modifications to a mobile home not meeting the ownership and land ownership requirements stated in this Paragraph shall not exceed five thousand five hundred dollars (\$5,500) per project.
- (3) Modifications to rented or leased residences shall not exceed five thousand five hundred dollars (\$5,500) per ~~client~~ project.
- (4) Vehicle modifications shall not exceed six thousand dollars (\$6,000) per client.
- (5) The limitations indicated in Subparagraphs (a)(1) through (4) of this Rule apply unless a higher amount is needed to meet the cost of unforeseen structural damage needing repair or adaptive equipment and related assistive technology and devices necessary:
 - (A) to accommodate the individual's degree of disability, and
 - (B) to enable the individual to complete the rehabilitation program or meet the goals of the independent living program.

Amounts exceeding the limitations must be approved by the Division's Modification Review Committee.

(b) Job site modifications shall not exceed seven thousand dollars (\$7,000) per client unless the vocational placement requires adaptive equipment which necessitates extensive physical site changes that warrant a higher amount which must be approved by ~~the Director~~ the Division's Modification Review Committee (MRC).

(c) The Independent Living Program of the Division may assist with the modification of a client or family-owned/leased-to-purchase vehicle in order to enhance the client's ability to function independently in the family or to actively participate in the community. The Vocational Rehabilitation Program of the Division may assist with the modification of a client or family-owned/leased-to-purchase vehicle for employment purposes or to assist a client enrolled in a college training program. Other options such as public transportation or family assistance shall be used when available. The following conditions and limitations apply:

- (1) Modifications shall not be considered for clients in secondary school programs unless the individual is a client of the Independent Living Rehabilitation Program.
- (2) Modifications for postsecondary training may be considered only:
 - (A) when the client is a full-time student with satisfactory grades and personal transportation is required as part of the training curriculum;
or
 - (B) when the client must live off campus because the college has no, or only limited, on-campus housing.
- (3) The Division shall require an evaluation of any used vehicle by a certified mechanic or a dealership to verify that the vehicle is in good repair. The rehabilitation engineer shall certify that the vehicle will accommodate the needed modifications.
- (4) Division ownership of the modifications shall be secured through a signed Security Agreement.

(d) The Vocational Rehabilitation Program may contribute to the cost of purchasing a vehicle for modification purposes for eligible clients with the most severe disabilities under the following conditions and limitations:

- (1) The Program shall not contribute to the purchase of more than one vehicle for any individual.
- (2) The Program shall select the most cost effective method, based on the recommendation of the Rehabilitation Engineer, to secure a vehicle that meets the modification requirements of the individual.
- (3) The vehicle must be titled to or in the process of being purchased through a lease-to-purchase arrangement by either the client or the client's immediate family.
- (4) The Program shall contribute to the purchase of a vehicle only when a vehicle is required to accomplish the employment goal of the individ-

ual which must be at or above the substantial gainful activity (SGA) level as defined by Social Security Administration.

- (5) A comprehensive review of other financial resources must be conducted by the client and counselor detailing the plan for purchasing, insuring, and maintaining the vehicle.
- (6) The client must contribute a minimum of 50 percent of the initial purchase cost of the vehicle.
- (7) All vehicle purchases shall be approved by the Modification Review Committee. The Modification Review Committee may grant an exception to any of the provisions of this Paragraph only upon the written recommendation of the appropriate regional director of the Division which shall indicate why the exception is needed in relation to the individual's particular disability and employment goal.

(e) (e) Other goods and services not specifically mentioned in the rules in this Section may be provided to clients who are eligible for services if necessary to enable them to become employable or, in the case of the Independent Living Program, to live independently. The other services shall not include the purchase of land or the purchase or construction of a building.

Authority G.S. 143-546; 34 C.F.R. 361.42.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26B .0112; and adopt rule cited as 10 NCAC 26B .0113.

Note: Existing rules 10 NCAC 26B .0113 - .0126 will be renumbered to 10 NCAC 26B .0114 - .0127.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 1:30 p.m. on December 1, 1995 at the NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.

Reason for Proposed Action:

10 NCAC 26B .0112 - To change the DSM-III-R manual title to the current version DSM-IV.

10 NCAC 26B .0113 - This is a cost containment measure for the Medicaid program.

Comment Procedures: Written comments concerning these rule-making actions must be submitted by December 15, 1995, to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from

the same address.

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0112 PSYCHIATRIC ADMISSION CRITERIA/MEDICAID BENEFICIARIES UNDER AGE 21

Medicaid criteria for the admission of children and adolescents under age 21 to psychiatric hospitals or psychiatric units of general hospitals is limited herein. To be approved for admission, the patient must meet criteria in Items (1), (2) and (3) of this Rule as follows:

- (1) Client meets criteria for one or more ~~DSM-III-R~~ DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, ~~Third Edition Revised~~ Fourth Edition--a manual whose purpose is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat various mental disorders) diagnoses. This manual is hereby incorporated by reference including subsequent amendment and editions. Copies may be obtained from the American Psychiatric Association 1400 K Street, NW Washington, DC 2000 tel: 1-800-368-5777 at a cost of fifty-four dollars and ninety-five cents (\$54.95) (hard cover); forty-two dollars and ninety-five cents (\$42.95) (soft cover); five dollars (\$5.00) s. and h. The manual is available for inspection at the Division of Medical Assistance 1985 Umstead Dr., Raleigh, NC; and
- (2) At least one of the following criteria:
 - (a) Client is presently a danger to self (e.g., engages in self-injurious behavior, has a significant suicide potential, or is acutely manic). This usually would be indicated by one of the following:
 - (i) Client has made a suicide attempt or serious gesture (e.g., overdose, hanging, jumping from or placing self in front of moving vehicle, self-inflicted gunshot wound), or is threatening same with likelihood of acting on the threat, and there is an absence of supervision or structure to prevent suicide of the client who has made an attempt, serious gesture or threat.
 - (ii) Client manifests a significant depression, including current contemplation of suicide or suicidal ideation, and there is an absence of

- supervision or structure to prevent suicide.
- (iii) Client has a history of affective disorder:
 - (A) with mood which has fluctuated to the manic phase, or
 - (B) has destabilized due to stressors or non-compliance with treatment.
- (iv) Client is exhibiting self-injurious behavior (cutting on self, burning self) or is threatening same with likelihood of acting on the threat; or
- (b) Client engages in actively violent, aggressive or disruptive behavior or client exhibits homicidal ideation or other symptoms which indicate he is a probable danger to others. This usually would be indicated by one of the following:
 - (i) Client whose evaluation and treatment cannot be carried out safely or effectively in other settings due to impulsivity, impaired judgment, severe oppositionalism, running away, severely disruptive behaviors at home or school, self-defeating and self-endangering activities, antisocial activity, and other behaviors which may occur in the context of a dysfunctional family and may also include physical, psychological, or sexual abuse.
 - (ii) Client exhibits serious aggressive, assaultive, or sadistic behavior that is harmful to others (e.g., assaults with or without weapons, provocations of fights, gross aggressive over-reactivity to minor irritants, harming animals) or is threatening same with likelihood of acting on the threat. This behavior should be attributable to the client's specific ~~DSM-III-R~~ DSM-IV diagnosis and can be treated only in a hospital setting; or
 - (c) Acute onset of psychosis or severe thought disorganization or clinical deterioration in condition of chronic psychosis rendering the client unmanageable and unable to cooperate in treatment. This usually would be indicated by the following: Client has recent onset or aggravated psychotic symptoms (e.g., disorganized or illogical thinking, hallucinations, bizarre behavior, paranoia, delusions, incongruous speech, severely impaired judgment) and is resisting treatment or is in need of assessment in a safe and therapeutic setting; or
 - (d) Presence of medication needs, or a medical process or condition which is life-threatening (e.g., toxic drug level) or which requires the acute care setting for its treatment. This usually would be indicated by one of the following:
 - (i) Proposed treatments require close medical observation and monitoring to include, but not limited to, close monitoring for adverse medication effects, capacity for rapid response to adverse effects, and use of medications in clients with concomitant serious medical prob-

- lems.
- (ii) Client has a severe eating disorder or substance abuse disorder which requires 24-hour-a-day medical observation, supervision, and intervention.
- (iii) Client has Axis I or Axis II diagnosis, with a complicating or interacting Axis III diagnosis, the combination of which requires psychiatric hospitalization in keeping with any one of these criteria, and with the Axis III diagnosis treatable in a psychiatric setting (e.g., diabetes, malignancy, cystic fibrosis); or
- (e) Need for medication therapy or complex diagnostic evaluation where the client's level of functioning precludes cooperation with the treatment regimen, including forced administration of medication. This usually would be indicated by one of the following:
 - (i) Client whose diagnosis and clinical picture is unclear and who requires 24 hour clinical observation and assessment by a multi-disciplinary hospital psychiatric team to establish the diagnosis and treatment recommendations.
 - (ii) Client is involved in the legal system (e.g., in a detention or training school facility) and manifests psychiatric symptoms (e.g., psychosis, depression, suicide attempts or gestures) and requires a comprehensive assessment in a hospital setting to clarify the diagnosis and treatment needs; and
- (3) To meet the federal requirement at 42 CFR 441.152, all of the following must apply:
 - (a) Ambulatory care resources available in the community do not meet the treatment needs of the recipient.
 - (b) Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician.
 - (c) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that services will no longer be needed.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 441, Subpart D; 42 C.F.R. 441.151.

.0113 NC MEDICAID CRITERIA FOR CONTINUED ACUTE STAY IN AN INPATIENT PSYCHIATRIC FACILITY

The following criteria apply to children and adolescents under the age of 21 in a psychiatric hospital or in a psychiatric unit of a general hospital, and to adults aged 21 through 64 receiving treatment in a psychiatric unit of a general hospital. Patient must meet each of the following six conditions:

- (1) The patient has a current DSM-IV, Axis I diagno-

sis, or

- (a) The patient has a current DSM-IV Axis II diagnosis and current symptoms/behaviors which are characterized by all of the following:
 - (i) Symptoms/behaviors are likely to respond positively to acute inpatient treatment.
 - (ii) Symptoms/behaviors are not characteristic of patient's baseline functioning.
 - (iii) Presenting problems are an acute exacerbation of dysfunctional behavior patterns which are recurring and resistive to change.
- (2) Symptoms are not due solely to mental retardation.
- (3) The symptoms of the patient are characterized by a degree of intensity sufficient to classify at the extreme end of a symptom continuum which requires continual medical/nursing response, management, and monitoring and at least one of the following:
 - (a) Actively endangers self or others.
 - (b) Presents with extreme level of subjective distress as indicated by at least one of the following:
 - (i) Makes desperate statements.
 - (ii) Is significantly unresponsive to environmental stimuli.
 - (iii) Is unable to meet basic self care needs.
 - (iv) Is unwilling to comply with treatment necessary to address life endangering physiological/medical needs.
- (4) Symptom behavior(s) is presented at least five times in a 24 hour period, or limited frequency behaviors are associated with lethality, dangerousness, or destructiveness which endangers self or others.
- (5) The acute symptoms must be related to factors other than weaknesses or problems in patient's environmental support system.
- (6) Inpatient care can reasonably be expected to improve the patient's condition so that treatment can be continued on an outpatient basis or patient needs further monitoring and evaluation in a hospital as evidenced by one of the following:
 - (a) Requires constant, skilled monitoring under the direction of a physician, to clarify treatment needs which can not be provided in an outpatient setting.
 - (b) Requires constant, skilled monitoring in a secure setting, under the direction of a physician, to control behavior or ensure safety which cannot be provided in an outpatient setting.
 - (c) The patient needs special neurological or biochemical tests that cannot be performed on an outpatient basis.

Authority G.S. 108A-25(b); 108A-54; 42 CFR 441, Subpart D.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Social Services Commission intends to amend rules cited as 10 NCAC 46A .0001, .0005; 46C .0107; 46D .0101, .0103, .0105 - .0107, .0202; 46E .0108 - .0109, .0111; 46F .0107 - .0108, .0110; 46G .0110, .0113, .0214; 46H .0101, .0103 - .0105, .0108, .0110, .0201, .0203, .0206 - .0207; and repeal rule cited as 10 NCAC 46H .0202.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: Some proposed amendments reflect technical changes in language or removal of dated material. The rest of the proposed changes reflect policy changes to promote a more seamless child care delivery services, need and income eligibility determination, and limitations of service.

Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. All written comments must be received no later than December 15, 1995. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603 (919) 733-3055.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46A - IDENTIFYING INFORMATION

.0001 SCOPE

(a) ~~The purpose and responsibilities of the Child Day Care Section are specified in 10 NCAC 3A.~~

(b) The rules in this Chapter govern the purchase of child day care services with state and federal day care funds administered by the ~~Section.~~ Division.

Statutory Authority G.S. 143B-10; 143B-153; S.L. 1985, c. 757, s. 155(q).

.0005 DEFINITIONS

For the purpose of this Chapter, unless the context of the rule clearly indicates a different meaning, the terms listed in this Rule are defined as follows:

(1) "Department" means the Department of Human Resources.

- (2) "Secretary" means the Secretary of the Department of Human Resources.
- (3) "Division" means the Division of ~~Facility Services.~~ Child Development.
- (4) "Director" means the Director of the Division of ~~Facility Services.~~ Child Development.
- (5) ~~"Section" means the Child Day Care Section.~~
- (6) ~~"Chief" means the Chief of the Child Day Care Section.~~
- (7) (5) "Purchase of Care Program" means the administrative, programmatic and fiscal activities related to the use of public funds to pay for child day care services for children of needy families.

Statutory Authority 143B-10.

SUBCHAPTER 46C - PURCHASE OF CHILD DAY CARE

SECTION .0100 - BASIC REQUIREMENTS

.0107 RATES FOR SUBSIDIZED CARE

(a) The payment rate for centers in which fewer than 50 percent of the children enrolled are subsidized with state or federal funds shall be the same fee paid by private paying parents for a child in the same age group in the same center, including registration fees. The payment rate for daily transportation provided by these centers is the same fee paid by a private paying parent for transportation of a child to or from the center.

(b) Centers in which 50 percent or more of the children enrolled are subsidized with state or federal funds may choose annually one of the following options:

- (1) ~~the center's payment rates for care and transportation for state fiscal year 1985-86; or~~
- (2) ~~the county market rate for care calculated pursuant to the annual appropriations act and the state payment rate for transportation; be paid the rate established by the local purchasing agency not to exceed the county market rate.~~

(c) Facilities, as defined in G.S. 110-86(3), which ~~primarily are certified as developmental day centers by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services and serve children who meet the definition of special needs set forth in 10 NCAC 46H .0110 are exempt from the provisions of Paragraphs (a) and (b) of this Rule.~~ Rule and may choose annually one of the following payment options:

- (+) These facilities may be paid up to the maximum rates established by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services for developmental day centers; or for children with special needs. For typically developing children, enrolled in developmental day centers, the maximum rate shall be established by the Division of Mental Health/Developmental Disabilities/Substance

Abuse Services. This rate shall exclude those costs associated exclusively with serving children with special needs.

- (2) ~~the center's allowable unit cost per child established annually by the section according to the Division of Mental Health/Developmental Disabilities/Substance Abuse Services allowable cost policy, and the rate establishment procedures approved by the secretary pursuant to G.S. 143B-153(2a).~~

(d) Any approved day care provider who provides care to children who meet the definition of special needs set forth in 10 NCAC 46H .0110, but who does not primarily serve special needs children, may be paid a supplemental rate up to 75% above the provider's approved daily care rate for a particular age group and shall be subject to the following conditions:

- (1) ~~the maximum payment rate shall not exceed the maximum rate established for developmental day centers by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services; and~~

- (2) if the service population of the child day care facility or home is comprised of at least 60% children without special needs and the facility or home provides services to a child or children with special needs. The 60% rule does not apply to home-based arrangements where the number of children enrolled exempts them from state regulation. The supplemental rate shall be based on actual additional documented costs incurred by the provider in serving the child with special needs. The costs shall be determined by the early intervention specialist, the local purchasing agency, and the provider based on the plan developed to meet the child's individual needs.

(e) The reimbursement of additional fees as charged by facilities shall be limited to registration fees. Except as provided for in Paragraph (a) of this Rule and for facilities described in Paragraph (c) of this Rule, the payment rate for registration fees shall be limited to twenty dollars (\$20.00) twenty-five dollars (\$25.00) per year per child. Registration fees may not be paid more than twice per year per child regardless of the type of facility.

(f) Purchasing agencies may negotiate with day care center providers for purchase of child day care services at payment rates lower than those prescribed by this Rule.

(g) Child day care services funds shall not be used to pay for services provided by the Department of Human Resources, Division of Mental Health/Developmental Disabilities/Substance Abuse Services or the Department of Public Instruction, Division of Exceptional Children's Services for that portion of the service delivery costs which are reimbursed by Division of Mental Health/Developmental Disabilities/Substance Abuse Services or Department of Public Instruction.

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

SUBCHAPTER 46D - STATE DAY CARE SERVICES FUND

SECTION .0100 - GENERAL

.0101 DEFINITION OF FUND

The "State Child Day Care Services Fund" Funding" means all state and federal funds appropriated and otherwise made available to the Department of Human Resources which are administered by the Division of ~~Facility Services, Child Development, Child Day Care Section~~ to purchase or provide child day care services for needy families in programs which have been approved for participation by the section.

Statutory Authority G.S. 143B-153(2a); S.L. 1985, c. 479, s. 95-97.

.0103 ELIGIBILITY

(a) Child day care services may be provided to ~~the target populations~~ families demonstrating a need for services as defined by one of the reasons for care described in 10 NCAC 46H .0104.

(b) Eligibility criteria for child day care services are described in 10 NCAC 46H .0200.

(c) Eligibility for the service is determined by the local department of social services or other agency authorized to determine eligibility for child day care services under the conditions described in 10 NCAC 46H .0207.

(d) Application for the service is made to the agency responsible for determining eligibility as described in Paragraph (c) of this Rule.

~~(e) Child day care services provided on or after July 1, 1986 to children who meet the eligibility criteria for Child Welfare Services funds as provided in the North Carolina Division of Social Services Family Services Manual, Volume 1, Chapter 11, may be paid for with state day care funds.~~

Statutory Authority G.S. 143B-153(2a).

.0105 PROGRAM POLICIES AND STANDARDS

All programs receiving state child day care services funds funding must meet all day care services policies and procedures as found in 10 NCAC 46.

Statutory Authority G.S. 143B-153.

.0106 ALLOCATION

Funds are allocated in accordance with procedures specified with the appropriation. In the absence of such instructions, the funds will be allocated according to procedures approved by the ~~secretary~~ Secretary. All allocation procedures are kept on file in the ~~section~~ Division.

Statutory Authority G.S. 143B-153(2a).

.0107 REIMBURSEMENT

Reimbursement will be made in accordance with procedures established by the Secretary of the Department of Human Resources. These procedures are specified in ~~Part 6 of the Day Care Policy Manual and may be obtained from the section-~~ materials developed by the Division and distributed to local purchasing agencies.

Statutory Authority G.S. 143B-153(2a).

SECTION .0200 - START-UP FUNDS

.0202 REVIEW CRITERIA FOR START-UP FUNDS

(a) All proposals for start-up funds must be submitted on a format designated by the ~~section-~~ Division. Each proposal will be reviewed and evaluated according to criteria established and published by the ~~section-~~ Division. The criteria shall be specific to the type of project being funded.

(b) A concurrent review process will be conducted by the ~~division's~~ Division's fiscal staff to assure that all budgetary requirements have been addressed in the proposal and that the requesting agency is operating in conformity with standard accounting procedures.

(c) All start-up funding will be subject to the availability of state and federal funds.

Statutory Authority G.S. 143B-153(2a).

SUBCHAPTER 46E - DAY CARE CENTER REQUIREMENTS

SECTION .0100 - GENERAL

.0108 PURCHASE OF CARE REQUIREMENTS

(a) Any center which wishes to participate in the state Purchase of Care Program as defined in 10 NCAC 46A .0005 must satisfy applicable state day care requirements as codified in 10 NCAC 3U.

(b) Any center not required to be licensed must be able to document that it is in compliance with all day care standards applicable to the licensed type of program most similar to that being operated, e.g., similar size, age groups served.

(c) Any center exempt from licensure must ensure that the building is in compliance with appropriate building and fire safety codes and sanitation regulations to provide adequate protection for the ages of the children in care. Copies of approved inspection reports will be on file in the ~~section~~ Division and the center.

(d) The operator of any center in the Purchase of Care Program must assure that the center complies with all applicable provisions of the Civil Rights Act of 1964 and all requirements imposed thereunder. ~~The operator shall sign a statement of assurance on a form provided by the section-~~ Copies of the statement shall be on file in the ~~section and~~

~~the center-~~

(e) Each day care center shall submit appropriate information to enable the ~~section~~ Division to establish a payment rate for the center in accordance with the rate setting policies in the annual appropriations act and codified in Subchapter 46C.

Statutory Authority G.S. 143B-153(2a).

.0109 APPLICATION

Application for approval to participate may be made to the ~~section-~~ Division.

Statutory G.S. 143B-153(2a).

.0111 CONTINUED PARTICIPATION

(a) Any center approved for participation in the Purchase of Care Program will continue to be eligible for as long as the center maintains compliance with all of the requirements set forth in this Subchapter.

(b) When a center is found to be out of compliance with any requirement for participation, the ~~section~~ Division may set a time limit for compliance. If the center fails to comply within the set time limit, approval will be terminated.

Statutory Authority G.S. 143B-153(2a).

SUBCHAPTER 46F - CHILD DAY CARE HOME REQUIREMENTS

SECTION .0100 - DAY CARE HOME APPROVAL PROCEDURES

.0107 APPROVAL

(a) Provisional approval may be issued for a limited period of time to a program which does not, at the time of such issuance, meet all of the requirements for approval but which is expected to meet them by the end of the period.

(b) Approval indicates that all requirements have been met.

(c) Each child day care home shall be evaluated annually by the ~~section~~ Division for compliance with the requirements for participation in the purchase of care program.

Statutory Authority G.S. 110-88; 143B-153.

.0108 PURCHASE OF CARE

(a) Any home which wishes to participate in the state purchase of care program as defined in 10 NCAC 46A .0005 must comply with the standards for child day care homes as codified in 10 NCAC 3U .1700 and all other applicable state child day care home requirements in 10 NCAC 3U and Article 7 of Chapter 110 of the N.C. General ~~Statute-~~ Statutes.

(b) The operator of any home in the purchase of care program must assure that the home complies with all applicable provisions of the Civil Rights Act of 1964 and all

requirements imposed thereunder. ~~The operator shall sign a statement of assurance on a form provided by the section. Copies of the statement shall be on file in the section and in the home.~~

(c) Any home that wishes to participate in the purchase of care program must be issued an approval notice for participation and payment from the ~~section~~ Division.

Statutory Authority G.S. 143B-153(2a); S.L. 1989, c. 500, s. 101.

.0110 CONTINUED PARTICIPATION

(a) Any home approved for participation in the purchase of care program will continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this Subchapter.

(b) When a home is found to be out of compliance with any requirement for participation, the ~~section~~ Division may set a time limit for compliance. If the home fails to comply within the set time limit, approval will be terminated.

Statutory Authority G.S. 143B-153(2a).

SUBCHAPTER 46G - NONREGISTERED DAY CARE HOME REQUIREMENTS

SECTION .0100 - GENERAL REQUIREMENTS

.0110 DIVISION RESPONSIBILITY

(a) The ~~section~~ Division, as defined in 10 NCAC 46A .0005, is responsible for the administration of the requirements and procedures for approving nonregistered day care homes in which day care funds administered by the Department are used to subsidize the day care cost for children of families eligible for assistance.

(b) The number of nonregistered day care home arrangements that shall be visited by the ~~section~~ Division for the purpose of evaluating compliance with the requirements for participation in the purchase of care program shall be included in the monitoring plan developed annually by the ~~section~~ Division.

(c) All complaints registered against nonregistered day care homes shall be investigated by the ~~section~~ Division. The investigation may include an on-site visit by an authorized representative of the Department.

(d) Documentation of substantiated complaints shall be available for parents to examine.

Statutory Authority G.S. 143B-153(2a).

.0113 MAINTAINING APPROVAL

(a) When a provider is found to be out of compliance at any time with any requirement for participation, the local purchasing agency or the ~~section~~ Division shall set a specified time limit for compliance. If the provider fails to comply within the specified time limit, approval may be terminated.

(b) Each nonregistered day care home shall be evaluated for compliance annually as described in Rule .0111 in this Section.

Statutory Authority G.S. 143B-153(2a).

SECTION .0200 - REQUIREMENTS FOR NONREGISTERED DAY CARE HOMES

.0214 HEALTH AND SAFETY STANDARDS

Each nonregistered day care home shall comply with the following requirements in order to maintain a safe, healthy and sanitary environment for children:

- (1) A health and emergency information form completed and signed by the child's parents or guardian shall be on file for each child who attends. The completed form must be on file on the first day the child attends with the exception of the child's immunization record which must be completed within 30 days after the first day the child attends. A recommended form is available from the ~~section~~ Division. However, the provider may use another form provided that form includes the following information:
 - (a) the child's name, address, and date of birth;
 - (b) the names of individuals to whom the child may be released;
 - (c) the general status of the child's health;
 - (d) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or health professional;
 - (e) the names and phone numbers of persons to be contacted in an emergency situation;
 - (f) the name and phone number of the child's health provider and preferred hospital;
 - (g) authorization for the provider to administer specified medication according to the parent's instructions, if the parent so desires;
 - (h) authorization for the provider to seek emergency medical care in the parent's absence;
 - (i) a record of the child's immunizations as required pursuant to G.S. 130A-152.
- (2) The parent and provider must discuss and agree upon the methods of discipline to be used with each child. The use of corporal punishment is prohibited except as allowed in G.S. 110-101.1.
- (3) All areas used by the children, indoors and outdoors, shall be kept clean and orderly and free of items which are hazardous to children.
- (4) First-aid supplies shall be kept in a place easily accessible to the provider but out of the reach of children.
- (5) A working telephone shall be proximate to the day care home arrangement. A written plan shall be developed that describes how the provider will access emergency assistance. Emergency phone numbers shall be readily available.

- (6) To assure the safety of children whenever they are transported, the provider, or any other transportation provider, shall comply with all applicable state and federal laws concerning the transportation of passengers. All children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices.
- (7) Garbage shall be stored in waterproof containers with tight fitting covers.
- (8) The provider shall have sanitary toileting facilities, and sanitary diaper changing and handwashing facilities.
- (9) Soiled diapers shall be placed in a covered leak-proof container which is emptied and cleaned frequently.
- (10) The provider shall wash her hands after toileting and after diapering each child.
- (11) The provider shall complete and keep on file the health self-questionnaire form provided by the Division.
- (12) Each provider shall obtain written proof that she is free of active tuberculosis prior to initial approval and every two years thereafter.
- (13) The provider shall serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of children in care.
- (14) The provider shall provide daily opportunities for supervised outdoor play or fresh air, weather permitting.
- (15) The provider shall assure that the structure in which the day care arrangement is located has clean drinking water, an approved sanitary disposal system, weather-tight construction, and is otherwise safe for human habitation.
- (16) Fuel burning heaters used when the children are in care shall be properly vented to the outside. Fuel burning heaters, fireplaces, stoves, and portable electric heaters, when in use, shall have a securely attached guard.
- (17) A battery-operated smoke detector shall be installed in the primary caregiving area of each nonregistered day care home.
- (18) The provider shall successfully complete a basic ~~multimedia~~ first aid course within three months of beginning participation in this program.

Statutory Authority G.S. 143B-153(2a).

SUBCHAPTER 46H - POLICIES FOR PROVISION OF CHILD DAY CARE SERVICES

SECTION .0100 - GENERAL POLICIES

.0101 SCOPE

The rules of this Subchapter set forth general policies governing conditions for the provision of child day care services under the funding sources administered by the

~~Child Day Care Section.~~ Division. General policies include methods of service provision, definition of the service, and ~~eligible target populations.~~ eligibility criteria.

Statutory Authority G.S. 143B-153.

.0103 DEFINITION OF SERVICE

(a) Primary Service. Child day care services means the provision of protection, care and developmental experiences to children ages birth to 18 years, for a portion of a day but less than 24 hours, in the child's own home, in the home of a caregiver, or in a day care facility. Each type of care arrangement must meet all state and federal standards applicable to such arrangements. Services include providing information to families and the community about what constitutes a good day care experience for a child and assisting eligible families as needed in the cost of purchase of the day care service consistent with state policies. The provision of facilities and the essentials of daily living; a daily program of care; education and recreational activities; remedial care and services appropriate to the age and developmental level of the child; and health supervision are also included. In addition, transportation may be included. For each type of care arrangement, the equipment and materials necessary to carry out the daily program of activities are included. ~~Medical examinations required for staff, and for children for admission to day care and periodically thereafter, may be provided when not otherwise available.~~

(b) Component. Transportation, when needed and not otherwise available, must be provided to access day care service programs for persons receiving services in conjunction with protective services. ~~services, and for persons eligible for service on the basis of their income maintenance status.~~ Transportation, when needed and not otherwise available, may be provided to access day care services for other persons who are eligible for child day care services.

Statutory Authority G.S. 143B-153.

.0104 ELIGIBILITY CRITERIA

(a) Child day care services must be provided to eligible children, as determined by the county department of social services or its designee according to the criteria in 10 NCAC 46H .0200, who ~~are in one or more of the following target populations~~ need services for one of the following reasons when funds and care resources are available:

- (1) children whose parents, foster parents, or other adults responsible for the care of the child need child care support in order to seek or maintain employment.
- (2) children whose parents, foster parents, or other adults responsible for the care of the child need child care support to attend school or job training activities as described in Rule .0105 of this Section.
- (3) children who need child care assistance in order

to remain in their own homes during the period in which they receive protective services for children.

~~(4) children who need child care assistance as defined by the local agency responsible for determining client eligibility and who are in licensed foster care homes or for whom the county department of social services has custody.~~

(b) Child day care services may be provided to eligible children, as determined by the county department of social services or its designee, according to the criteria in 10 NCAC 46H .0200 in the following circumstances:

- (1) children who are eligible according to the criteria defined in either Rule .0202 or Rules .0203 and .0204 of this Subchapter whose emotional, cognitive, social or physical development is delayed or is at risk for delay.
- (2) children who meet the eligibility criteria for Child Welfare Services funds as provided in the North Carolina Division of Social Services' Family Services Manual, Volume I, Chapter II, and who need child care assistance as a support to the family preventive or reunification services described in the manual.

(c) Notwithstanding other rules in this Chapter, child day care services may be provided to children in counties participating in the Early Childhood Education and Development Initiatives Program authorized by G.S. 143B, Part 10B of Article 3, provided that the child care services are included in the county's Early Childhood Education and Development Plan as approved by the Department of Human Resources.

(d) When the availability of funding is less than the amount needed to serve all eligible children, the local agency responsible for determining child eligibility for subsidized child care services may establish the priority in which the target populations identified in Paragraphs (a) through (c) of this Rule will be served. for serving families. The order of priority shall be stated in writing and made available to applicants for child care assistance.

Statutory Authority G.S. 143B-153.

.0105 SUPPORT TO EMPLOYMENT: TRAINING FOR EMPLOYMENT

(a) Child day care services must be provided to support employment of the child's parents.

(b) Child day care services must be provided to support training leading to employment of the child's parents. ~~parents; except that an agency may obtain a waiver from providing support to training leading to employment. The section shall administer the waiver provision.~~

(c) Where a parent or responsible adult remains in the home and is capable of providing care for the child, child day care services may not be provided as a support for employment or training. Where it is determined that such

parent is incapable of providing care for the child, the reasons for this determination must be documented in the client record.

(d) Day care services may be provided when the parent or responsible adult is engaged in gainful employment on either a full-time or part-time basis.

(e) Where the parent or responsible adult is temporarily absent from work with arrangements to continue the same employment, child day care services shall continue for at least 30 days. Where an absence from work extends beyond 30 days, the agency responsible for determining eligibility shall determine on the basis of individual circumstances whether day care should continue beyond that time period. Where child care is continued beyond 30 days, the reasons for such extension shall be documented in the client's record.

(f) Where a parent is unemployed but is seeking employment, child day care services will be provided for a minimum of 30 days if the parent is already receiving subsidized child day care services or the parent or responsible adult is enrolled in a job search activity as part of an approved employment/training plan. Continuation of the service may be extended if the agency determines such extension is warranted, provided the reason for the extension is documented in the client's record.

(g) Training leading to employment shall include the following:

- (1) continuation of high school within the school system; and
- (2) basic education or a high school education or its equivalent in community colleges or technical institutes; and
- ~~(3) vocational, technical, or skills training in programs which are designed to last for up to two years; and~~
- (3) post secondary education or skills training, up to a maximum of two years enrollment.
- ~~(4) in the case of current or former income maintenance recipients, enrollment in a four-year college degree program.~~

Statutory Authority G.S. 143B-153.

.0108 LIMITATIONS

(a) Child day care services as a support for protective services may not be provided to children living in foster care arrangements.

(b) Child day care services as a support for training leading to employment for the parent or responsible adult may not be provided when the parent is ~~enrolled in a four year college degree program or participating in graduate or post-graduate studies.~~ studies, except as stipulated in Rule .0105(g)(4) of this Section.

(c) Child day care services are limited to a total of two years when the parent is enrolled in a post-secondary degree program.

(d) Child day care services shall not be provided to non-

citizen families who are residing in the state illegally, with the exception of children receiving child protective or foster care services.

Statutory Authority G.S. 143B-153.

.0110 DEFINITION OF SPECIAL NEEDS CHILD

(a) A special needs child is one who qualifies under one or more than one of the criteria listed in this Paragraph:

- (1) a child who is determined by the area mental health/developmental disabilities/substance abuse program to meet the definition of special needs pursuant to G.S. 122C and codified in 10 NCAC 14K .0103(c) (11), (24), and (40); including subsequent amendments; or
- (2) a child who is determined by the local educational agency (LEA) to meet the definition of special needs as defined in the Department of Public Instruction's "Procedures Governing Programs and Services for Children With Special Needs", Section .1501A, except that the definition of an academically gifted child in .1501A is not considered a special needs child when determining the eligibility of a child for the subsidized child day care program. This incorporation includes subsequent amendments and editions.

A copy of 10 NCAC 14K, Section .0100 can be obtained from the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina, 27611-7447, (919) 733-2678, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) at the time of adoption of this Rule. A copy of "Procedures Governing Programs and Services for Children With Special Needs" can be obtained from the North Carolina Department of Public Instruction, Attention: Cash Management, 116 West Edenton Street, Raleigh, NC 27603-1712, (919) 733-4258, 301 North Wilmington Street, Raleigh, North Carolina 27601-2825, (919) 715-1018, at a cost of two dollars and forty cents (\$2.40) at the time of adoption of this Rule.

(b) The agency determining eligibility for the services shall have on file a signed letter, statement, or summary from the person authorized to make the diagnosis to document the "special need" condition and a summary of the special services required to meet the child's needs as outlined in the child's individualized plan. An individualized plan is required to be developed by the area mental health program or the local educational agency for every child who is determined to meet the definition of a special needs child pursuant to PL 99-457, G.S. 122C-3 and G.S. 115C-146.1.

(c) Eligibility for the supplemental rate shall be contingent upon the provider's compliance with the activities designated for the provider in the child's individualized plan.

Statutory Authority G.S. 143B-153(2a).

SECTION .0200 - ELIGIBILITY FOR SERVICES

.0201 BASIC ELIGIBILITY CRITERIA

In addition to the requirements of 10 NCAC 46H .0100, in order for an individual to be determined eligible to receive child day care services funded ~~under the Social Services Block Grant (SSBG) or the State Day Care Fund, with Child Day Care Services Funding~~, it must be established that he is ~~eligible~~ eligible:

- (1) ~~on the basis of income maintenance status;~~
- (2) ~~on the basis of income eligible status;~~ status; ~~or~~
- (3) ~~for day care to support protective services as described in 10 NCAC 46H .0106, on the basis of need without regard to income, unless the service is available without regard to income as referenced in Rule .0206 of this Subchapter.~~

Statutory Authority G.S. 143B-153.

.0202 INCOME MAINTENANCE STATUS

~~For an individual to be eligible on the basis of income maintenance status, it must be established that the individual is either:~~

- (1) ~~a current recipient of Aid to Families with Dependent Children (AFDC) or a person whose needs are included in the grant to an AFDC recipient; or~~
- (2) ~~a current recipient of Supplemental Security Income (SSI); or~~
- (3) ~~a child with respect to whom foster care maintenance payments or adoption assistance payments are made under Title IV E.~~

Statutory Authority G.S. 143B-153.

.0203 INCOME ELIGIBLE STATUS

(a) For the purpose of the rules in this Subchapter, the term "income unit" shall apply to persons who reside in the same household and who, according to North Carolina law, are responsible for the financial support of the individual whose eligibility for child day care services is being determined. Also for the purpose of determining eligibility for day care services, the terms "income unit" and "family" are used interchangeably in the rules in this Subchapter.

(b) When the amount of income available to an individual is a condition of eligibility for child day care services, it is necessary to determine the number of persons in the individual's income unit and the amount of the gross income available to the income unit.

- (1) The number of individuals in the income unit is referred to as the "income unit size" or "family size". These terms are used interchangeably in the rules in this Subchapter.
- (2) The total amount of the income used to determine day care eligibility is referred to as the "gross income of the income unit" or "family income". These terms are used interchangeably

in the rules in this Subchapter.

(c) Child day care services may be provided to individuals other than those described in 10 NCAC 46D .0103(e) and in Rules .0202 and .0206 of this Subchapter provided the gross annual income of the individual's income unit does not exceed the state's maximum income eligibility limit (as defined in Rule .0204 of this Subchapter) for the number of persons in that income unit.

(d) The following are defined as separate income units for the purposes of determining eligibility and client fees for child day care services:

- (1) Biological and adoptive parents and their minor children. A step-parent shall be included in the income unit with his/her spouse when the children in need of care include their biological or adoptive child and step-siblings.
- (2) A minor parent and his or her children.
- (3) Each adult whether related or unrelated, other than spouses.
- (4) Each child living with anyone other than their biological or adoptive parents.

(e) Income to be considered when computing the gross income of the income unit is listed in the Division of Social Services' Family Child Day Care Services Manual issued by the Division of Child Development. Manual, as described in 10 NCAC 35A .0003.

Statutory Authority G.S. 143B-153.

.0206 WITHOUT REGARD TO INCOME

Child day care services needed in conjunction with protective services for children as described in 10 NCAC 46H .0106 will be provided without regard to income up to a maximum of 12 months from the time protective services is initiated, provided that all conditions set forth in 10 NCAC 35E .0106(a)(6) are met. In addition, child day care services shall be provided without regard to income for:

- (1) children described in 10 NCAC 46H .0104 who need child care services and meet eligibility criteria for Child Welfare Services; and
- (2) children receiving foster care services who are in the custody of the county department of social services and are residing in licensed foster care homes or in the care of adults other than their parents.

Statutory Authority G.S. 143B-153(2a).

.0207 RESPONSIBILITY FOR ELIGIBILITY DETERMINATION

Responsibility for eligibility determination, redetermination, and case management for child day care services funded by ~~Social Services Block Grant~~ and state child day care services funds shall rest with those agencies authorized by the Secretary of the Department of Human Resources. Resources as set forth in 10 NCAC 43L .0301.

Statutory Authority G.S. 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Social Services Commission intends to adopt rule cited as 10 NCAC 49C .0107.

Temporary: This Rule was filed as a temporary adoption effective December 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 6, 1995 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: The proposed amendment to Subchapter 49C is needed in order to provide necessary flexibility to adjust reimbursements for covered EA services to achieve the necessary reduction of expenditures to stay within anticipated federal funding while protecting covered services to the maximum extent possible. This requires adoption of 10 NCAC 49C .0107. Priority for use of the projected available funds will be (1) to maintain support for local Child Protective Services activities at the full level currently projected for SFY 95-96; and (2) to maintain support for EA Services provided by the DHR Divisions of Social Services, Youth Services, and Mental Health to the maximum extent possible for as long as funds remain available up to the level consistent with the federal reduction anticipated in SFY 95-96.

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

Fiscal Note: This Rule affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.

CHAPTER 49 - AFDC

SUBCHAPTER 49C - EMERGENCY ASSISTANCE

SECTION .0100 - COVERAGE

.0107 LIMITATIONS

(a) Reimbursements for covered emergencies may be limited in the event that the Director of the Budget finds that Federal and state funds are insufficient to continue current service levels.

(b) In applying such limitations, priority for reimbursements shall be set by the Secretary of the Department of Human Resources.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt rules cited as 11 NCAC 4 .0501 - .0509.

Proposed Effective Date: January 1, 1997.

A Public Hearing will be conducted at 2:00 p.m. on December 14, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: *Provide more adequate disclosure to consumer of life insurance coverages.*

Comment Procedures: *Written comments and questions should be directed to Tony Higgins, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4935. Oral presentations may be made at the public hearing.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 4 - CONSUMER SERVICES DIVISION

SECTION .0500 - LIFE INSURANCE ILLUSTRATIONS

.0501 SCOPE AND DEFINITIONS

(a) This Section applies to all policies sold on and after the effective date of this Section.

(b) As used in this Section, the following terms have the following meanings:

- (1) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.
- (2) "Basic illustration" means a ledger or proposal used in the sale of a policy that shows both guaranteed and non-guaranteed elements.
- (3) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.
- (4) "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy as of the preparation date of the illustration or declared to become effective within the next 95 days.
- (5) "Disciplined current scale" means a scale of

non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer.

- (6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are guaranteed and determined at issue.
- (7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:
 - (A) The disciplined current scale; or
 - (B) The currently payable scale.
- (8) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy over a period of years and that is either a basic illustration, in-force illustration, or a supplemental illustration.
- (9) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.
- (10) "Illustration actuary" means an actuary meeting the requirements of 11 NCAC 4 .0509 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.
- (11) "Lapse-supported illustration" means an illustration of a policy failing the test of self-supporting as defined in this Section, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100 percent policy persistency thereafter.
- (12) "Non-guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are not guaranteed or not determined at issue.
- (13) "Policy" means a group or individual life insurance policy or certificate. "Policy" does not include:
 - (A) A variable life insurance policy or certificate.
 - (B) An annuity contract.
 - (C) A credit life insurance policy or certificate.
 - (D) A life insurance policy with no illustrated death benefit on any individual exceeding ten thousand dollars (\$10,000).
- (14) "Policy owner" means the owner named in a policy or the certificate holder in the case of a group policy.
- (15) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.
- (16) "Self-supporting illustration" means an illustration of a policy for which it can be demonstrated that, when using experience assumptions under-

lying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

- (17) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this Section, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0502 ASSUMED EXPENSES AND CURRENT SCALE

(a) As used in this Rule, "minimum assumed expenses" means the minimum expenses current scale for a policy. An insurer may choose to designate each year the method of determining assumed expenses for all policies from the following:

- (1) Fully allocated expenses.
- (2) Marginal expense.
- (3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the [National Association of Insurance Commissioners or by the Commissioner].

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(b) Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) Are consistent with all provisions of this Section.
- (2) Limit a disciplined current scale to reflect only actions that have been taken on events that have already occurred.
- (3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.
- (4) Do not permit assumed expenses to be less than minimum assumed expenses.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-

15; 58-60-20; 58-63-15; 58-63-65.

.0503 ILLUSTRATED POLICIES

(a) Each insurer marketing policies to which this Section applies shall notify the Commissioner whether a policy is to be marketed with or without an illustration. For all policies being actively marketed on the effective date of this Section, the insurer shall identify in writing those policies and whether or not an illustration will be used with them. For policies filed after the effective date of this Section, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Commissioner.

(b) If the insurer identifies a policy as one to be marketed without an illustration, any use of an illustration before the first policy anniversary for any policy using that policy is prohibited.

(c) If a policy is identified by an insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Section is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to those individuals. The illustration furnished to an applicant for a group policy issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) As used in this Paragraph, "non-term group life" means a group policy or individual policies of traditional permanent or universal life insurance issued to members of an employer group where:

- (1) Every plan of coverage was selected by the employer.
- (2) The premium is paid by the employer or through payroll deduction.
- (3) Group underwriting or simplified underwriting is used.

Potential enrollees for policies and certificates of non-term group life subject to this Section shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this Section, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the policy or certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0504 GENERAL RULES

(a) As used in this Rule, "generic name" means a short title descriptive of the policy being illustrated, such as "whole life", "term life", or "flexible premium adjustable life." An illustration used in the sale of a policy shall satisfy the applicable requirements of this Section, be clearly labeled "life insurance illustration" and contain the following basic information:

- (1) Name of insurer.
- (2) Name and business address of producer or insurer's authorized representative, if any.
- (3) Name, age and sex of proposed insured, except where a composite illustration is permitted under this Section.
- (4) Underwriting or rating classification upon which the illustration is based.
- (5) Generic name of the policy, the company product name, if different, and policy form number.
- (6) Initial death benefit.
- (7) Dividend option election or application of non-guaranteed elements, if applicable.
- (8) Clear disclosure of the method used by the company to allocate expenses, as disclosed to the Commissioner in the actuarial certification as required in 11 NCAC 4 .0509(c).

(b) When using an illustration in the sale of a policy, an insurer or its agents or other authorized representatives shall not:

- (1) Represent the policy as anything other than a life insurance policy;
- (2) Use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (3) State or imply that the payment or amount of non-guaranteed elements is guaranteed;
- (4) Use an illustration that does not comply with the requirements of this Section;
- (5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- (6) Provide an applicant with an incomplete illustration;
- (7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
- (8) Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
- (9) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
- (10) Use an illustration that is not "self-supporting."

(c) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0505 STANDARDS FOR BASIC ILLUSTRATIONS

(a) Format. A basic illustration shall conform with the following requirements:

- (1) The illustration shall be labeled with the date on which it was prepared.
- (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
- (3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.
- (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
- (5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.
- (6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.
- (7) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.
- (8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements").
- (9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
- (10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

- (11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.
- (12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
 - (A) The benefits and values are not guaranteed;
 - (B) The assumptions on which they are based are subject to change by the insurer; and
 - (C) Actual results may be more or less favorable.
- (13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is paid.
- (14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the effect on future policy benefits and values.

(b) Narrative Summary. A basic illustration shall include the following:

- (1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy.
- (2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the policy, that must be paid to guarantee coverage for the term of the policy, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code.
- (3) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the effect they may have on the benefits and values of the policy.
- (4) Identification and a brief definition of column headings and key terms used in the illustration.

(c) Numeric Summary.

- (1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium,

the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30.

- (A) Policy guarantees;
- (B) Insurer's illustrated scale;
- (C) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:
 - (i) Dividends at 50 percent of the dividends contained in the illustrated scale used;
 - (ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and
 - (iii) All non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.
- (2) In addition, if coverage would cease before policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

(d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this Section.

- (1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."
- (2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) Tabular Detail.

- (1) A basic illustration shall include the following for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration, and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable is to change:
 - (A) The premium outlay and mode the applicant plans to pay and the contract premium, as

applicable;

- (B) The corresponding guaranteed death benefit, as provided in the policy; and
- (C) The corresponding guaranteed value available upon surrender, as provided in the policy.
- (2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.
- (3) Non-guaranteed elements may be shown if described in the policy. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0506 STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS

(a) A supplemental illustration may be provided as long as:

- (1) It is appended to, accompanied by or preceded by a basic illustration that complies with this Section;
- (2) The non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
- (3) It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and
- (4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0507 DELIVERY OF ILLUSTRATION AND RECORD RETENTION

(a) If a basic illustration is used by an insurance agent or

other authorized representative of the insurer in the sale of a policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Section, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Section, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(c) If no illustration is used by an insurance agent or other authorized representative in the sale of a policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(d) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(e) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail directly from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(f) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0508 ANNUAL REPORTS AND NOTICES TO POLICY OWNERS

(a) In the case of a policy designated as one for which an illustration will be issued, the insurer shall provide each

policy owner with an annual report on the status of the policy that shall contain the information specified in this Rule.

(b) For universal policies, the report shall include the following:

- (1) The beginning and end date of the current report period;
- (2) The policy value at the end of the previous report period and at the end of the current report period;
- (3) The total amounts that have been credited or debited to the policy value during the current period, identifying each by type (e.g., interest, mortality, expense and riders);
- (4) The current death benefit at the end of the current report period on each life covered by the policy;
- (5) The net cash surrender value of the policy as of the end of the current report period;
- (6) The amount of outstanding loans, if any, as of the end of the current report period; and
- (7) For fixed premium policies: If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or
- (8) For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(c) For all other policies, where applicable, the report shall contain:

- (1) Current death benefit;
- (2) Annual contract premium;
- (3) Current cash surrender value;
- (4) Current dividend;
- (5) Application of current dividend; and
- (6) Amount of outstanding loan.

(d) Insurers writing policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(e) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting an in force illustration. You may annually request, without charge, such an illustration by calling

[insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive an in force illustration within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(f) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Section 6A, 6B, 7A and 7E. No signature or other acknowledgment of receipt of this illustration shall be required.

(g) If an adverse change in any non-guaranteed element that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a brief notice of that fact prominently displayed. Notice on a separate sheet entitled "ALERT!" shall describe the nature of the change(s), the potential effect of the change(s) and the reasons the company felt the change was necessary.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

.0509 ANNUAL CERTIFICATIONS

(a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this Section.

(c) The illustration actuary shall:

- (1) Be a member in good standing of the American Academy of Actuaries;
- (2) Be familiar with the standard of practice regarding life insurance policy illustrations;
- (3) Not have been found by the Commissioner, following appropriate notice and opportunity for hearing to have:
 - (A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;
 - (B) Been found guilty of fraudulent or dishonest practices;
 - (C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
 - (D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

- (4) Not fail to notify the Commissioner of any action taken by an insurance regulator of another state similar to that under Subparagraph (c)(3) of this Rule;
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charge, or credited, this must be disclosed in the annual certification; and
- (6) Disclose in the annual certification the method used to allocate overhead expenses for all illustration:
- (A) Fully allocated expenses;
 - (B) Marginal expenses; or
 - (C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the [National Association of Insurance Commissioners or by the Commissioner].
- (d) The illustration actuary shall file a certification with the board and with the Commissioner:
- (1) Annually for all policies for which illustrations are used; and
 - (2) Before a new policy is illustrated.
- If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the Commissioner promptly.
- (e) If an illustration actuary is unable to certify the scale for any policy illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the Commissioner promptly of his or her inability to certify.
- (f) A responsible officer of the insurer, other than the illustration actuary, shall certify annually that the illustration formats meet the requirements of this Section and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary.
- (g) The annual certifications shall be provided to the Commissioner each year by a date determined by the insurer.
- (h) If an insurer changes the illustration actuary responsible for all or a portion of the company's policies, the insurer shall notify the Commissioner of that fact promptly and disclose the reason for the change.

Statutory Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend rules cited as 11 NCAC 6A .0201, .0217, .0225 - .0226, .0234 - .0236, .0240, .0301 - .0302, .0304 - .0306, .0402, .0410, .0413, .0501, .0701 - .0705, .0808 - .0810; and adopt rules cited as 11 NCAC 6A .0417, .0813, .0901 - .0904.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 5, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Needed to comply with changes made in statutes during last session of the General Assembly.

Comment Procedures: Written comments and questions should be directed to Tony Higgins, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4935. Oral presentations may be made at the public hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0200 - DESCRIPTION OF FORMS

.0201 GENERAL INFORMATION

All forms pertaining to licensure including applications, bonds, appointments, termination of appointments and other forms necessary for the daily operation of the Division in fulfilling its purpose shall be supplied by the Division. In addition, the Division will provide instructions for proper completion of all forms.

- (1) Forms Shall be completed in full and must contain necessary signatures in order to be accepted. Companies and applicants shall submit all forms or complete other requirements within time schedules established by the Division.
- (2) Companies or applicants that are authorized to duplicate forms must do so without alteration or modification thereto.
- (3) If any additional supporting documents, information or fees are required, they shall be submitted with the appropriate forms or applications.
- (4) The Division shall allow appointments, terminations of appointments, and the transfer of funds for payment of fees to be done through an electronic medium. The medium shall meet all re-

quirements as established and approved by the State Auditor.

Statutory Authority G.S. 58-2-40; 58-33-25(n); 58-33-40(c),(d),(e),(f); 58-33-55(a),(b); 58-33-125(a).

.0217 NORTH CAROLINA NOTICE OF CANCELLATION

(a) The "North Carolina Notice of Cancellation" shall include the name of the company, address of the company licensing office, name of the limited representative or adjuster, type of license to be canceled, company number, signature of authorized company representative and other pertinent information.

(b) The Division shall allow terminations of appointments to be done through an electronic medium. The medium shall meet all requirements as established and approved by the State Auditor.

Statutory Authority G.S. 58-2-40; 58-33-55(a)(b).

.0225 APPOINTMENT OF NORTH CAROLINA AGENT

(a) The "Appointment of North Carolina Agent" form shall include personal information, insurance authority for which appointed, company NAIC number, effective date of the appointment, signature of authorized company official and other information to aid the Division in recording the appointment.

(b) The Division shall allow appointments to be done through an electronic medium. The medium shall meet all requirements as established and approved by the State Auditor.

Statutory Authority G.S. 58-2-40; 58-33-40(e).

.0226 TERMINATION OF NORTH CAROLINA AGENT APPOINTMENT, LTD REPRESENTATIVE AND ADJUSTER

(a) The "Termination of North Carolina Agent Appointment, Limited Representative and Adjuster" form shall include personal information, insurance authority being terminated, signature of authorized company official, company number, effective date of termination, and other information to aid in the recording of the termination of authority.

(b) The Division shall allow appointments to be done through an electronic medium. The medium shall meet all requirements as established and approved by the State Auditor.

Statutory Authority G.S. 58-2-40; 58-33-40(e).

.0234 RESIDENT SURPLUS LINES LICENSE RENEWAL

~~The "Resident Renewal Application for License to Represent a Surplus Lines Insurer (Form RSL-1)" shall contain~~

~~personal information and other pertinent information to aid the Division in determining if the applicant's license should be renewed. It must be signed by the applicant and notarized. Each year the Division shall send to each surplus lines licensee an invoice for the license renewal fee. Upon receipt of the renewal fee by the Division the license shall be renewed and a new license shall be mailed to the licensee. The applicant must be a member of a surplus lines advisory organization at the time of application for renewal.~~

Statutory Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(d),(f).

.0235 CORPORATE SURPLUS LINES APPLICATION

The "Corporate Surplus Lines Application" shall contain pertinent information concerning the corporation, the names of surplus lines licensees within the corporation and conditions for the issuance of the license and shall include appropriate signatures. ~~This form is used for both new and renewal applicants. As used in this Rule, "corporation" includes a limited liability company as described in G.S. 57C, and a partnership, limited partnership or registered limited liability partnership as described in G.S. 59.~~

Statutory Authority G.S. 58-2-40; 58-21-65(c)(d).

.0236 APPLICATION FOR CORPORATE/PARTNERSHIP INSURANCE LICENSE

The "Application for Corporate/Partnership Insurance License" shall contain pertinent information concerning the ~~corporation/partnership~~ corporation or partnership and other information that is relevant in aiding the Division in determining if the applicant meets eligibility requirements for licensing. The application must be signed and notarized. As used in this Rule, "corporation or partnership" includes a limited liability company as described in G.S. 57C, and a partnership, limited partnership or registered limited liability partnership as described in G.S. 59.

Statutory Authority G.S. 58-2-40; 58-33-25(h); 58-33-30(a).

.0240 NONRESIDENT SURPLUS LINES LICENSE RENEWAL

~~The "Non-Resident Renewal Application for License to Represent a Surplus Lines Insurer (Form NRSL-1)" shall contain personal information and other pertinent information to aid the Division in determining if the applicant's license should be renewed. It must be signed by the applicant and notarized. Each year the Division shall send to each surplus lines licensee an invoice for the license renewal fee. Upon receipt of the renewal fee by the Division the license shall be renewed and a new license mailed to the licensee. The applicant must be a member of a surplus lines advisory organization at the time of application for renewal.~~

Statutory Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(f).

SECTION .0300 - EXAMINATIONS

.0301 TYPES OF EXAMINATIONS

Types of examinations administered for licensing are life, ~~accident and health; accident and health; fire and casualty;~~ property and liability; Medicare supplement/long term care; auto physical damage; adjusters; hail adjusters; title; and surplus lines. ~~Additional examinations may be created and administered at the discretion of the Commissioner.~~

Statutory Authority G.S. 58-2-40; 58-21-65(b)(3); 58-33-30(e).

.0302 FORM OF EXAMINATIONS

All examinations shall ~~be in written and~~ may be in objective or essay form. A physically handicapped individual whose ability to write is impaired or lost and a visually handicapped individual may have special assistance from other individuals acting as readers or recorders. Applicants requiring special assistance must request in writing such assistance by the filing deadline of the examination. Verification of handicaps and a statement of all assistance needed must be included at the time of application.

Statutory Authority G.S. 58-2-40; 58-33-30(e).

.0304 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

Applicants are responsible at the examination site for the following:

- (1) Applicants ~~who have pre-registered and~~ who have not previously failed the same examination must bring to the examination site the ~~ticket of admission~~ Certificate of Course Completion/Examination Admission Ticket, their ~~confirmation numbers obtained from the Service at time of registration~~, and two forms of proof of identity, one of which must be photo bearing.
- (2) ~~Applicants who wish to take the examination on a walk-in basis and who have not previously failed the same examination must bring to the examination site a properly completed application, two forms of proof of identity, one of which must be photo bearing, and proper fees.~~
- (3) (2) Applicants who have previously failed an examination may retake the examination in accordance with instructions furnished by the Commissioner and must pay applicable fees for each administration.
- (4) (3) Examination fees must be paid by company check, certified check, cashier's check or money order, made payable to the Service.
- (5) (4) Applicants taking the life, ~~accident and health, accident and health or fire and casualty~~ Medicare supplement/long term care, or property and

liability examination are required to bring to the examination site a ~~"Certificate of Prelicensing Course Completion"~~ "Certificate of Course Completion/Examination Admission Ticket" validated by an approved prelicensing school or by the Division indicating that the applicant has successfully completed the mandatory prelicensing education requirements as specified in G.S. 58-33-30(d)(2). The ~~"Certificate of Prelicensing Course Completion"~~ "Certificate of Course Completion/Examination Admission Ticket" is valid for ~~42~~ three months from the date of course completion or a maximum of five examination sittings, whichever occurs first. A ~~"Certificate of Prelicensing Course Completion"~~ is valid for ~~60~~ days from the date of issue for those waiving the prelicensing education requirement.

(6) (5) No applications will be supplied at the examination site for completion by applicants; nor will required supplies be furnished to applicants.

(7) (6) Applicants must arrive at the examination site at the time specified in the current examination schedule.

Statutory Authority G.S. 58-2-40; 58-33-30(d)(2); 58-33-30(e); 58-33-125.

.0305 ADMINISTRATION OF EXAMINATION

Applicants ~~should~~ shall expect the examination to be administered using, among others, the following procedures:

- (1) Applicants shall present to the test site personnel upon request the applicable items described in 11 NCAC 6A .0304(1) through (5) (4).
- (2) Applicants should follow carefully all instructions given by the examination proctors, ~~particularly when completing the answer sheet.~~
- (3) Applicants are not permitted to take calculators, textbooks, other books or papers into the examinations. Applicants found to have any of these materials or other aids will not be allowed to continue the examination.
- (4) ~~The answer sheets must contain only identification data and responses to exam questions. No credit will be given to any applicant for any marks or answers made in the examination booklet.~~ All examinations will be administered in a form prescribed by the Commissioner.
- (5) Applicants may leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time will be allowed for completing the examination.
- (6) Any applicant who gives or receives assistance during the examination will be required to turn in all exam materials immediately and leave the room. Under these circumstances, the applicant's answer sheet will not be scored and the relevant

facts will be reported by the proctors to the Commissioner.

- ~~(7) An applicant may take only one examination on any given exam date.~~

Statutory Authority G.S. 58-2-40; 58-33-30(e).

.0306 REGISTRATION FOR EXAMINATION

~~Application for examination and licensure must be post-marked no later than the published filing deadline for applicants who wish to pre-register to take the examination. A separate application for examination and licensure must be made for each kind of insurance for which an individual wishes to be examined. An applicant for examination must register with the Service.~~

Statutory Authority G.S. 58-2-40; 58-33-30(e).

SECTION .0400 - LICENSING PROCEDURES

.0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

(a) Applicants must meet minimum qualifications as stated in G.S. 58-33-30.

(b) An agent licensed to sell life, ~~accident~~ and health has authority to sell variable contracts provided the agent is licensed to sell securities through the Secretary of State, holds a current NASD registration, (series 6 or 7 and 63) and is appointed by a company authorized to sell variable annuities and variable life products in North Carolina. The company is responsible for verifying that the agent has met all NASD requirement.

(c) A limited representative must be licensed with each company for which he will solicit business. No solicitation shall begin by the applicant until he has received such license.

(d) Responsibility of companies for forms and fees:

- (1) Companies shall make application for limited representatives and company/firm adjusters to be licensed.
- (2) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (3) Companies shall have on file with the Division the name of the individual responsible for all agent appointments, termination of agent appointments and agent license applications submitted by the company to the Division.
- (4) Companies shall submit to the Division company checks for the proper amount due.

(e) Responsibility of the agent:

- (1) An applicant who is subject to the examination shall ~~submit to the Service the candidate guide application along with a company check, certified check, cashier's check or money order in~~

~~the appropriate amount, comply with the requirements of Section .0300 of this Subchapter.~~

- (2) An agent shall be responsible for verifying licensure to a company prior to being appointed.
- (3) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.

- (4) Any licensee licensed under Chapter 58, Article 33 of the North Carolina General Statutes shall notify the Division in writing of any change of residence or business address within 30 days of such change.

- ~~(5) An agent whose license terminates because of inactivity shall be allowed to reapply within two years after the license terminates without having to meet education and examination requirements. If the agent's license terminates a second time as a result of continued inactivity, the agent upon application shall be required to meet all education and examination requirements.~~

- (5) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days of such demand.

(f) Responsibility of the service:

- (1) The service shall administer the examination for life, ~~accident~~ and health; ~~fire and casualty~~; property and liability; automobile physical damage; adjusters; hail adjusters; title; ~~accident and health~~; and surplus lines.
- (2) The service shall issue pass or fail notices for each examination administered, without reference to numeric scores, within two weeks of testing.
- (3) The service shall notify the Division of score reports for all examinations administered within one week of testing.
- (4) The service shall meet the requirements of its contract with the Commissioner in a timely manner.

(g) Responsibility of the Division:

- (1) Upon receipt of score reports from the service, the Division shall issue appropriate licenses to qualified applicants.
- (2) For eligible applicants, the Division shall issue a 90-day temporary license. For additional information refer to 11 NCAC 6A .0410.

(h) An applicant for a resident license shall, if applicable, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance shall be valid for no more than 60 days from date of issuance.

Statutory Authority G.S. 58-2-40; 58-2-195(a); 58-33-30; 58-33-65.

.0410 TEMPORARY LICENSE

(a) A temporary license is available only to persons described in G.S. 58-33-65(a).

(b) The company shall submit to the Division the application for temporary license, ~~at the same time the applicant forwards the candidate guide application to the service.~~

(c) Successful completion of the examination within 90 days from the date a temporary license is issued will ~~cause the temporary license to be changed to~~ result in the issuance of a permanent license.

(d) Unsuccessful completion of, or failure to take the examination within 90 days from the date a temporary license is issued, will cause immediate cancellation of the temporary license. The company shall return the temporary license to the Division immediately.

(e) Applicants for temporary license under G.S. 58-33-65(a)(1),(2) will follow the procedures outlined in this Rule. In addition, an authorized company official shall send a letter to the Division requesting a temporary license and stating the reason applicant is applying.

Statutory Authority G.S. 58-2-40; 58-33-65.

.0413 LICENSING OF CORPORATION/PARTNERSHIPS

(a) An applicant must meet minimum qualifications as stated in G.S. 58-33-30.

(b) An applicant shall submit application forms with a company check, certified check, cashier's check or money order.

(c) A corporation making first time application and domiciled in North Carolina shall provide proof of corporate status by submitting a copy of its Articles of Incorporation certified by the North Carolina Secretary of State.

(d) A foreign corporation making first time application shall provide proof of corporate status by submitting a copy of its application for Certificate of Authority certified by the North Carolina Secretary of State.

(e) Partnerships making first time application shall submit a copy of the filing with the ~~county clerk's~~ Registrar of Deed's office of the county where the partnership business is being conducted. This copy shall be certified by the ~~county clerk~~ Registrar of Deeds or notarized by a notary public.

(f) An applicant shall file with the Division a list of all companies contracted with the firm along with the names and social security numbers of the agents representing each company.

(g) Any addition or deletion of an agent or company shall be submitted on a form prescribed by the Commissioner within 30 days of any such change in the corporate representation.

(h) For licensing purposes a Limited Liability Corporation (LLC) and a Limited Liability Partnership (LLP) shall

qualify to be licensed as a Corporation. A LLC or LLP applying to be licensed shall submit a copy of its Certificate of Existence issued by the North Carolina Secretary of State.

Statutory Authority G.S. 58-2-40; 58-33-17.

.0417 REQUIREMENTS FOR PRE NEED LIMITED REP. AGENT

Individuals applying to be licensed to sell prearrangement insurance, as defined in G.S. 58-60-35(a)(2), shall submit a North Carolina Limited Insurance Representative Application and appropriate fees. Applicants must also submit evidence that they are licensed to sell pre-need contracts under G.S. 90, Article 13D.

Statutory Authority G.S. 58-2-40; 58-33-25(e)(12).

SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES

.0501 RENEWAL OF AGENT APPTS: LICENSES/LIMITED REPS: COMPANY ADJUSTERS

(a) Annually the Division will notify each company of dates and procedures for renewing agent appointments and limited representative and adjuster licenses. Companies will be given at least 30 days' advance notice of the last date the Division will process terminations.

(b) On the date specified by the Division as the last date to submit terminations, the Division shall cease processing all terminations and bill companies for renewals. All appointments and licenses will automatically be renewed unless the Division has received a termination request from the company within the specified time.

(c) Each company will be sent an invoice stating the total amount of money due. Companies shall remit a check made payable to the North Carolina Department of Insurance in the amount of the invoice. Any discrepancies claimed by companies will be investigated only after full payment is received.

(d) Upon receipt of the company check, the Division will mail to the company a list of all appointments and licenses renewed.

(e) Appointments recorded and licenses issued prior to the renewal date, but after the date specified by the Division as the last date to process termination will be considered valid until the following year.

(f) Annually the Division will, upon written request and payment of prescribed fee, provide to any company a list of all appointees or licensees.

(g) Failure of a company to pay any quarterly or annual invoice within the time prescribed shall automatically result in the cancellation of all appointees or licensees of that company. No new appointments or licenses shall be issued until all outstanding invoices have been paid.

Statutory Authority G.S. 58-2-40; 58-33-40(f); 58-33-55; 58-33-125(a).

SECTION .0700 - PRELICENSING EDUCATION

.0701 GENERAL REQUIREMENTS

(a) This Section applies to individuals attempting to obtain a resident license to solicit life, ~~accident and health, fire and casualty or accident property and liability~~ and health insurance in North Carolina except as specifically exempted by 11 NCAC 6A .0701(b) and (c).

(b) Individuals who are exempt from the requirement for a written examination pursuant to G.S. ~~58-33-35(1), (3), and~~ (4) 58-33-35(3) and (4) are exempt from prelicensing education requirements.

(c) Individuals who satisfy the following are exempt from prelicensing education requirements:

- (1) Life, ~~accident and health~~:
 - (A) Certified Employee Benefits Specialist (CEBS); or
 - (B) Fraternal Insurance Counselor (FIC); or
 - (C) Life Underwriter Training Council Graduate (LUTC Graduate); or
 - (D) Certified Financial Planner (CFP).
- (2) ~~Property and liability: Fire and casualty:~~
 - (A) Accredited Advisor in Insurance (AAI); or
 - (B) Associate in Claims (AIC); or
 - (C) Associate in Insurance Accounting and Finance (AIAF); or
 - (D) Associate in Premium Auditing (APA); or
 - (E) Associate in Risk Management (ARM); or
 - (F) Associate in Underwriting (AU); or
 - (G) Certified Insurance Counselor (CIC); or
 - (H) Holder of Certificate in General Insurance (INS).
- (3) ~~Accident and health:~~
 - (A) ~~Associate in Life and Health Claims (ALHC); or~~
 - (B) ~~Certified Employee Benefits Specialist (CEBS); or~~
 - (C) ~~Holder of Health Insurance Association of America Certificate; or~~
 - (D) ~~Registered Health Underwriter (RHU).~~
- (4) (3) Life, ~~accident and health, and property and liability: fire and casualty and accident and health:~~
 - (A) Holder of degree in insurance (associate or bachelors); or
 - (B) An individual whose license in another state or jurisdiction for the same kind of insurance as that for which applied has been canceled within 60 days of the Division's receipt of the letter of clearance and the individual's request for waiver of prelicensing education; or
 - (C) An individual who is currently licensed in another state or jurisdiction for the same kind of insurance as that for which applied.

(d) If an applicant exempted from prelicensing education under the provisions of 11 NCAC 6A .0701(c) fails the examination, the applicant must successfully meet North Carolina's mandatory prelicensing education requirement prior to retaking the examination.

(e) In this Section, unless otherwise noted the following definitions will apply:

- (1) "Classroom School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution by an instructor utilizing a teaching curriculum based on the outline.
- (2) "Correspondence Course" shall mean home, self, individual, or correspondence study utilizing programmed text instructions.
- (3) "Correspondence School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through completion of a correspondence course that has been approved by the Commissioner, with students individually supervised by an approved instructor.
- (4) "Instructional Hour" shall mean a ~~60-minute~~ 50-minute hour.
- (5) "Instructor" shall mean an individual approved by the Commissioner to instruct in a classroom school who is responsible for preparation and presentation of lesson plans to assure that the outline is taught to that school's students and who prepares a final course examination; and in a correspondence school to assist and supervise students in the completion of an approved correspondence course.
- (6) "Outline" shall mean the instructor/examination content outlines prepared and published by the Department in the "State of North Carolina Insurance Licensure Examination Candidate Guide".
- (7) "Program Director" shall mean the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to 11 NCAC 6A .0702(l).

(f) Applicants shall request from the Commissioner permission to meet the prelicensing education requirement through correspondence. This written request shall include an explanation as to why the applicant is unable to attend classroom courses.

Statutory Authority G.S. 58-2-40; 58-33-30(d); 58-33-35; 58-33-132.

.0702 PRELICENSING EDUCATION SCHOOLS

(a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by General Statute 58-33-30. All schools desiring to conduct a prelicensing course shall be approved by the Commissioner

prior to commencement of the courses.

(b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) After due investigation and consideration, approval shall be granted to the school when it is shown to the satisfaction of the Commissioner that:

- (1) the school has submitted all information required by the Commissioner;
- (2) the course to be conducted complies with 11 NCAC 6A .0704; ~~and~~
- (3) the program director has been approved by the Commissioner in accordance with 11 NCAC 6A .0703;
- (4) the school has an approved instructor to teach each line of insurance for which they are seeking approval; and
- (5) schools requesting approval to operate as a correspondence school must also have and maintain an approved active classroom schedule.

(d) The following guidelines shall apply to the approval of classroom and correspondence schools:

- (1) Approval extends only to the course and location reported in the application for approval.
- (2) Approval shall terminate on June 30 next following the date of issuance.
- (3) A school must renew annually its approval to conduct prelicensing courses by submitting an application for approval not later than May 31 of each year.

(e) The Commissioner shall deny, revoke, ~~or~~ suspend, or terminate approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of 11 NCAC 6A .0702, .0703, .0704, or .0705, ~~or~~ .0706; or
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, Examination questions; or
- (3) the school's students have a first-time licensing examination performance record that is determined by the Commissioner to be substantially below the performance record of all first-time examination candidates; or
- (4) the school has not conducted at least one prelicensing course during any 12-month ~~24-month~~ period; or
- (5) the school has refused or failed to submit information or properly-completed forms prescribed by the Commissioner within the required time frames.

(f) In all proceedings to deny, revoke, ~~or~~ suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.

(g) When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration. The Commissioner may require

an investigation before new approval is granted.

(h) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one prelicensing course during any 12-month ~~24-month~~ period, that school may reapply after one year of suspension. At such time, the school will be given six ~~12~~ months to conduct at least one prelicensing course.

(i) The following guidelines shall apply for changes during any approved year:

- (1) A school shall obtain advance approval from the Commissioner for any change of course location or schedule information. Requests for approval of such changes shall be in writing.
- (2) An approved school that intends to terminate its prelicensing program, other than during the annual renewal period, shall notify the Commissioner in writing.
- (3) A school shall notify the Commissioner in writing of a change of textbook.

(j) An approved school may utilize, for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and
- (3) be reviewed and approved by the Commissioner in writing prior to publication.

(k) A classroom school's facilities and equipment shall have been found by appropriate local building, heating and fire inspectors to be in compliance with all applicable local, state and federal laws and regulations regarding safety, sanitation, and access by handicapped persons.

(l) The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the prelicensing program.

(m) A school shall publish and provide to all prelicensing students prior to enrollment a bulletin or similar official publication of that school that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs;
- (4) detailed outline or description of all prelicensing courses offered.

(n) With the exception of correspondence courses, a school shall file with the Commissioner information giving

exact dates, times, locations, and instructor name for each scheduled preclicensing course. This information may be submitted either at the beginning of each quarter/semester, or no later than one week prior to the first class meeting of each preclicensing course.

(o) Classroom schools shall retain the following material on file at one location for a minimum of three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student names, with social security numbers, for each course, and the name of the Instructor; and
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

(p) Correspondence schools shall retain the following material on file at one location for a minimum of three years:

- (1) advertisements;
- (2) bulletins, catalogues and other official publications;
- ~~(3) master copy of each final course examination, indicating the answer key;~~
- (4) (3) grade reports;
- (5) (4) a list of student names, with social security numbers, for each course, and the name of the instructor; and
- (6) (5) student registration information that must be obtained prior to the distribution of course material.

All files shall be made available to the Commissioner upon request.

(q) In the event of illness, injury or death of an instructor, the program director may utilize a non-approved instructor to complete a course. The school shall thereafter suspend operation of its preclicensing courses until an approved instructor is available.

Statutory Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

.0703 PROGRAM DIRECTORS

(a) All program directors shall be approved by the Commissioner in accordance with the provisions of this Section.

(b) A person desiring approval as a program director shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the president/chief

operating officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the Commissioner, an application for school approval shall be submitted along with the application for program director approval.

(d) The Commissioner shall approve an applicant as a program director upon finding that the applicant is recommended by the president/chief operating officer of the sponsoring educational institution, company, agency or association has submitted all information required by the Commissioner, possesses good character and reputation, and:

- (1) Holds a baccalaureate or higher degree and has at least two years of experience as an instructor of insurance or as an educational administrator; or
- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management; or
- (3) Possesses qualifications that are found by the Commissioner to be substantially equivalent to those described.

(e) Program director approval shall be valid for an indefinite period, subject to future changes in laws or regulations regarding approval of program directors.

(f) The Commissioner shall deny, revoke, ~~or~~ suspend, or terminate the approval of any program director upon finding that:

- (1) The program director fails to meet the criteria for approval provided by these regulations; or
- (2) The program director has failed to comply with any provisions of 11 NCAC 6A .0700; or
- (3) The program director's employment has been terminated by any sponsoring educational institution/company; or
- (4) The program director provided false information to the Commissioner when making application for approval; or
- (5) The program director has at any time had an insurance license denied, suspended, ~~or~~ revoked, or terminated by this or any other insurance department, or has ever been required to return a license while under investigation; or
- (6) The program director has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (7) The program director has failed to utilize an acceptable level of performance in directing the insurance preclicensing program.

(g) In all proceedings to deny, revoke, ~~or~~ suspend, or terminate approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

(h) When a program director's approval is discontinued, the procedure for reinstatement shall be to apply as a new program director, with a statement of the reasons that he is now eligible for reconsideration. The Commissioner may

require an investigation before new approval is granted.

(i) An approved program director shall inform the Commissioner of any change in program affiliation by filing an application for program director approval prior to directing a new program.

(j) Full-time faculty of fully accredited senior level colleges and universities who regularly teach risk and insurance courses shall be deemed to meet the eligibility requirements of this Section.

(k) The program director is responsible for the actions of the approved school's instructors.

Statutory Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

.0704 COURSES

(a) This Rule establishes minimum standards for life, ~~accident~~ and health, property and liability, Medicare supplement, and long term care ~~fire and casualty~~ and ~~accident and health~~ preclicensing courses prescribed by General Statute 58-33-30.

(b) Insurance preclicensing programs shall consist of any of the following courses:

- (1) life, ~~accident~~ and health insurance;
- (2) property and liability ~~fire and casualty~~ insurance; and
- (3) Medicare supplement and long term care ~~accident and health~~ insurance.

(c) The maximum length of an approved preclicensing education course shall be at the discretion of the school. In no event shall a school offer a life, ~~accident~~ and health or property and liability ~~fire and casualty~~ course of fewer than 40 hours or an ~~accident and health~~ Medicare supplement and long term care course of fewer than 10 20 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas covered in the outline.
- (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Rule .0704(c) of this Section, for the coverage of such subject areas.
- (3) Preclicensing courses are intended for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (4) Schools shall establish and enforce academic standards for course completion that reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.
- (5) Schools shall conduct a final comprehensive

course examination that covers all subject areas prescribed by the Commissioner for each course. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school. No final examination shall be given until a student has completed the instructional requirement.

- (6) Students shall attend a minimum of 40 hours of life, ~~accident~~ and health or property and liability ~~fire and casualty~~ instruction or a minimum of 20 10 hours of Medicare supplement and long term care ~~accident and health~~ instruction. Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the minimum instructional requirement. If a life, ~~accident~~ and health or property and liability ~~casualty~~ course is scheduled for 50 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.

- (7) Schools shall make available for purchase, at the first class meeting of each course, the State of North Carolina Insurance Licensing Examination Candidate Guide at the fee designated by the Department.

(e) The following requirements shall be met for scheduling purposes:

- (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
- (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
- (3) Correspondence courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.

(f) The following shall apply to the use of text books:

- (1) Choice of classroom course text shall be at the discretion of each school.
- (2) Text books used in correspondence courses shall be approved by the Commissioner before use.

(g) All preclicensing classroom school courses shall be taught by instructors who have been approved by the Commissioner.

(h) All preclicensing correspondence courses shall be monitored by instructors who have been approved by the Commissioner. An instructor shall be designated for each correspondence course student.

(i) The following certification of course completion procedures shall apply:

- (1) Schools shall ~~furnish~~ validate each student who successfully completes a preclicensing course an official certificate on a form prescribed by the Commissioner. A certificate shall not be ~~issued~~ to validated for a student prior to completion of

all course requirements and the passing of the course's comprehensive final examination.

- (2) A Certificate of Course Completion/Examination Admission Ticket ~~certificate of prelicensing course completion~~ shall be issued ~~validated~~ for each course successfully completed by a student. A certificate presented at the examination site that indicates completion of more than one course shall be invalid.
- (3) A Certificate of Course Completion/Examination Admission Ticket ~~certificate of prelicensing course completion~~ shall be valid for access to the examination for 12 three months or a maximum of five examination attempts, whichever occurs first. If an applicant for a license does not successfully pass the examination within 12 three months or five examination attempts in the 3-month period, he shall again ~~complete a meet~~ the prelicensing education course requirement to be eligible for the examination.

Statutory Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

.0705 INSTRUCTORS

(a) All instructors shall be approved by the Commissioner in accordance with the provisions of this Rule.

(b) A person desiring approval to teach or proctor prelicensing courses shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) The Commissioner shall approve an applicant as an instructor upon finding that the applicant has submitted all information required by the Commissioner, possesses good character and reputation, and possesses the appropriate qualifications described in this Paragraph:

- (1) ~~Life, accident and health:~~
 - (A) Chartered Life Underwriter (CLU); or
 - (B) Chartered Financial Consultant (ChFC); or
 - (C) Fellow Life Management Institute (FLMI); or
 - (D) Life Underwriter Training Council Fellow (LUTCF); or
 - (E) Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the ~~life, accident and health industry~~ and a designation as:
 - (i) Certified Employee Benefits Specialist (CEBS); or
 - (ii) Life Underwriter Training Council Graduate (LUTC Graduate); or
 - (iii) Fraternal Insurance Counselor (FIC); or
 - (iv) Certified Financial Planner (CFP); or
 - (v) Holder of degree in insurance (associate or bachelors); or
 - (F) Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the ~~life,~~

~~accident and health industry;~~ or

- (G) A combination of training, experience and qualifications that are substantially equivalent to those listed among 11 NCAC 6A .0705(c)(1)(A) through (F) to satisfy the Commissioner that the applicant is qualified.
- (2) ~~Property and liability; Fire and casualty;~~
 - (A) Chartered Property and Casualty Underwriter (CPCU); or
 - (B) Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the property and liability ~~fire and casualty~~ industry and a designation as:
 - (i) Associate in Underwriting (AU); or
 - (ii) Program in General Insurance (INS); or
 - (iii) Accredited Advisor in Insurance (AAI); or
 - (iv) Associate in Claims (AIC); or
 - (v) Associate in Risk Management (ARM); or
 - (vi) Certified Insurance Counselor (CIC); or
 - (vii) Associate in Premium Auditing (APA); or
 - (viii) Associate in Insurance Accounting and Finance (AIAF); or
 - (ix) Holder of degree in insurance (associate or bachelors); or
 - (C) Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the property and liability ~~fire and casualty~~ industry; or
 - (D) A combination of training, experience and qualifications that are substantially equivalent to those listed among 11 NCAC 6A .0705(c)(2)(A) through (C) to satisfy the Commissioner that the applicant is qualified.
- (d) An applicant for instructor shall be approved for each course taught or proctored in the prelicensing curriculum.
- (e) The Commissioner shall deny, revoke, ~~or suspend,~~ or terminate the approval of an instructor upon finding that:
 - (1) The instructor fails to meet the criteria for approval provided by these regulations; or
 - (2) The instructor has failed to comply with the Commissioner's regulations regarding prelicensing courses or schools; or
 - (3) The instructor's employment has been terminated by any school approved by the Commissioner on the grounds of incompetence or failure to comply with institutional policies and procedures; or
 - (4) The instructor provided false information to the Commissioner on any form or application; or
 - (5) The instructor has at any time had an insurance license denied, suspended ~~or revoked,~~ or terminated by this or any other insurance department, or has ever been required to return a license while under investigation; or
 - (6) The instructor has obtained or used, or at-

tempted to obtain or use, in any manner or form, examination questions; or

- (7) The instructor has failed to employ acceptable instructional principles and methods; or
- (8) The instructor's students have a first-time licensing examination performance record that is determined by the Commissioner to be substantially below the performance record of all first-time examination candidates.

(f) In all proceedings to deny, revoke, ~~or~~ suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes shall be applicable.

(g) When an instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(h) Instructor proctoring duties are prescribed by the Commissioner and a description may be obtained by writing to the North Carolina Department of Insurance, Agent Services Division, Prelicensing Education Section, Post Office Box 26267, Raleigh, NC 27611.

(i) An individual who instructs or proctors for an approved school shall be responsible for verifying to that school's program director that he has been approved by the Commissioner as an instructor.

(j) Additional instructor requirements shall be the same as those for instructors as provided in 11 NCAC 6A .0808(d) through (f).

Statutory Authority G.S. 58-2-40; 58-33-30(d); 58-33-132.

SECTION .0800 - CONTINUING EDUCATION

.0808 INSTRUCTOR QUALIFICATION

(a) Instructor qualification requirements shall be the same as those for instructors as provided in 11 NCAC 6A .0705(c), except that the Commissioner may approve instructors possessing specific areas of expertise to instruct courses comprising those areas of expertise.

(b) Insurance company trainers as instructors must be full time salaried employees of the insurance company sponsoring the course and must have as part of their full time responsibilities the duty to provide insurance company training.

(c) College and university instructors may be full time or adjunct faculty of the accredited college or university, must be teaching a curriculum course in his or her field of expertise, and must meet the requirements of the association that accredits the college or university.

(d) The Commissioner shall require applicants and current instructors to submit to a personal interview, provide a video or audio tape, a written history of courses taught or any other documentation that will verify the applicant's qualifications to instruct approved insurance courses.

(e) Temporary instructor authority shall be given to each qualified applicant. The instructor authority shall become

permanent after six months unless otherwise denied, suspended, terminated or revoked by the Commissioner.

(f) As a condition to continued instructor approval, instructors shall teach one prelicensing or continuing education course each calendar year beginning in 1996.

Statutory Authority G.S. 58-2-40; 58-33-130; 58-33-132.

.0809 APPROVAL OF COURSES

(a) Providers of all courses specifically approved under 11 NCAC 6A .0803 must file copies of program catalogs, course outlines, copies of advertising literature, a nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per course up to a two thousand five hundred dollar (\$2,500) per calendar year maximum, and any other documents or related materials that the Commissioner requests, prior to January 1, 1991, and within 30 days of any changes to such programs in the future.

(b) All providers of courses not specifically approved under 11 NCAC 6A .0803 must do the following:

- (1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the Commissioner; pay a nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per course up to a two thousand five hundred dollar (\$2,500) per calendar year maximum and provide the requested number of copies of detailed outlines of the subject matter to be covered, copies of handouts to be given, the qualifications of each instructor, and other information requested by the Commissioner to support the request for approval.
- (2) Providers of supervised individual study programs must file the requested number of copies of the study programs. Extra copies will be returned to a provider after course approval if a return fee is paid in advance.
- (3) Such applications and accompanying information must be received by the Commissioner at least 30 days prior to the intended beginning date of the course.
- (4) The Commissioner shall approve or deny the application; and shall indicate the number of ICECs that have been assigned to the course if approved. If a course is not approved or disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.
- (5) If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.

(c) Course approval applications must include all of the following forms and attached information in exactly the following order:

- (1) A cover letter with payment of a the nonrefundable, nontransferable filing fee of one hundred dollars (\$100.00) per course attached with separate paragraphs for the following:

- (A) a request that the course be evaluated;
- (B) for whom the course is designed;
- (C) the course objectives;
- (D) the names and duties of all persons who will be affiliated in an official capacity with the course;
- (E) the course provider's tuition and fee refund policy; and
- (F) an outline that shall include a statement of the method used to determine whether there will be meaningful attainments of education by licensees to be certified upon their satisfactory completion of the course. Such method may be a written examination, a written report, certification of attendance only, or other methods approved by the Commissioner. The outline shall describe the method of presentation;

- (2) The course content outline with instruction hours assigned to the major topics;

- (3) Instructor approval application qualification form and instructor qualification documentation or resume if not previously approved;

- (4) Schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session. Schedules shall be submitted at least 30 days in advance of any subsequent course offerings but it will not be necessary that courses be resubmitted unless there are substantial changes in content; and

- (5) A copy of the course completion certificate- ;

- (6) A course rating form;

- (7) A course bibliography.

(d) The Commissioner may waive any part of this Section for programs offered by the University of North Carolina system schools or the North Carolina Department of Community Colleges.

(e) A provider may request that its materials be kept confidential if they are of a proprietary nature. The Commissioner will review and promptly return such extra copies of materials if a return fee is paid in advance.

(f) Courses awarded more than six ICECs must have an Insurance Department approved exam for the student to get full credit; otherwise, the limitations of 11 NCAC 6A .0806(c) will apply.

(g) Cancelled course schedules must be submitted five days before the scheduled course offering. All students scheduled to attend the cancelled course must be informed of the cancellation.

(h) Course rosters shall be submitted within 15 business days after course completion in accordance with 11 NCAC 6A .0803(d).

Statutory Authority G.S. 58-2-40; 58-33-130; 58-33-132.

.0810 ADVERTISING

(a) Courses shall not be advertised as approved for ICECs unless such approval has been granted by the Commissioner in writing.

(b) When a course has been approved for ICECs and is advertised as such, the advertisement shall include:

- (1) the provider name, assigned provider number, course(s) title(s), and assigned course number; course(s) date(s) and course location;
- (2) the number of approved ICECs;
- (3) the type of licensee for whom the course would be most applicable; and
- (4) all fees and associated expenses- ; and
- (5) course rating.

(c) Advertisements shall be complete, truthful, clear, and not deceptive or misleading.

(d) The Commissioner may withdraw his approval of any violator to provide or conduct courses.

Statutory Authority G.S. 58-2-40; 58-33-130; 58-33-132.

.0813 ISSUANCE/CONTINUATION OF PROVIDER APPROVAL

(a) Any individual or entity intending to provide classes, seminars, or other forms of instruction as approved courses shall submit:

- (1) an application as approved by the Commissioner for provider approval; and
- (2) a course approval application in accordance with 11 NCAC 6A .0809.

(b) The Commissioner shall approve or deny the provider and course approval application.

(c) Any provider approval that is denied shall be furnished a written explanation for the denial in accordance with 11 NCAC 6A .0809(4).

(d) Any provider receiving a provider approval denial shall have 15 business days to respond to the denial; previously submitted materials will be destroyed; and the one hundred dollar (\$100.00) nonrefundable, nontransferable course filing fee shall be forfeited if the applicant fails to respond within the required timeframe.

(e) As a condition to continued provider approval, providers shall conduct a minimum of one course within the State of North Carolina each calendar year beginning in 1996.

Statutory Authority G.S. 58-2-40; 58-33-130; 58-33-132.

SECTION .0900 - PUBLIC ADJUSTERS

.0901 DEFINITIONS

As used in this Section:

- (1) "Public adjuster" means any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed

under G.S. 58-33-30 or who is authorized to adjust under G.S. 58-33-70; but does not mean an attorney at law, licensed to practice by the North Carolina State Bar, who adjusts insurance losses in the course of the practice of law.

- (2) "Public adjusting" means investigating, reporting to, and assisting an insured in relation to first party claims arising under insurance contracts, other than life or annuity, that insure the real or personal property, or both, of the insured; but does not include acting in any manner in relation to liability claims for personal injury or property damage, other third party claims, nor physical damage to motor vehicles.

Statutory Authority G.S. 58-2-40; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70.

.0902 TRANSACTIONS WITH INSURED

(a) A public adjuster shall in all respects be fair and honest with an insured and in all communications with an insurer or its representatives.

(b) A public adjuster shall have no financial interests in any aspect of an insured's claim, other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster.

(c) A public adjuster shall not refer or direct any insured needing repairs or other services in connection with a loss to any person with whom the public adjuster has a financial interest; nor to any person who will or is reasonably anticipated to provide the public adjuster any direct or indirect compensation for the referral of any resulting business.

(d) A public adjuster shall not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person, regarding the settlement of the insured's claim.

(e) The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified.

(f) Any choice of counsel to represent the insured shall be made solely by the insured.

(g) A public adjuster may not settle a claim unless the terms and conditions of the settlement are approved by the insured.

(h) All contracts for the services of public adjusters shall:

- (1) Legibly state the full name, as specified in the Department's records, of the licensed public adjuster who is the other party to the contract.
- (2) Be signed by the public adjuster who solicited or in whose name the contract was solicited.
- (3) Show the insured's full name and street address, the address and description of the loss, and the name of the insured's insurance company and policy number, if available.

(4) Show the date on which the contract was actually signed by both parties.

(5) Clearly and conspicuously disclose the insured's right to cancel or revoke the contract as specified in 11 NCAC 6A .0904(e) of this Section.

(6) Be in writing.

(i) A public adjuster shall not acquire any interest in salvage property, except with the express written permission of the insured, after settlement with the insurer.

Statutory Authority G.S. 58-2-40; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70; 58-33-76; 58-63-15(11).

.0903 RELATIONSHIPS WITH THIRD PARTIES

(a) No public adjuster shall compensate or provide any thing of value to a person who is not licensed as an adjuster under G.S. 58-33-30 in return for the referral of a business prospect to the public adjuster; provided, however, a public adjuster may enter into an agreement with another public adjuster for referral of business and sharing compensation.

(b) No public adjuster shall represent or act as an adjuster representing an insurance company, either as an employee of the insurance company or as an independent adjuster. No independent adjuster or insurance company adjuster shall act as a public adjuster.

Statutory Authority G.S. 58-2-40; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70.

.0904 REGULATORY MATTERS

(a) A public adjuster shall not engage in the practice of law, as defined and interpreted under G.S. 84-2.1.

(b) Only public adjusters shall solicit business from an insured who has sustained an insured loss.

(c) All advertising by a public adjuster shall fairly and accurately describe the services to be rendered, shall not misrepresent either the public adjuster or the public adjuster's abilities, and shall comply with the following requirements:

- (1) Only public adjusters residing in North Carolina licensed by the Department may advertise, whether in print, or in other media, within the State of North Carolina. Nonresident public adjusters licensed by the Department may not advertise, unless such advertising has first been approved by the Department.
- (2) An advertisement shall state the full name of the public adjuster and the public adjuster's firm.

(d) No public adjuster shall solicit or enter into any agreement for the repair or replacement of damaged property on which the public adjuster has been engaged to adjust or settle claims.

(e) If an insured enters into an agreement with a public adjuster to adjust a loss within three business days after the date of the loss, the insured shall have until the close of business on the third business day after the date of the loss to rescind the agreement.

(f) The exercise of the right to rescind the agreement by the insured must be in writing and delivered to the public adjuster at the address shown on the agreement.

(g) If the insured property that is the subject of the claim is not the primary residence of the insured or used by the insured primarily for personal, family, or household purposes, the insured may waive the right to rescind the agreement. The waiver must be in writing and signed by the insured.

(h) If the insured rescinds the agreement with a public adjuster in accordance with this provision, the public adjuster shall be entitled to payment by the insured for the reasonable value of the service rendered and any expenses incurred by the public adjuster prior to receiving notice of the rescission.

(i) Every public adjuster shall maintain all records of losses and claims adjusted for three years after the settlement or closing of each claim.

Statutory Authority G.S. 58-2-40; 58-33-10(b); 58-33-25(a); 58-33-30; 58-33-70; 58-33-76; 58-63-15(2), (11).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend rules cited as 11 NCAC 11B .0601 - .0602, .0604, .0607, .0610, .0612; and adopt rules cited as 11 NCAC 11B .0616 - .0617.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on December 4, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Required by recent legislation.

Comment Procedures: Written comments and questions should be directed to Ray Martinez, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-5633. Oral presentations may be made at the public hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0600 - WORKERS' COMPENSATION SELF-INSURANCE

.0601 DEFINITIONS

As used in this Section:

- (1) "Act" means G.S. 97, as amended.
- (2) "Certified audit" means an audit upon which an auditor duly qualified to practice as a public accountant or certified public accountant expresses his professional opinion that the accompanying statements fairly present the financial position of the employer or of the group, in conformity with generally accepted accounting principles as considered necessary by the auditor under the circumstances.
- ~~(3) "Commissioner" means the Commissioner of Insurance or his authorized representative.~~
- (3) "Certified Public Accountant" or "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA or firm is licensed to practice.
- (4) "Corporate surety" means an insurer authorized by the Commissioner to write surety business in North Carolina.
- (5) "Employer" means a self-insured individual employer.
- (6) "Fund year" means that elected period of coverage, up to 12 months in duration, pursuant to which a group self-insurer extends coverage to its members.
- (7) "Group" means a self-insured group of employers.
- (8) "Loss fund" means that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that covers the retention of liability for a self-insurer under the terms of an aggregate excess insurance contract; and means, in the absence of an aggregate excess policy, that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that is allocated to pay claims.
- (9) "Manual premium" means premium determined by multiplying the annualized payroll amount, segregated into the proper workers' compensation job classifications, by the applicable manual premium rates approved for the use in North Carolina.
- (10) "Qualified actuary" means a member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.
- (11) "Self-insurer" means either a self-insured individual employer or self-insured group of employers.
- (12) "Service company" means a business that has contracted with an employer or group for the purpose of providing any or all services necessary to a self-insured program.
- (13) "Surplus" means all assets a loss fund has on hand

that are in excess of all loss reserves and liabilities.

- (14) "Trustees" means the governing body of a group that is elected by its members for stated terms of office to direct the administration of a group; and whose duties include responsibility for approving applications for new members of such group.
- (15) "Trustees' fund" means any monetary fund under the control of the board of trustees of a group that is not part of the loss fund or that is not set aside to pay claims.

Statutory Authority G.S. 58-2-40; 58-2-145; 58-2-171; 58-2-205; 97-93; 97-136.

.0602 ADMINISTRATION - ALL SELF-INSURERS

(a) Each self-insurer, as a condition of the authority to self-insure, shall provide proof of compliance with the provisions of this Section regarding its ability to operate a program of self-insurance, either through in-house capabilities or servicing companies.

(b) Every self-insurer shall make provision for competent persons to administer and adjust claims.

(c) If a self-insurer contracts with a service company, the Commissioner ~~may~~ shall use the service company as an intermediary in his dealings with the self-insurer if the Commissioner determines that this will result in a more rapid and accurate flow of information from the self-insurer and will aid in the self-insurer's compliance with this Section and the act.

(d) Each self-insurer contracting with a service company shall ~~notify the Commissioner~~ within 30 days after the ~~contract~~ execution provide a copy of the contract as well as any amendments to an existing contract to the Commissioner.

(e) Each self-insurer and service company shall maintain its records in such manner to enable the Commissioner or any designated ~~auditor~~ examiner to verify the accuracy and completeness of all reports and documents that are submitted to the Commissioner pursuant to this Section, as well as all records and reports necessary to evaluate the financial solvency of the self-insurer and its ability to meet its obligations under the act. Such records shall be open to inspection by the Commissioner during regular business hours. Such records shall be retained for a period of time sufficient to ensure their availability for audit examination purposes. In the absence of other guidelines established by the Commissioner, all records shall be retained according to the schedule adopted by the Commissioner for insurers. The location of these records shall be within North Carolina and shall be made known to the Commissioner as necessary for audit examination purposes. ~~A self-insurer may keep records outside of North Carolina; provided, that the self-insurer shall make such records available for inspection within North Carolina within ten days after any request for inspection by the Commissioner. If a self-insurer has contracted with a service company for claims processing,~~

~~the self-insurer's claims files and related records may be located at the offices of the service company.~~

~~(f) Each self-insurer's and service company's records may, for good cause shown, be audited. If ordered, such audits shall be performed by accountants or auditors designated by the Commissioner. The reasonable cost of such audits shall be borne by the party examined.~~

~~(g) (f) After For each audit examination conducted, a written report shall be prepared and submitted to the Commissioner in accordance with 11 NCAC 11C .0102 and .0103. with a copy to the self-insurer or service company, and such report shall be a part of the annual review for compliance with this Section. Any deficiencies cited by the audit report shall be considered in determining whether there may be grounds for the suspension, revocation, or nonrenewal of the authority to self-insure; provided, however, that no self-insurer shall have its authority to self-insure suspended, revoked or not renewed without a prior notice and hearing before the Commissioner.~~

Statutory Authority G.S. 58-2-40; 58-2-131; 58-2-132; 58-2-133; 58-2-145; 97-93; 105-228.9.

.0604 REPORTS - ALL SELF-INSURERS

(a) Each self-insurer shall submit to the Commissioner payroll information for the purpose of tax assessment as required by this Section. The Rules, classifications, and rates as set forth in the most recently approved workers' compensation and employers' liability insurance manual governs the audits of payrolls and the adjustments of premiums. Payroll information shall be submitted summarized by classification. Each self-insurer shall maintain true and accurate payroll records. Unless payroll records are maintained in such manner that a true and accurate identification and division by employer or group member departments or divisions or occupational classifications can readily be determined for proper rating, the entire payroll of that employer or group member shall be presumed to be within the classification to which the highest workers' compensation rate is applicable.

(b) Each self-insurer shall on or before May 10 within ~~180 days after the end of each calendar year~~ file with the Commissioner a statement of total workers' compensation benefits paid by the self-insurer during the reported previous calendar year, as well as total future liability of all open claims, regardless of the dates of accidents.

~~(c) Each year every self-insurer shall file certified audited financial statements with the Commissioner. These statements shall at a minimum comprise a balance sheet, statement of operations, statement of cash flows, and all applicable notes to the financial statements. All self-insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. Two copies of this report shall be filed in the office of the Chief Examiner, Field Audit Section of the Department. Noncertified interim financial statements may be required by the Commissioner~~

~~at the end of any fiscal quarter or any calendar month whenever he has good cause to believe there has been a deterioration in the financial condition of a self-insurer that adversely affects the self-insurer's ability to pay expected losses.~~

~~(d) Extensions granted by the Commissioner for good cause will be limited to one 45-day period.~~

(d) An extension of the May 10 filing date shall be granted by the Commissioner for a period of up to 45 days upon a showing by the self-insurer and its CPA of the reasons for requesting the extension. The request for extension must be submitted in writing not less than 15 days before May 10.

(e) The annual certified audited financial report shall report the financial position of the self-insurer as of the most recent calendar or fiscal year in conformity with general accepted accounting principles. The annual certified audited financial report shall include the following:

- (1) report of CPA;
- (2) balance sheet reporting assets, liabilities, capital, and surplus;
- (3) statement of operations;
- (4) statement of cash flows;
- (5) statement of changes in capital and surplus; and
- (6) notes to the financial statements;

(f) In addition to the annual certified audited financial report, each self-insurer shall furnish the Commissioner with a copy of a report of matters noted in an audit related to the internal control structure.

(g) A report of the evaluation by the CPA of the accounting procedures of the self-insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the self-insurer with the Department at the time of the filing of the annual certified audited financial report.

(h) The report shall follow the Form for Reports on Internal Control Structure Related Matters Noted in an Audit described in Volume 1, Section AU 325, of the Professional Standards of the American Institute of Certified Public Accountants.

Statutory Authority G.S. 58-2-40; 58-2-145; 58-2-205; 97-93; 105-228.9.

.0607 APPLICATION - EMPLOYERS

(a) Each employer desiring to self-insure shall make application to the Commissioner for such authority on a form prescribed by the Commissioner. This application shall be filed with the Commissioner at least ~~60~~ 90 days ~~prior to before~~ the desired effective date of self-insurer status. The application shall be completed and shall be in the form of a sworn statement. Until all ~~requested~~ requisite data has been filed, an application is incomplete.

(b) In addition to the filing of the application, compliance with all of the following is required:

- (1) The applicant shall provide the Commissioner with certified audited financial statements for the

most recent reporting period and the two next most recent years including, ~~at a minimum,~~ a balance sheet reporting assets, liabilities, and equity, a statement of operations, a statement of cash flows, and applicable notes to the financial statements prepared on the basis of generally accepted accounting principles consistently applied.

- (2) Specific excess insurance with actuarially appropriate policy limits and retention ~~amounts acceptable to the Commissioner,~~ may shall be required for each applicant.

- (3) Each applicant shall have satisfy the Commissioner that either it has, within its own organization, ~~ample~~ facilities and ~~competent~~ personnel to administer and adjust ~~claims,~~ claims; or shall contract with a service company to provide these services.

- (4) Each applicant shall submit a summary of workers' compensation benefits paid for the last three calendar years, as well as total future liability of all open claims. This summary shall indicate a breakdown as to benefits paid for medical and indemnity.

- (5) Each applicant with 20 or more full-time employees shall submit a certificate or other evidence of safety inspection, completed before the application, that certifies that all safety requirements of the North Carolina Department of Labor have been met.

(c) Only an applicant whose employee base is actuarially sufficient in numbers and provides an actuarially appropriate spreading of risk and whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more is eligible to apply for authority to self-insure. In considering the financial strength and liquidity of the applicant to comply with the act, the Commissioner ~~may shall~~ consider, ~~among other evaluative criteria,~~ the applicant's: organizational structure and management background; profit and loss history; source and reliability of financial information; compensation loss history; number of employees; claims administration; excess insurance; access to excess insurance markets; and other significant financial ratios. ~~in each case that the Commissioner may deem appropriate.~~

(d) All financial statement formulations shall ~~be provided in such detail as to~~ facilitate application of ratio and trend analysis.

(e) Each applicant shall execute and file with the Commissioner an agreement, which shall be part of ~~his the~~ application, wherein the applicant agrees to fully comply with the act and to deposit with the Commissioner cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Section and with the act.

(f) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and advise the applicant of deficiencies

that constitute the basis for denial. If the deficiencies are resolved ~~to the Commissioner's satisfaction~~ within ~~30~~ 60 days of the date of Commissioner's notice, authorization shall be granted.

(g) The applicant ~~shall may, in the discretion of the Commissioner,~~ be granted additional time to remedy deficiencies in its application in order to meet the requirements in this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. ~~If the Commissioner is not satisfied that all requirements of this Section have~~ not been met, the application shall be ~~considered~~ withdrawn.

(h) Upon meeting the requirements of this Section, an applicant shall receive a written certificate of authority to self-insure.

Statutory Authority G.S. 58-2-40; 97-93.

.0610 APPLICATION - GROUPS

(a) Application may be made to provide workers' compensation coverage for a group in accordance with the terms of an indemnity agreement. Application shall be made to the Commissioner ~~for such privilege~~ on forms provided ~~prescribed~~ by the Commissioner and shall be filed with the Commissioner at least ~~60~~ 90 days ~~prior before~~ to the desired effective date of self-insured status. The application shall contain answers to all questions propounded and shall be in the form of a sworn statement. Until all requested data has been filed, an application is incomplete.

(b) The application shall include ~~without limitation to the~~ following:

- (1) a copy of the bylaws of the proposed group;
- (2) an individual application of each member of the group applying for coverage in the group on the inception date of the group with a current financial statement of the member;
- (3) a current certified financial statement of each group, including at a minimum, a balance sheet reporting assets, liabilities, and surplus, a statement of operations, a statement of cash flows, and a statement showing the combined surplus or equity of all members applying for coverage on the inception date of the group. Such combined surplus or ~~net worth equity~~ shall be an amount that establishes the financial strength and liquidity of the businesses;
- (4) evidence of the financial ability of the group to meet its obligations under the act;
- (5) a composite listing of the estimated standard premium to be developed for each member individually and in total as a group. Payroll data for each of the three preceding years shall be furnished by risk classification;
- (6) documented agreement by each member to pay to the group not less than 25 percent of estimated annual manual premium not later than the

- (7) initial day of coverage afforded by the group;
- (8) a confirmation of any required excess insurance underwritten by an authorized insurer;
- (9) designation of the initial trustees or administrator, or both;
- (10) proof of a fidelity bond, issued by an authorized insurer, covering the group administrator in a form provided by the Commissioner and an amount commensurate with the risk; ~~acceptable to the Commissioner~~;
- (11) an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the act and pay obligations imposed by the act; ~~which shall conform to an indemnity agreement in a form acceptable to the Commissioner~~;
- (12) a breakdown of all projected administrative expenses for the fund year in dollar amount and as a percentage of the estimated annual manual premium;
- (13) proof provided by the trustees, satisfactory to the Commissioner, that the employees base is sufficient in numbers and provides an appropriate spreading of risk;
- (14) proof, satisfactory to the Commissioner, that either the applicant has within its own organization ample facilities and competent personnel to service its own program with respect to underwriting matters, claims adjusting, and industrial safety engineering; or that the applicant will contract with a service company to provide these services and the reporting of loss data to the Commissioner. If any plan servicing is to be done by the applicant, biographies of those persons who will be responsible for or performing such functions shall be submitted to the Commissioner with the application;
- (15) a letter of assent stipulating the applicant's acceptance of membership status in the North Carolina Self-Insurance Guaranty Association under Article 4 of the act.

(c) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and inform the applicant of deficiencies that constitute the basis for denial. If the deficiencies are resolved ~~to the Commissioner's satisfaction~~ within ~~30~~ 60 days ~~of after~~ the Commissioner's notice, authorization shall be granted to the applicant.

(d) The applicant ~~shall may, in the discretion of the Commissioner,~~ be granted additional time to remedy the deficiencies in its application in order to meet the requirements of this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. ~~If the Commissioner is not satisfied that all requirements of this Section have~~ not been met, the application shall be ~~considered~~ withdrawn.

(e) Upon meeting the requirements of this Section, the applicant shall receive a written certificate of authority to self-insure.

Statutory Authority G.S. 58-2-40; 58-2-145; 97-93.

.0612 REPORTS - GROUPS

(a) Reports as to financial condition, payroll records, coverage, accident experience, compensation payments, and other reports shall be filed with the Commissioner as follows:

- (1) Each group shall file with the Commissioner an annual financial statement in accordance with G.S. 58-2-165, within 180 days after the close of the fund year a statement of financial condition, which statement shall include a report of the outstanding workers' compensation liabilities of the group, including details of the amount and source of all monies recoverable from any third party. Financial statements shall at a minimum, be comprised of a balance sheet, a statement of operations, and a statement of cash flows.
- (2) Every group shall submit with its financial statement on an annual basis a report from a qualified actuary as defined in this Section of outstanding workers' compensation liabilities for each fund year. The Such report shall show liabilities, excess carrier and other qualifying credits, if any, and net retained liabilities.
- (3) Summary loss reports, formatted by classifications as prescribed in the unit statistical plan of the principal workers' compensation rating organization in North Carolina, shall be filed. as required by the Commissioner.

(b) The failure or refusal of any group to file the reports specified in Paragraph (a) of this Rule within the time limits prescribed by this Section or by any provision of the act may be grounds for revocation, suspension, or nonrenewal of the authority to self-insure.

(c) Every group member shall notify the group to which it belongs of any changes in the names, addresses, structure, or composition of any businesses or subsidiaries that participate in the group. Every group member shall notify the group of any additions or deletions of the businesses or subsidiaries participating in the group, including changes in majority ownership interest in any business or subsidiary that is covered or that will be covered by the group. All such changes shall be reported to the group within ten days after the effective date of the change. Upon receipt of such notice, each group shall notify the Commissioner, in writing, of such reported changes.

~~(d) Any group that does not have the record-keeping capability required by this Section on October 1, 1990, must be in compliance with this Section within 90 days thereafter.~~

Statutory Authority G.S. 58-2-40; 58-2-145; 58-2-165; 58-2-171; 97-93.

.0616 INSOLVENCY OR HAZARDOUS FINANCIAL CONDITION

For the purposes of G.S. 58-2-145(c), a group fund is unable to meet its obligations with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business when it has a negative group fund surplus. A negative group fund surplus is a financial position of a group fund in which the assets of a group fund are less than its liabilities. A group fund that has a negative group fund surplus is insolvent. In addition, the Commissioner shall consider a group fund to be in a hazardous financial condition if any of the standards or factors in G.S. 58-30-60(b) are applicable or present.

Statutory Authority G.S. 58-2-40; 58-2-145; 58-30-60; 97-93; 97-136.

.0617 GROUP ASSESSMENTS, DISCLOSURE, DEVIATIONS, AND DIVIDENDS

(a) Each group shall file a plan for approval with the Commissioner to document its procedure for assessment of its members. The group shall provide the Commissioner with the assessment plan within 60 days after obtaining authority to self-insure.

(b) The group's trustees or administrator shall notify the Commissioner no less than 60 days before an assessment.

(c) The Commissioner shall impose assessments on group members if the trustees or administrator fails to take action to correct financial impairment or insolvency.

(d) Every group through its trustees, administrator, servicing company, agents, or other representatives shall provide each member applicant, before approving the application, with:

- (1) A document disclosing that the members of the group are jointly and severally liable for claims of the group.
- (2) A copy of the group's assessment plan that has been filed with and approved by the Commissioner under Paragraph (a) of this Rule.
- (3) The amount of specific and aggregate stop loss or excess insurance or reinsurance carried by the group, the amount and kind of risk retained by the group, and the name and rating of the insurer providing the stop loss or excess insurance or reinsurance.
- (4) An opportunity to receive a copy of or to inspect the policy described in Subparagraph (d)(3) of this Rule.

(e) Proposed deviations shall be filed by a group with the Commissioner in writing at least 60 days before the beginning of the group's fund year.

(f) Group dividends shall be declared in accordance with G.S. 58-8-25(b).

(g) A group may continue to use all deviations and dividends filed and approved for its use until they have been disapproved by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-2-145; 58-8-35; 58-30-60; 58-36-30; 97-93; 97-136.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt rules cited as 11 NCAC 11F .0401 - .0405.

Proposed Effective Date: February 1, 1997.

A Public Hearing will be conducted at 10:00 a.m. on January 25, 1996 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: To be in compliance with NAIC standards.

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

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0400 - COMMISSIONER'S RESERVE VALUATION METHOD

.0401 APPLICABILITY

(a) This Section does not apply to:

- (1) Any individual life insurance policy issued on or

.0402 DEFINITIONS

As used in this Section:

- (1) "Basic reserves" means reserves calculated in accordance with the principles of G.S. 58-58-50(d).
- (2) "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in 11 NCAC 11F .0402(5), (or any other valuation mortality table adopted by the NAIC after the effective date of this Section and adopted as a rule by the Commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in 11 NCAC 11F .0403(b).

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t \equiv \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

after the effective date of this Section if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this Section, that guarantees the premium rates of the new policy; nor to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

- (2) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

- (3) Any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

- (4) Group life insurance certificates unless the certificates provide for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Calculation of the minimum valuation standard for policies with guaranteed nonlevel premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with 11 NCAC 11F.0404.

(c) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period of more than five years shall be in accordance with 11 NCAC 11F .0405.

Statutory Authority G.S. 58-2-40; 58-58-50(d).

x \equiv original issue age;

k \equiv the number of years from the date of issue to the beginning of the segment;

t \equiv 1, 2, ...; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ \equiv Guaranteed gross premium per thousand of face amount, ignoring policy fees only if level for the premium paying period of the policy, for year t of the segment.

$R_t \equiv \frac{q_{x+k+t}}{q_{x+k+t-1}},$ However, R_t may be increased or decreased by one percent in any policy year, at the company's option, but R_t shall not be less than one;

where:

x, k and t are as defined above, and

$q_{x+k+t-1}$ \equiv valuation mortality rate for deficiency reserves in policy year $k+t$.

- (3) "Deficiency reserves" means the excess, if greater than zero, of minimum reserves calculated in accordance with the principles of G.S. 58-58-50(g) over basic reserves.
- (4) "Maximum valuation interest rate" means the interest rate specified in G.S. 58-58-50(c)(4)b that is to be used in determining the minimum standard for the valuation of life insurance policies.
- (5) "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variation of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.
- (6) "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in 11 NCAC 11F .0405(a)(3), if any, or else the minimum premium described in 11 NCAC 11F .0405(a)(4).
- (7) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective gross premiums within the segment.
 - (a) The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:
 - (i) The present value of the death benefits within the segment, plus
 - (ii) The present value of any unusual guaranteed cash value [see 11 NCAC 11F .0404(d)] occurring at the end of the segment, less
 - (iii) Any unusual guaranteed cash value occurring at the start of the segment, plus
 - (iv) For the first segment only, the excess of the Item (i) over Item (ii), as follows:
 - (A) A net level annual premium equal to the present values, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
 - (B) A net one year term premium for the benefits provided for in the first policy year.
 - (b) The length of each segment is determined by the contract segmentation method.
 - (c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.
 - (d) For both basic reserves and deficiency reserves computed by the segmented method, present values must include future benefits and net premiums in the current segment and in all subsequent segments.
- (8) "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

- (9) "Ten-year select mortality factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.
- (10) "Unitary reserves" means the present value of all future guarantee benefits less the present value of all future modified net premiums, where:
 - (a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
 - (b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows:
 - (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
 - (ii) A net one year term premium for the benefits provided for in the first policy year.
- (c) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.
- (11) "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

Statutory Authority G.S. 58-2-40; 58-58-50(d).

.0403 BASIC AND PREMIUM DEFICIENCY RESERVES

(a) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this Section and adopted as a rule by the Commissioner for this purpose). If select mortality factors are elected, they may be:

- (1) The 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law.
- (2) 150 percent of the base select mortality factors of the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation"; or
- (3) 150 percent of the base select mortality factors of the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation" for the first 10 policy years; then linearly graded from the resulting tenth year factor to 100 percent at policy year 16; or
- (4) Any other table of select mortality factors adopted by the NAIC after the effective date of this Section and adopted as a rule by the Commissioner for the purpose of calculating basic reserves.

(b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the

guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this Section and adopted as a rule by the Commissioner). If select mortality factors are elected, they may be:

- (1) The 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law.
- (2) 120 percent of the base select mortality factors of the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation";
- (3) 120 percent of the base select mortality factors of the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation" for the first 10 policy years; then linearly graded from the resulting tenth year factor to 100 percent at policy year 16;
- (4) Any other table of select mortality factors adopted by the NAIC after the effective date of this Section and adopted as a rule by the Commissioner for the purpose of calculating deficiency reserves.

(c) Notwithstanding Paragraphs (a) and (b) of this Rule, if the length of the first segment as determined by the contract segmentation method for the basic reserves is not greater than five years (safe harbor), then for the length of time measured from issue, for either the unitary method or the contract segmentation method, gross premiums need not

be substituted for net premiums even if the gross premiums are less than the net premiums. For subsequent periods, gross premiums must be substituted for net premiums if the gross premiums are less than the corresponding net premiums.

(d) For any policies for which the company chooses to use the "safe harbor", the company shall demonstrate annually to the Commissioner, by submitting a statement of actuarial opinion signed by the appointed actuary, that the reserves held for all such policies are adequate.

(e) In applying percentages to the base select mortality factors:

- (1) Do not round any result; and
- (2) Set equal to 100 any result that exceeds 100.

(f) This subsection applies to both basic reserves and deficiency reserves. Any set of base select mortality factors may be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10-year select mortality factors may be used thereafter through the tenth policy year from the date of issue.

(g) In determining basic reserves or deficiency reserves, gross premiums without policy fees may be used where the calculation involves the gross premium, but only if the policy fee is a level dollar amount for the entire premium-paying period of the policy. In determining deficiency reserves, policy fees may be included in gross premiums even if they are not included in the actual calculation of basic reserves.

Statutory Authority G.S. 58-2-40; 58-58-50(d).

.0404 CALCULATION OF 11 NCAC 11 .0401(B)

(a) Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy must use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the following adjustments may be made:

- (1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.
- (2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(b) Deficiency Reserves.

- (1) The deficiency reserve at any duration shall be calculated:

- (A) On a unitary basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is unitary;
 - (B) On a segmented basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is segmented; or
 - (C) On the segmented basis if the corresponding basic reserve determined by 11 NCAC 11F .0404(a) is equal to both the segmented reserve and the unitary reserve.
- (2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality [specified in 11 NCAC 11F .0403(b)] and rate of interest.
 - (3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in 11 NCAC 11F .0403(b).
 - (4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

(c) Minimum Value Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance must use the same valuation mortality table, select mortality factor and interest rates as that used for the calculation of both the segmented and the unitary reserves. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) Unusual Pattern of Guaranteed Cash Surrender Values.

- (1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guarantee cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the

- date of issue to the date the unusual cash surrender value is scheduled.
- (2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:
- (A) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
- The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
 - The mandatory expiration date of the policy; and
- (B) The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and
- (C) The net to gross ratio is equal to Subpart (d)(2)(C)(i) divided by (ii) as follows:
- The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.
 - The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.
- (3) For the purposes of 11 NCAC 11F .0404(d) a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- 110 percent of the scheduled gross premium for that year;
 - 110 percent of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
 - Five percent of the first policy year surrender charge, if any.
- (e) Optional Exemption for Yearly Renewable Term Reinsurance At the option of the company, the following approach for reserves on YRT reinsurance may be used:
- Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
 - Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in 11 NCAC 11F .0404(c).
 - Deficiency reserves.
 - For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
 - Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Part (e)(3)(A) of this Rule.
 - For purposes of this section the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this Section by the NAIC and adopted as a rule by the Commissioner for this purpose.
- A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if:
- The reinsurance premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) for any given year are independent of both the premium rates and the plan of the original policy; and
 - Only the mortality risk is reinsured.
- (f) Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
- Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
 - Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in 11 NCAC 11F .0404(c).
 - Deficiency reserves.
 - For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
 - Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Part (f)(3)(A) of this Rule.
 - For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without 10-year select mortality factors, or any other table adopted after the effective date of this Section by the NAIC and adopted as a rule by the Commissioner for this purpose.

- (5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:
- (A) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and
- (B) The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.
- (6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
- (A) The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or
- (B) The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and
- (C) After the initial period of coverage, the policy meets the conditions of Subparagraph (f)(5) of this Rule.
- (7) If this election is made, this approach must be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this Rule.
- (g) Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:
- (1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, and for each n-year period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;
- (2) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the 10-year select mortality factors; and
- (3) There are no cash surrender value in any policy year.
- (h) Exemption from Unitary Reserves for Certain Juvenile Policies Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:
- (1) At issue, the insured is age 24 or younger;
- (2) Until the insured reaches the end of the juvenile

period, which must occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

Statutory Authority G.S. 58-2-40; 58-58-50(d).

.0405 CALCULATION OF 11 NCAC 11 .0401(C)

(a) General.

- (1) Policies with a secondary guarantee include:
- (A) A policy with a guarantee that the policy will remain in force at the original schedule of benefits over a period exceeding five years, subject only to the payment of specified premiums;
- (B) A policy in which the minimum premium at any future duration beyond the end of the fifth policy year is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after the effective date of this Rule by the NAIC and promulgated by regulation by the Commissioner for this purpose; or
- (C) A policy with any combination of Parts (a)(1)(A) and (B) of this Rule.
- (2) A secondary guarantee period is the longest period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. Secondary guarantees that are unilaterally extended by the insurer after issue shall be considered to have been made at issue. Reserves described in Paragraphs (b) and (c) of this Rule shall be recalculated from issue to reflect the extensions.
- (3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.
- (4) For purposes of this Rule, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation must use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0500 - ACCIDENT AND HEALTH:
GENERAL NATURE

.0514 COORDINATION: GROUP A/H CONTRACT
BENEFITS: GROUP COVERAGES

Purpose. In order to promote consistency in liability for claims and claims determination for Group Accident and Health coverage, the department shall require a uniform order of benefits determination as follows:

- (1) Applicability:
 - (a) This Coordination of Benefits ("COB") provision applies to this plan when a employee or the employee's covered dependent has health care coverage under more than one plan. "Plan" and "This Plan" are defined in Sub-items (2)(a) and (b) of this Rule.
 - (b) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:
 - (i) Shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but
 - (ii) May be reduced when, under the order of benefit determination rules, another plan ~~determines its Section (IV) Effect on the Benefits of this plan.~~ is required to determine its benefits first.
- (2) Definitions:
 - (a) A "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment:
 - (i) True group insurance. This includes prepayment, group practice or individual practice coverage. It does not include school accident-type coverage, blanket, franchise individual, automobile and homeowner coverage.
 - (ii) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

Each contract or other arrangement for coverage under Sub-item (2)(a)(i) or (ii) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

 - (b) "This Plan" is the part of the group contract that provides benefits for health care expenses.

guaranteed at issue.

- (5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in 11 NCAC 11F .0403(a)(2), .0403(a)(3), .0403(a)(4), .0403(b)(2), .0403(b)(3), and .0403(b)(4) may not be used to calculate the one-year valuation premiums.

(b) Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in 11 NCAC 11F .0402(2).

(c) Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in 11 NCAC 11F .0404(b) with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

(d) The minimum reserves during the secondary guarantee period are the greater of:

- (1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
- (2) The minimum reserves required by other rules or regulations governing universal life plans.

Statutory Authority G.S. 58-2-40; 58-58-50(d).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend rule cited as 11 NCAC 12 .0514.

Proposed Effective Date: February 1, 1996.

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

Reason for Proposed Action: Necessary to make technical changes and clarifications in the rule.

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

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds.

- (c) "Primary Plan"/"Secondary Plan". The order of benefit determination rules state whether this plan is a Primary Plan or Secondary Plan as to another plan covering the person. When this plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When there are more than two plans covering the person, this plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.
- (d) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid. Total benefits paid must be equal to 100 percent of necessary medical expenses covered by both plans.
- (e) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this COB provision or a similar provision takes effect.
- (3) Order of Benefit Determination Rules:
 - (a) General. When there is a basis for a claim under this plan and another plan, this plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:
 - (i) the other plan has rules coordinating its benefits with those of this plan; and
 - (ii) both those rules and this plan's rules, in Sub-item (3)(b) ~~(ii)(B)~~ of this Rule, require that this plan's benefits be determined before those of the other Plan.
 - (b) Rules. This plan determines its order of benefits using the first of the following rules which applies:
 - (i) Non-dependent/Dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a ~~dependent~~. dependent; except that: if the person is also a Medicare beneficiary, and as a result of the rule established by Title VXIII of the Social Security Act and implementing regulations, Medicare is:
 - (A) Secondary to the plan covering the person as a dependent; and
 - (B) Primary to the plan covering the person as other than a dependent (e.g. a retired employee), then the benefits of the plan covering the person as a dependent are determined before those of the plan covering that person as other than a dependent.
 - (ii) Dependent Child/Parents Not Separated or Divorced. Except as stated in Sub-item (3)(b)(iii)~~(B)~~ of this Rule, when this plan and another plan cover the same child as a dependent of different persons, called "parents":
 - (A) the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but
 - (B) if both parents have the same birthday, the benefits of the plan that has covered a parent for a longer period of time are determined before those of the plan that covered the other parent for a shorter period of time.

As used in this Sub-item, "birthday" refers only to month and day in a calendar year not the year in which the person is born.

However, if the other plan does not have the rule described in ~~Paragraph (3)(a)~~ Sub-item 3(b)(ii) in this Rule, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.
 - (iii) Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:
 - (A) first, the plan of the parent with custody of the child;
 - (B) then, the plan of the spouse of the parent with custody of the child; and
 - (C) finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. In this Rule, Sub-item (3)(b)(iii)(C) does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.
 - (iv) ~~Active-Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid-off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid-off or retired employee (or as that employee's dependent). If the other plan does not have (3)(b)(iv), and if, as a result, the plans do~~

~~not agree on the order of benefits, (3)(b)(iv) is ignored.~~ Active/Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired are determined before those of a plan which covers that person as laid off or retired employee. The same would hold true if a person is a dependent of a person covered as a retiree and an employee. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

- (v) Joint Custody. If the specific terms of a court decree state that the parents shall share joint custody, without stating that one of the parents is responsible for the health care expenses of the child, the plans covering the child shall follow the order of benefit determination rules outlined in Sub-item (3)(b)(ii) of this Rule.
- (vi) Continuation coverage. If a person whose coverage is provided under a right of continuation pursuant to federal or state law also is covered under another plan, the following shall be the order of benefit determination:
 - (A) First, the benefits of a plan covering the person as an employee, member or subscriber (or as that person's dependent);
 - (B) Second, the benefits under the continuation coverage. If the other plan does not have the rules described above, and if, as a result, the plans do not agree on the order of benefits, this Rule is ignored.
- (vii) Longer/Shorter Length of Coverage. If more of Paragraph (3) of this Rule If none of the above rules determine determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter time.

Statutory Authority G.S. 58-2-40; 58-51-1; 58-65-1; 58-65-40; 58-67-1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend rules cited as 11 NCAC 12 .0307, .0326, .0415 - .0416, .0436, .0449, .0822, .0824 - .0825, .0835, .0837, .1004; 17 .0006; repeal rules cited as 11 NCAC 12 .0460, .0552 and adopt rules cited as 11 NCAC 12 .0562, .0839, .1601 - .1604, .1701 - .1709.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 am on December 6, 1995 at the Dobbs Building, Third Floor

Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action:

- 11 NCAC 12 .0307, .0326 - Changes procedures for filing and for making application for insurance coverage.
- 11 NCAC 12 .0415, .0416, .0436, .0449 - Changes procedures for making application for insurance coverages and to change requirements for variable life insurance policies.
- 11 NCAC 12 .0460, .0552 - Current legislation made rules unnecessary.
- 11 NCAC 12 .0562 - Provides for return of unearned premiums in health insurance.
- 11 NCAC 12 .0822, .0824, .0825, .0835, .0837, .0839 - Required by Federal law.
- 11 NCAC 12 .1004 - Change made necessary by Federal law.
- 11 NCAC 12 .1601 - .1604 - Establish guidelines for payments of death benefits under insurance policies.
- 11 NCAC 12 .1701 - .1709 - Necessary to comply with recent statute changes made by the last session of the General Assembly.
- 11 NCAC 17 .0006 - Change made necessary by recent legislation.

Comment Procedures: Chapter 12 - Written comments and questions should be directed to Rodney Finger, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-5060. Oral presentations may be made at the public hearing.

Chapter 17 - Written comments and questions should be directed to Carla Suitt, Seniors Health Insurance Information Program, NC Department of Insurance, 112 Cox Avenue, Raleigh, NC 27605, (919) 733-0111. Oral presentations may be made at the public hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

.0307 FILING APPROVAL: LIFE: ACCIDENT AND HEALTH FORMS

(a) The following procedure shall be used in filing life, annuity, and accident and health and health maintenance organization forms for approval by the Department:

- (1) A filing letter shall be submitted in duplicate with the Federal Employee Identification Number (FEIN); forms shall be listed by number and descriptive title; the filer shall indicate if the form is new and briefly describe the use of the form; if the form is a revision the filer shall identify the form being replaced by its number and approval date;
- (2) If riders, endorsements or certificates are filed separately, the filer shall indicate policy forms

with which they are used;

- (3) ~~Only one copy of the form shall be submitted unless the filer desires a stamped copy. Forms shall be submitted in duplicate and each form shall be identified by a form number in the lower left-hand corner of the first page. Forms filed for Medicare supplement insurance shall be filed in triplicate. For the purposes of approval all forms shall be in final print. The Commissioner shall not accept photocopies as final print.~~
- (4) All forms shall be completed with specimen data;
- (5) Rates by age and mode of payment including the actuarial memorandum shall be attached to each form requiring a premium;
- (6) The filer shall submit evidence of approval of the subject identical filing by the filer's state of domicile;
- (7) The filer shall submit a listing of states in which any subject identical filing has been submitted and a listing of states that have:
 - (A) approved; or
 - (B) disapproved, including the reasons for disapproval;
- (8) The filer shall submit copies of any endorsements, riders or changes in the subject filing required by any other jurisdiction as a condition of approval;
- (9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers;
- (10) The filer shall submit copies of sales promotion material to be used in North Carolina for ~~annuities and interest sensitive life products, annuities, interest-sensitive life, Medicare supplement, and long-term care products. All such advertisements shall be identified by a unique form number in the lower left-hand corner of the first page.~~

(b) Individual accident and health premium rate revisions for which Department approval is required by General Statute Chapter 58 must be filed in triplicate and include evidence of the Department's approval of that policy's most recent rate revision.

(c) Remittance of the filing fee shall be made within 45 days after the date of the filing fee notice or the file will be closed.

(d) If the status of a pending rate or form filing is desired, a written request for such status must be made by the filer no earlier than 60 days after the date of the filing letter.

(e) A written notice must be given to the Department by the filer before forms or rates are deemed by statute to be approved.

(f) If the filer does not respond to a forms filing disapproval letter within 90 days of disapproval the file is closed.

Statutory Authority G.S. 58-2-40; 58-6-5; 58-51-1; 58-58-1;

58-65-1; 58-65-40; 58-67-50; 58-67-150; 58-54-35; 58-55-30.

.0326 APPLICATION FOR INSURANCE REQUIRED

(a) Applications for individual life, and accident or health insurance and annuities intended to insure North Carolina residents shall, except in the case of direct response business, be signed by a North Carolina licensed agent. The signature of the licensed agent must be his or her actual signature.

(b) Applications for insurance shall not include questions related to membership in substance or chemical dependency support groups. The applicant may be required to complete any medical question related to actual treatment, confinement, or diagnosis of such conditions.

Statutory Authority G.S. 58-2-40; 58-33-25(o)(5); 58-50-5.

SECTION .0400 - LIFE: GENERAL NATURE

.0415 LIFE APPLICATION

All life and annuity applications used to solicit life insurance or annuities in North Carolina ~~must~~ shall inquire whether or not the replacement of existing life insurance or annuities is involved in the transaction.

Statutory Authority G.S. 58-2-40(1); 58-3-150; 58-33-75; 58-58-1.

.0416 LIFE APPLICATION: GUARANTEED ISSUE

When a life insurance policy or certificate is sold on a guaranteed issue basis, the application for such life insurance used in the solicitation may not contain health questions or statements regarding an applicant's health of the applicant.

Statutory Authority G.S. 58-2-40(1); 58-3-150; 58-58-1.

.0436 INSURANCE POLICY REQUIREMENTS

The ~~commissioner~~ Commissioner shall not approve any variable life insurance form filed pursuant to this ~~Regulation~~ Rule unless it conforms to the requirements of this Section:

- (1) Filing of Variable Life Insurance Policies. All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to and made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him in writing prior to delivery or issuance for delivery in this state:
 - (a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this Regulation, the same as those otherwise applicable to other life insurance policies.
 - (b) The commissioner may approve variable life insurance policies and related forms with provi-

- sions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this Regulation.
- (c) The requirements of (3)(e) of this Rule shall not apply to variable life insurance policies and related forms issued in connection with pension, profit-sharing and retirement plans if separate accounts for such policies are exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940.
- (2) Mandatory Policy Benefit and Design Requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:
- (a) The mortality and expense risk shall be borne by the insurer.
- (b) Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this Subsection shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This Subsection shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.
- (c) A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid [subject to the provisions of (4)(b) of this Rule].
- (d) The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide:
- (i) fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or
- (ii) variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy; or
- (iii) any other form of insurance benefits as the commissioner may approve.
- (e) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.
- (f) Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.
- (g) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by G.S. 58-201.2 of the insurance laws of this state (Standard Non-forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.
- (h) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.
- (i) In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in .0438(7)(a)(i), (ii), (iv), and (v) of this Section.
- (3) Mandatory Policy Provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:
- (a) The cover page or pages corresponding to the cover page of each such policy shall contain:
- (i) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision of that page, that the death benefit may be variable for fixed

- under specified conditions;
- (ii) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type size used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;
- (iii) a statement that the minimum death benefit will be at least equal to the initial face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;
- (iv) the rule, or a reference to the policy provision which describes the method for determining the variable amount of insurance payable at death;
- (v) a captioned provision which provides that the policyholder may return the variable life insurance policy within 45 days of the date of the execution of the application or within 10 days of receipt of the policy by the policyholder, whichever is later, and receive a refund of all premium payments for such policy; and
- (vi) such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this Regulation;
- (vii) for all variable life insurance policies, which do not provide, while in force, a death benefit at least equal to the amount specified at issue or at the most recent policy change requested by the policyholder, must contain an endorsement or sticker, printed in contrasting type or color which contains sufficient cautionary languages such as: "THIS POLICY DOES NOT HAVE A MINIMUM GUARANTEED DEATH BENEFIT. THE DEATH BENEFIT IN THIS POLICY MAY BE LESS THAN OR MAY EXCEED THE PROJECTED BENEFITS REPRESENTED BY THE SOLICITING AGENT."
- (b) A provision for a grace period of not less than 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;
- (c) A provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:
 - (i) all overdue premiums with interest at a rate not exceeding eight percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight percent per annum compounded annually; or
 - (ii) 110 percent of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight percent per annum compounded annually;
- (d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;
- (e) A provision designating the separate account to be used and stating that:
 - (i) Such separate account shall be used to fund only variable life insurance benefits, except to the extent permitted by (5)(c)(vi) of this Rule;
 - (ii) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and
 - (iii) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly;
- (f) A provision that at any time during the first 48 24 months of the variable life insurance policy, so long as premiums are duly paid, the owner may exchange the ~~policy for policy, or any requested increase in face amount, for a life insurance policy providing benefits that do not vary with the investment experience of a variable account.~~ The owner shall be given the option to exchange the variable life insurance policy for: a policy of permanent fixed benefit fixed premium life insurance, ~~or insurance on the life of the insured for the same initial amount of insurance as the variable life insurance policy, and on a plan of insurance specified in the policy, provided that the new policy:~~ a policy of flexible benefit flexible premium life insurance. The new policy shall be on a plan of insurance specified in the policy, provided that the new policy:
 - (i) shall bear the same date of issue and age at

- issue as the original variable life insurance policy;
- (ii) ~~is~~ issued on a substantially comparable plan of ~~permanent life~~ insurance offered in this state by the insurer or an affiliate on the date of issue of the variable life insurance policy and at the premium rates in effect on that date for the same class of insurance;
- (iii) includes such riders and incidental insurance benefits as were included in the original policy if such riders and incidental insurance benefits are issued with ~~fixed benefit~~ the new policy;
- (iv) shall be issued subject to an equitable premium or cash value adjustment that takes appropriate account of the premiums and cash values under the original and new policies; A detailed statement of the method of computing such adjustment shall be filed with the commissioner;
- (v) shall not require evidence of insurability for this exchange;
- (g) A provision that the policy and any papers attached hereto by the insurer, including the application if attached, constitute the entire insurance contract;
- (h) A designation of the officers of the insurer who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representation and not warranties;
- (i) An identification of the owner of the insurance contract;
- (j) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;
- (k) A statement of any conditions or requirements concerning the assignment of the policy;
- (l) A description of any adjustment in policy values to be made in the event of misstatement of age or sex of the insured;
- (m) A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the life time of the insured;
- (n) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state;
- (o) A provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:
 - (i) for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or
 - (ii) otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;
- (p) A description of the basis for computing the cash surrender value under the policy shall be included; Such surrender value may be expressed as either:
 - (i) a schedule of cash value amounts per one thousand dollars (\$1,000) of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or
 - (ii) one cash value schedule as described in (3)(p)(i) of this Rule for the death benefit, or for each one thousand dollars (\$1,000) of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years;
- (q) Premiums for incidental insurance benefits shall be stated separately;
- (r) Any other policy provisions required by this Regulation;
- (s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this Regulation.
- (4) Non-forfeiture, Partial Withdrawal, Policy Loan and Partial Surrender Provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholders than the following:
 - (a) a provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default:
 - (i) Variable extended term insurance may not be offered;
 - (ii) A given non-forfeiture option need not be offered on both a fixed and a variable basis;
 - (iii) The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available;

- (b) a provision for policy loans (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:
- (i) Up to 75 percent but if the loan is made from the general account not more than 90 percent of the policy's cash value may be borrowed;
 - (ii) The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;
 - (iii) The amount borrowed shall bear interest at a rate not to exceed eight percent per year compounded annually;
 - (iv) Any indebtedness shall be deducted from the proceeds payable on death;
 - (v) Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;
 - (vi) Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice;
 - (vii) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policy holder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;
 - (viii) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision;
 - (ix) No policy loan provision is required if the policy is under the extended insurance non-forfeiture option;
 - (x) In addition to the foregoing, the policy may contain partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;
 - (xi) All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;
 - (xii) Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.
- (5) Other Policy Provisions. The following provisions may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:
- (a) An exclusion for suicide within two years of the policy issue date;
 - (b) Incidental insurance benefits may be offered on a fixed basis only;
 - (c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options.
 - (i) The amount of the dividend may be credited against premium payments;
 - (ii) The amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;
 - (iii) The amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;
 - (iv) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;
 - (v) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;
 - (vi) The amount of the dividend may be deposited as a variable deposit in the separate account if the separate account is exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940;
 - (d) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under (4) of this Rule except that a restriction that no more than

two consecutive premiums can be paid under this provision may be imposed.

Statutory Authority G.S. 58-2-40; 58-7-95.

.0449 LIMITED INITIAL DEATH BENEFIT

No policy or certificate of life insurance which provides a limited death benefit for a stated initial period shall be issued except on a guaranteed issue basis. Such policy ~~should~~ shall have printed on the face in bold type Graded Death Benefit.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-58-1.

.0460 PREARRANGEMENT INSURANCE DISCLOSURE

~~The amount of prearrangement insurance policy proceeds payable to the provider of a funeral service under a prearrangement contract shall not exceed the lesser of the total cost of the funeral service or the policy proceeds.~~

Statutory Authority G.S. 58-2-40; 58-58-1; 58-60-35.

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

.0552 TEMPOROMANDIBULAR JOINT DYSFUNCTION

~~Policies providing surgical, medical and in hospital benefits may not be excluded when treatment for temporomandibular joint dysfunction is caused by disease or accident. However, treatment performed by prosthesis placed directly on the teeth may be excluded.~~

Statutory Authority G.S. 58-2-40; 58-51-1; 58-51-95; 58-65-85.

.0562 UNEARNED PREMIUM

As used in this Rule, "unearned premium" means that portion of the premium representing the unexpired portion of the policy term. All insurers of individual health or accident and health insurance shall in the event of cancellation or the death of the insured return any portion of unearned premium.

Statutory Authority G.S. 58-2-40(1).

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

.0822 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM

(a) Loss Ratio Standards:

- (1) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire

period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

- (A) At least 75 percent of the aggregate amount of premiums earned in the case of group policies, or
 - (B) At least 65 percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.
- (2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.
 - (3) For the purposes of Subparagraph (a)(1) of this Rule, group policies sold or solicited on individual bases by mail or mass media advertising shall be deemed to be group policies.
 - (4) For policies issued before October 16, 1991, expected claims in relation to premium shall meet:
 - (A) The originally filed anticipated loss ratio when combined with the actual experience since inception;
 - (B) The appropriate loss ratio requirements from Parts (a)(1)(A) and (B) of this Rule when combined with actual experience beginning with December 1, 1995 to date; and
 - (C) The appropriate loss ratio requirement from Parts (a)(1)(A) and (B) of this Rule over the entire future period for which the rates are computed to provide coverage.
- (b) Refund or Credit Calculation:
 - (1) An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the reporting form for each type in a standard Medicare supplement benefit plan. This information shall be filed with the Life and Health Division. The reporting form shall be in the format prescribed by the NAIC in Appendix A of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum

Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file at the North Carolina Department of Insurance. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.

- (2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.
- (3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.
- (4) For policies or certificates issued before October 16, 1991, the issuer shall make the refund or credit calculation separately for all individual policies combined and all other group policies combined for experience after December 1, 1995. The first report is due by May 31, 1997.

(c) Annual Filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by statute or rule. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:

- (1) Appropriate premium adjustments necessary to

produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

- (A) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate that will conform with minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.
- (B) If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this Rule.
- (2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(d) Public Hearings. The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in the manner prescribed by statute.

Statutory Authority G.S. 58-2-40; 58-54-20.

.0824 REQUIRED DISCLOSURE PROVISIONS

(a) General Rules.

- (1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provisions must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium in-

- creases based on the policyholder's age.
- (2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.
 - (3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.
 - (4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
 - (5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.
 - (6) Issuers of accident and health policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, ~~other than incidentally, basis~~ to persons eligible for Medicare ~~by reason of age~~ shall provide to such applicants a copy of the ~~Medicare Supplement Buyer's Guide~~ Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration in a type size no smaller than 12-point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement

policies or certificates as defined in this Rule. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) Notice Requirements.

- (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement policies or certificates in a format acceptable to the Commissioner. Such notice shall:
 - (A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and
 - (B) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.
- (2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
- (3) Such notices shall not contain or be accompanied by any solicitation.
- (c) Outline of coverage requirements for Medicare supplement policies.
 - (1) Issuers shall provide an outline of coverage to each applicant at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and
 - (2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this Rule consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Subparagraph (c)(4) of this Rule in no less than 12-point type. All plans A-J shall be shown on the cover page, and the plan or plans offered by the issuer shall be prominently identified. Premium information for the plan or plans offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for each plan that is offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The outline of coverage shall be in the language and format as prescribed by the NAIC in Section 16C(4) of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file with the North Carolina Department of Insurance. Copies may be obtained at a cost of fourteen dollars (\$14.00) each from the Life and Health Division, 430 N. Salisbury Street, Raleigh, North Carolina 27611.

~~(d) Notice regarding policies or certificates which are not Medicare supplement policies. Any accident and health insurance policy or certificate, other than a Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in 11 NCAC 12 .0816(b), issued for delivery in this state to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy; or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:~~

~~"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."~~

~~(d) Notice regarding policies or certificates that are not Medicare supplement policies.~~

~~(1) For any accident and health insurance policy or~~

certificate, other than a Medicare supplement policy; policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et seq.); disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy; or other policy identified in 11 NCAC 12 .0816(b), that is issued for delivery in this State to persons eligible for Medicare, the insurer shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy; or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare, which is available from the company."

(2) Applications provided to persons eligible for Medicare to purchasing the policies or certificates described in Subparagraph (d)(1) of this Rule shall disclose, using the applicable disclosure statement in the format prescribed by the NAIC in Appendix C of the Model Regulation, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate. A copy of this format is on file at the Department. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.

Statutory Authority G.S. 58-2-40; 58-54-25.

.0825 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE

(a) Application forms shall include the following statements and questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and health policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

- (1) You do not need more than one Medicare supplement policy.
- (2) ~~If you are 65 or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.~~ If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
- (3) The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.
- (4) ~~Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.~~ Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

To the best of your knowledge,

- (1) ~~Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?~~

If so, with which company?

- (2) ~~Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate?~~
 - (A) ~~If so, with which company?~~
 - (B) ~~What kind of policy?~~

- (3) ~~If the answer to question 1 or 2 is yes, do you intend to replace these medical or health policies with this policy [certificate]?~~

- (4) ~~Are you covered by Medicaid?~~

- (1) Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy [certificate]?

- (2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

- (3) Are you covered for medical assistance through the state Medicaid program:

(a) As a Specified Low-Income Medicare Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For other Medicaid medical benefits?

- (4) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five years which are no longer in force.

(b) ~~Agents shall list any other health insurance policies they have sold to the applicant.~~

- (1) ~~List policies sold which are still in force.~~

(2) ~~List policies sold in the past five years which are no longer in force.~~

(b) (e) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.

(c) (d) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of such notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(d) (e) The notice required by Paragraph (d) of this Rule for an issuer shall be provided in substantially the following form in no less than 10 12-point type:

**NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE**

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [company name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. ~~Terminate your present policy only if after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.~~ If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER OR AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

- ☐ Additional benefits.
- ☐ No change in benefits, but lower premiums.
- ☐ Fewer benefits and lower premiums.
- ☐ Other. (Please specify)

- (1) Health conditions which you may now have (preexisting conditions) may not be immediately or fully covered under the new policy if you have had your present policy for less than six months.
- (2) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this Paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

Signature of Agent, Broker or Other Representative

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

(e) (f) Paragraph 1 of the replacement notice (applicable to pre-existing conditions) may be deleted by an issuer if the replacement does not involve application of a new pre-existing condition limitation.

Statutory Authority G.S. 58-2-40; 58-54-25.

**.0835 MINIMUM BENEFIT STANDARDS ON
OR AFTER JANUARY 1, 1992**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Section.

- (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
- (b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
- (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes, but new premiums must be filed and approved by the Commissioner before use.
- (d) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium.
- (e) Each Medicare supplement policy shall be

guaranteed renewable and:

- (i) The issuer shall not cancel or fail to renew the policy solely on the ground of health status of the individual.
- (ii) The issuer shall not cancel or fail to renew the policy for any reason other than nonpayment of premium or material misrepresentation.
- (iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (1)(e)(v) of this Rule, the issuer shall offer each certificateholder an individual Medicare supplement policy that, at the option of the certificateholder:
 - (A) Provides for continuation of the benefits contained in the group policy, or
 - (B) Provides for such benefits as otherwise meet the requirements of this Rule.
- (iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall either:
 - (A) Offer the certificateholder the conversion opportunity described in Subparagraph (1)(e)(iii) of this Rule; or
 - (B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits

beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(g) Suspension During Medicaid Eligibility.

(i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance. ~~Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.~~

(ii) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

(iii) Reinstitution of such coverages:

- (A) Shall not provide for any waiting period with respect to treatment of pre-existing conditions;
- (B) Shall provide for coverage that is substantially equivalent to coverage in effect before the date of such suspension; and
- (C) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Standards for Basic ("Core") Benefits Common to All Benefit Plans: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Benefit Plans in addition to

the basic "core" package, but not in lieu thereof.

- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
 - (b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
 - (c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
 - (d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
 - (e) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.
- (3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 11 NCAC 12 .0836.
- (a) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
 - (b) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.
 - (c) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
 - (d) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
 - (e) One Hundred Percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge.
 - (f) Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescrip-

tion drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

- (g) Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
- (h) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250.00) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.
- (i) Preventive Medical Care Benefit: Coverage for the following preventive health services:
 - (i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (3)(i)(ii) of this Rule and patient education to address preventive health care measures.
 - (ii) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:
 - (A) Fecal occult blood test and/or digital rectal examination;
 - (B) Mammogram;
 - (C) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;
 - (D) Pure tone (air only) hearing screening test, administered or ordered by a physician;
 - (E) Serum cholesterol screening (every five years);
 - (F) Thyroid function test;
 - (G) Diabetes screening.
 - (iii) Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every ten years).
 - (iv) Any other tests or preventive measures determined appropriate by the attending

physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120.00) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

- (j) At-Home Recovery Benefit: Coverage for services to provide short term at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.
- (i) For purposes of this benefit, the following definitions shall apply:
 - (A) "Activities of daily living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
 - (B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
 - (C) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.
 - (D) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.
- (ii) Coverage Requirements and Limitations.
 - (A) At-home recovery services provided must be primarily services that assist in activities of daily living.
 - (B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
 - (C) Coverage is limited to:
 - (I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not ex-

ceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.

- (II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit.
- (III) One thousand six hundred dollars (\$1,600) per calendar year.
- (IV) Seven visits in any one week.
- (V) Care furnished on a visiting basis in the insured's home.
- (VI) Services provided by a care provider, as defined in this Rule.
- (VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.
- (VIII) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home health care visit.

(iii) Coverage is excluded for:

- (A) Home care visits paid for by Medicare or other government programs; and
- (B) Care provided by family members, unpaid volunteers or providers who are not care providers.

- (k) New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.

.0837 OPEN ENROLLMENT

(a) No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six-month period beginning with the first month in which an individual (who is aged 65 years or older) ~~first enrolled~~ is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this

Rule without regard to age. No issuer shall use any method of marketing that discourages the sale of any approved plan to persons eligible for open enrollment.

(b) Paragraph (a) of this Rule does not prevent the exclusion of benefits under a policy during the first six months, based on a pre-existing condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six-month period before the policy became effective.

Statutory Authority G.S. 58-2-40; 58-54-10

.0839 MEDICARE SELECT POLICIES AND CERTIFICATES

(a) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this Rule.

(b) For the purposes of this Rule:

- (1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.
- (2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.
- (3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.
- (4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.
- (5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.
- (6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.
- (7) "Service area" means the geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.

(c) The Commissioner shall authorize an issuer to offer a Medicare Select policy or certificate, under this Rule and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this Rule.

(d) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the Commissioner.

(e) A Medicare Select issuer shall file a proposed plan of operation with the Commissioner. The plan of operation

shall contain at least the following information:

- (1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:
 - (A) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.
 - (B) The number of network providers in the services area is sufficient, with respect to current and expected policyholders.
 - (i) To adequately deliver all services that are subject to a restricted network provision; and
 - (ii) To make appropriate referrals.
 - (C) There are written agreements with network providers describing specific responsibilities.
 - (D) Emergency care is available 24 hours per day and seven days per week.
 - (E) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy of certificate.
- (2) A statement or map providing a clear description of the services area.
- (3) A description of the grievance procedure to be utilized.
- (4) A description of the quality assurance program, including:
 - (A) The formal organizational structure;
 - (B) The written criteria for selection, retention, and removal of network providers;
 - (C) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.
- (5) A list and description, by specialty, of the network providers.
- (6) Copies of the written information proposed to be used by the issuer to comply with Paragraph (i) of this Rule.
- (f) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner before implementing the changes. Changes shall be considered

approved by the Commissioner after 30 days unless specifically disapproved. An updated list of network providers shall be filed with the Commissioner at least quarterly.

(g) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

- (1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and
- (2) It is not feasible to obtain services through a network provider.

(h) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(i) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. The disclosure shall include the following:

- (1) An outline of coverage that permits the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
 - (A) Other Medicare supplement policies or certificates offered by the issuer; and
 - (B) Other Medicare Select policies or certificates.
- (2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.
- (3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.
- (4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.
- (5) A description of limitations on referrals to restricted network providers and to other providers.
- (6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.
- (7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(j) Before the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided under Paragraph (i) of this Rule and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(k) A Medicare Select issuer shall have and use the following procedures for hearing complaints and resolving written grievances from the subscribers, which procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures:

- (1) The grievance procedure shall be described in the policy and certificates and in the outline of

coverage.

- (2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.
- (3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.
- (4) If a grievance is found to be valid, corrective action shall be taken promptly.
- (5) All concerned parties shall be notified about the results of a grievance.
- (6) The issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(l) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(m) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for 6 months. For the purposes of this Paragraph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(n) Medicare Select policies and certificates shall provide for continuation of coverage in the event the U.S. Secretary of Health and Human Services determines that Medicare Select policies and certificates issued under this Rule should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificate available without requiring evidence of insurability. For the purposes of this Para-

graph, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services, or coverage for Part B excess charges.

(o) A Medicare Select issuer shall comply with requests for data made by State or federal agencies, including the U.S. Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25.

SECTION .1000 - LONG-TERM CARE INSURANCE

.1004 POLICY PRACTICES AND PROVISIONS

(a) The terms "guaranteed renewable" or "noncancellable" may not be used in any individual policy without further explanatory language in accordance with the disclosure requirements of 11 NCAC 12 .1006. No such policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no unilateral right to make any change in any provision of the policy while the policy is in force and can not refuse to renew: Provided that rates may be revised by the insurer on a class basis.

(c) The word "noncancellable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no right to unilaterally make any change in any provision of the policy or in the premium rate.

(d) No policy may limit or exclude coverage by type of illness, treatment, medical condition, or accident, except as follows:

- (1) preexisting conditions as specified in G.S. 58-55-30;
- (2) mental or nervous disorders, except for Alzheimer's Disease;
- (3) alcoholism and drug addiction;
- (4) illness, treatment, or medical condition arising out of:
 - (A) war or act of war (whether declared or undeclared);
 - (B) participation in a felony, riot, or insurrection;
 - (C) service in the armed forces or units auxiliary thereto;
 - (D) suicide, attempted suicide, or intentionally self-inflicted injury; or
 - (E) aviation activity as a nonfare-paying passenger;
- (5) treatment provided in a government facility (unless otherwise required by law); services for

which benefits are available under Medicare (unless otherwise required by law), under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by a member of the insured's immediate family; and services for which no charge is normally made in the absence of insurance;

- (6) exclusions and limitations for payment for services provided outside the United States; and
- (7) legitimate variations in benefit levels to reflect differences in provider rates.

(e) Termination of a policy shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the policy was in force and continues without interruption after termination. Such extension of benefits beyond the period during which the policy was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits; and may be subject to any policy waiting period and all other applicable provisions of the policy.

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

SECTION .1600 - RETAINED ASSET ACCOUNTS

.1601 DEFINITIONS

As used in this Section:

- (1) "Policy" means any policy or certificate of insurance that provides a death benefit.
- (2) "Retained asset account" or "account" means any mechanism whereby the settlement of proceeds payable under a insurance policy is accomplished through the use of a temporary repository of proceeds into a checking or draft account in lieu of the immediate cash payment of the full benefit amount.

Statutory Authority - G.S. 58-2-40; 58-3-150; 58-7-15; 58-58-1; 58-58-110.

.1602 GENERAL REQUIREMENTS

No insurer shall offer retained asset accounts as a mode of settlement of proceeds unless the insurer complies with the following:

- (1) The retained asset account shall be specifically identified as a settlement option within the terms of the policy in conjunction with other optional modes of settlement of proceeds.
- (2) The policy owner shall be provided the contractual right of selection from all available optional modes of settlement before death or death of the insured if the insured is not the policy owner.
- (3) After an insurer's offer, if a beneficiary selects a mode of settlement other than the immediate cash payment of the full benefit amount, the insurer

shall provide the beneficiary with a supplemental contract that clearly discloses the rights and obligations of both the beneficiary and the insurer with respect to the mode of settlement selected.

Statutory Authority - G.S. 58-2-40; 58-3-150; 58-7-15; 58-58-1; 58-58-110.

.1603 DISCLOSURE REQUIREMENTS

In conjunction with any offer of a retained asset account as a mode of settlement of proceeds, the insurer shall disclose the following, in writing, to any recipient of such an offer:

- (1) That the retained asset account is an option, not automatic or required, and that other settlement options are available under the policy.
- (2) Literature describing the settlement options shall clearly disclose what other options are available under the policy. Any interest rate being paid under other options shall be disclosed.
- (3) Whether the retained asset account is the equivalent of a checking or draft account.
- (4) An explanation of the account's features, including:
 - (a) What banking services are provided to the account holder and by whom.
 - (b) Which services are provided at no charge and which services involve a fee and the amount of the fee.
 - (c) The nature and frequency of account statements.
 - (d) A telephone number and address where the beneficiary can obtain additional information regarding the account.
 - (e) Any minimum or maximum benefit payment requirements under the account.
 - (f) The number of withdrawals within any time period shall be unlimited.
- (5) That payment of the total proceeds is accomplished by delivery of a "checkbook kit" or "draft kit" to the beneficiary if that is the case.
- (6) That one check or draft can be written to access the entire proceeds and that other settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer's minimum payment requirements.
- (7) Any time delays the beneficiary should expect to encounter in completing any authorized transaction under a retained asset account and the anticipated amount of such time delay.
- (8) Whether the Federal Deposit Insurance Corporation insures the retained asset account balance.
- (9) The insurer shall disclose that interest earned on the account may be taxable and the beneficiary should consult a tax advisor.
- (10) The insurer shall disclose the interest rate being paid under the retained asset account and the interest rate being paid under other settlement

options.

Statutory Authority - G.S. 58-2-40; 58-3-150; 58-58-1; 58-58-110.

.1604 ACCOUNTING

Funds necessary to cover liabilities under retained asset accounts shall be reported on the annual statement as required by the Accounting Practices and Procedures Manual of the NAIC.

Statutory Authority G.S. 58-2-40; 58-2-165; 58-58-1; 58-58-110.

SECTION .1700 - VIATICAL SETTLEMENTS

.1701 DEFINITIONS

(a) The definitions in G.S. 58-58-42(a) are incorporated into this Section by reference.

(b) As used in this Section, "Division" means the Life and Health Division of the Department of Insurance.

Statutory Authority G.S. 58-2-40; 58-58-42.

.1702 VIATICAL SETTLEMENT PROVIDERS

(a) An application for provider registration shall be filed with the Division.

(b) Only those individuals named in the application may act as providers.

(c) A provider shall submit with the application a plan of operation, including full particulars on the manner in which the provider proposes to operate in North Carolina and the type or types of insurance policies or contracts it intends to viaticate.

(d) The applicant's plan of operation shall be a narrative overview of the applicant's business and shall include the following information:

- (1) A certified copy of the applicant's charter and by-laws, if a corporation, and a copy of the partnership agreement, if a partnership.
- (2) A chart showing the relationship of the applicant to any parent, affiliated, or subsidiary corporation.
- (3) A detailed description of the applicant's marketing techniques, including a description of training programs for those individuals who will have direct contact with viators.
- (4) A list of the names of applicant's directors and management personnel, including job title and a brief description of the job duties.
- (5) Financial statements, audited by an independent certified public accountant, for each of the three years immediately preceding the year of application or for that period, if shorter, during which the applicant was in existence. The financial statements shall disclose litigation expenses and costs incurred in processing viators' applica-

tions.

(6) A schedule listing the names of qualified financial institutions with which the applicant has escrow trust agreements, indicating the balance on each account and copies of all escrow and trust agreements.

(7) A detailed description of what steps through which the applicant will have access to funds, including the source that will make such funds available.

(e) A provider shall immediately notify the Division of any change in the address of the provider and of any change in the officers and directors of the provider.

(f) Each provider shall notify the Division of any change in the plan of operation or financial information filed with its application within 10 business days after the change.

(g) Each provider shall maintain net capital of at least one hundred thousand dollars (\$100,000), or net capital plus a surety bond totalling at least one hundred thousand dollars (\$100,000). As used in this Rule, "net capital" means the excess of total assets over total liabilities as determined by generally accepted accounting principles. If any of a provider's assets have been depreciated, the amount of depreciation relative to any particular asset may be added to the depreciated cost of the assets to compute the total assets; provided however, that the amount resulting after adding such depreciation shall not exceed the fair market value of the asset. For the purpose of calculating the appropriate amount of the surety bond that is required by this Rule, net capital shall be presumed to be zero (\$0.00) in situations in which a provider's liabilities exceed the provider's assets.

(h) A power of attorney designating the Commissioner as the provider's agent for service of legal process shall be filed by every applicant.

Statutory Authority G.S. 58-2-40; 58-16-30; 58-58-42.

.1703 VIATICAL SETTLEMENT BROKERS

(a) No person shall act as a broker without first registering with the Agent Services Division.

(b) The Commissioner shall suspend, revoke, or refuse to renew the registration of any broker if the Commissioner finds that:

- (1) There was any misrepresentation in the application for registration;
- (2) The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be financially irresponsible; or
- (3) The broker has placed or attempted to place a contract with an unregistered provider.

(c) In the absence of a written agreement between a viator and a broker making the broker the viator's agent, a broker is presumed to be an agent of the provider.

(d) A broker shall not, without the written agreement of the viator obtained before performing any services in

connection with a viatical settlement, seek or obtain any compensation from the viator.

(e) A power of attorney designating the Commissioner as the broker's agent for service of legal process shall be filed by every applicant.

Statutory Authority G.S. 58-2-40; 58-58-42.

.1704 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

In order to assure that each viator receives a reasonable return for viaticating a policy, the following shall be minimum discounts:

<u>Insured's Life Expectancy</u>	<u>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</u>
<u>Less than 6 months</u>	<u>[80 %]</u>
<u>At least 6 but less than 12 months</u>	<u>[70 %]</u>
<u>At least 12 but less than 18 months</u>	<u>[65 %]</u>
<u>At least 18 but less than 24 months</u>	<u>[60 %]</u>
<u>Twenty-four months or more</u>	<u>[50 %]</u>

Statutory Authority G.S. 58-2-40; 58-58-42(j).

.1705 REPORTING

On March 1 of each year, each provider shall file with the Division a financial report, audited by an independent certified public accountant, for the previous calendar year. As part of the report, each provider shall file an experience exhibit in a form prescribed by the Commissioner. The information for the previous calendar year shall include:

- (1) For each policy viaticated; the
 - (a) date the contract was entered into;
 - (b) life expectancy of the viator on the date of the contract;
 - (c) face amount of the policy;
 - (d) amount paid by the provider under the contract; and
 - (e) date of death of the viator and the total insurance premiums paid by the provider to maintain the policy in force if the viator has died.
- (2) A breakdown of applications received, accepted, and rejected, by disease category.
- (3) A breakdown of policies viaticated by issuer and policy type.
- (4) The number of secondary market vs. primary market transactions.
- (5) The portfolio size.
- (6) The amount of outside borrowings.

Statutory Authority G.S. 58-2-40; 58-58-42(e).

.1706 CONTRACTS AND PAYMENT OF PROCEEDS

(a) Every viatical settlement contract to be used by a provider or broker shall be approved by the Commissioner before the marketing or solicitation of the contract. Two

specimen copies of each contract, application, and information booklet shall be filed with the Division.

(b) In addition to the requirements in G.S. 58-58-42, every contract shall include the following provisions:

- (1) That if the viator elects the right to rescind the contract, the provider's rights or interest in the policy will terminate immediately upon the viator giving notice of the rescission and tendering of the settlement proceeds together with any escrow interest received by the viator; provided, however, the provider's right or interest in the policy shall be limited to the amount of settlement proceeds actually received by the viator but not returned by the viator.
- (2) That if the viator dies before the end of the unconditional refund period, it shall be deemed that the viator rescinded the contract;
- (3) The amount of the fee or fees to be paid by the viator to the provider in conjunction with the contract shall be clearly stated, along with any conditions of payment or receipt of the fee or fees.
- (4) That the contract together with the application shall constitute the entire contract between the parties.
- (5) That, if the contract provides for the payment of an additional settlement amount to the viator upon the exercise of a guaranteed insurability option by the viator, the contract shall disclose the amount the additional settlement and the terms upon which it shall be payable.
- (6) If the policy to be viaticated provides a guaran-

teed insurability option, the option may only be exercised for the benefit of a person who has an insurable interest in the life to be insured.

(c) Every application for a contract shall:

- (1) Set forth a notice in boldface and not less than 10-point type to read as follows:

"Receipt of payment under a viatical settlement may affect your eligibility for public assistance programs, such as medical assistance (Medicaid), aid to families with dependent children, supplementary social security income, and AIDS drug assistance programs; and it also may be taxable and subject to claims of your creditors. Before applying for a viatical settlement, you should consult with the appropriate social services agency concerning how receipt could affect your eligibility and that of your spouse or dependents; and consult with a tax advisor."

- (2) Contain the applicant's consent to the viatical settlement, an acknowledgment by the applicant that he or she has a catastrophic or life-threatening illness, and the applicant's representation that he or she has a full and complete understanding of the viatical settlement.
- (3) Contain a provision that the proposal that the provider will deliver to the applicant before the contract is signed will not include a detailed description of how the payment amount was determined unless the applicant specifically requests in the application the detailed description, which description shall also include the assumed life expectancy of the viator.
- (4) Contain the applicant's representation that he or she has a full and complete understanding of the benefits of the policy; a release, in compliance with applicable statutory requirements, by the applicant of his or her medical records; and an acknowledgment that the applicant has entered into the contract freely and voluntarily.
- (5) Be duly witnessed and authorized by a person who does not have a financial or beneficial interest, directly or indirectly, in the contract or policy.
- (6) Provide for an acknowledgment of receipt of the information booklet.

(d) With respect to a policy containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator before the execution of the contract; to such other beneficiary, other than the provider, as the viator may thereafter designate; or in the absence of a designation, to the estate of the viator.

(e) Payment of the proceeds under the contract shall be

by means of wire transfer to the account of the viator or by certified check payable to the viator, and shall be made in a lump sum. Retention of a portion of the proceeds by the provider or escrow agent is not permissible. Installment payments shall not be made unless the provider has purchased an annuity or similar instrument issued by a licensed insurance company.

Statutory Authority G.S. 58-2-40; 58-58-42.

.1707 SOLICITATION

(a) A provider or broker shall not discriminate in the solicitation or making of contracts on the basis of race, age, sex, natural origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

(b) A provider or broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any viator's physician, attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

(c) Providers and brokers shall not solicit any investor who could influence the treatment of the illness of the viator whose coverage would be the subject of the investment.

(d) Contacts for the purpose of determining the health status of a viator by a provider or broker after the contract has been signed shall be limited to once every three months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts before the contract is executed.

Statutory Authority G.S. 58-2-40; 58-58-42.

.1708 ADVERTISING STANDARDS

(a) All advertising material shall be filed simultaneously with the contract for which the advertisement is intended to solicit. All advertising material shall be in final form. The Commissioner shall accept a printer's proof with the written understanding that final printed material will be filed before use of the advertisement. Advertising material shall be submitted to the Division by the provider within 30 days before its intended use.

(b) Advertising shall be truthful and not misleading by fact or implication.

(c) If the advertiser emphasizes the speed with which viatication will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by a viator.

(d) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

Statutory Authority G.S. 58-2-40; 58-58-42; 58-63-15; 58-63-65.

.1709 DISCLOSURE

(a) Every provider shall deliver an information booklet to every applicant. Delivery of the booklet shall be acknowledged by the applicant in the application form. The information booklet shall include the following:

- (1) How viatical settlements operate.
- (2) Possible alternatives to viatical settlements for persons with catastrophic or life-threatening illnesses, including accelerated death benefits offered by the issuer of the life insurance policy or certificate or loans secured by the life insurance policy or certificate.
- (3) Any tax consequences that may result from entering into a contract.
- (4) Any consequences of interruption or loss of assistance as provided by medical or public assistance programs.
- (5) The viator's right to rescind a contract.
- (6) The identity of any person who will receive any fee or compensation from the provider with respect to the contract and the amount and terms of such compensation.
- (7) The provider's complete name, main office address, and telephone number.

(b) The provider shall disclose to the applicant, either on the application or through the information booklet, that the proceeds payable to the viator may not be exempt from the viator's creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts.

(c) The provider shall disclose to each applicant, either on the application or through the information booklet, that the proceeds under a contract will be made in a lump sum. The disclosure shall state that the installment payments are not permissible unless the provider is a licensed insurance company or the provider has effected the purchase of an annuity or similar financial instrument issued by a licensed insurance company.

(d) The provider shall disclose on the application or through the information booklet that medical, financial, or other personal information obtained from the viator will not be disclosed to any other person without the viator's specific written consent.

(e) The provider shall disclose on the application or through the information booklet the procedures available concerning the payment of death benefit proceeds for any insured other than the viator or for the payment of accidental death proceeds.

(f) The provider, upon receipt of an application to viaticate and after determining the value to be offered in return for the assignment or transfer of the death benefit or ownership of a life insurance policy or certificate to the provider, shall deliver a proposal to the applicant before the contract is to be signed. The proposal shall disclose the following information:

- (1) Insurance contract death benefit in each of the next 10 years if the insurance contract is not viaticated.
- (2) Amount of death benefit to be viaticated.
- (3) Policy cash value before deducting any loan.
- (4) Policy net cash value after deducting any loan.
- (5) Policy death benefit less net cash value.
- (6) Amount offered to applicant.
- (7) Whether any supplemental benefit or benefits including the following benefits, will be continued and, if so, the source of premium payment and the beneficiary of the proceeds of such supplemental benefit:
 - (A) Accidental death benefit.
 - (B) Disability income.
 - (C) Waiver of premium or of monthly deduction waiver.
 - (D) Guaranteed insurability options.
 - (E) Children or spouse coverage.
- (8) Name of the insurer; and whether the insurer does or does not have an accelerated death benefit program for which the applicant qualifies.

(g) The proposal shall include a notice stating that a detailed description of how the payment amount was determined, including interest rate, expense factors, and the assumed life expectancy used in the determination, may be obtained by a written request made to the provider.

(h) Upon a written request by the applicant for a detailed description of how the payment amount was determined, the provider shall provide a detailed description stating the assumed life expectancy in months, the interest rate used to discount the amount at risk, the adjustments, if any, for future premiums, dividends and additional amounts, broker's compensation, and retention for other expenses, risk charge, and profit.

(i) Every broker shall provide a written statement to every applicant before completion of any application to viaticate that describes how the broker will be compensated.

Statutory Authority G.S. 58-2-40; 58-58-42.

CHAPTER 17 - SENIORS' HEALTH INSURANCE INFORMATION PROGRAM

.0006 BUYER'S GUIDES

The Guide to Health Insurance for People with Medicare, as published by the National Association of Insurance Commissioners, and the Medicare Supplement Comparison Guide, as published by SHIP, or any successor publication, is publications, are available from SHIP to consumers, free of charge. Licensed insurance agents and employees of insurance companies shall obtain this these publications from the insurance companies by which they are appointed or employed.

Statutory Authority G.S. 58-2-40(1); 58-54-25; 58-55-30.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend rule cited as 11 NCAC 17 .0003.

Proposed Effective Date: February 1, 1996.

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

Reason for Proposed Action: Change of office location.

Comment Procedures: Written comments and questions should be directed to Carla Suitt, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-0111. Oral presentations may be made at the public hearing.

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds.

CHAPTER 17 - SENIORS' HEALTH INSURANCE INFORMATION PROGRAM

.0003 LOCATION, MAILING ADDRESS, AND TELEPHONE

(a) ~~The primary location of SHIIP is 1600 Hillsborough Street, Raleigh, North Carolina 27605.~~

(a) ~~(b)~~ The mailing address of SHIIP is Post Office Box 26387, Raleigh, North Carolina, 27611.

(b) ~~(c)~~ The telephone numbers for SHIIP are toll-free 1-800-443-9354 and 1-919-733-0111.

Statutory Authority G.S. 58-2-5; 58-2-25; 58-2-40(1); 58-54-25; 58-55-30.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt rules cited as 11 NCAC 12 .0901, .0918 - .0919; 11 NCAC 20 .0101, .0201 - .0205, .0301 - .0304, .0401 - .0410, .0501 - .0511, .0601 - .0602, .0701 - .0703; 11 NCAC 21 .0101 - .0110.

Proposed Effective Date: March 1, 1996, except for 11 NCAC 20 .0701 - .0703 which is June 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 18, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Consumer protection and establish guidelines necessary to comply with statute provisions already in place.

Comment Procedures: Written comments and questions should be directed to Barbara Morales-Burke, NC Department of Insurance, 112 Cox Avenue, Raleigh, NC 27605, (919) 715-0194. Oral presentations may be made at the public hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0900 - UTILIZATION REVIEW

.0901 ORGANIZATIONAL STRUCTURE

Each entity shall develop an organizational structure to conduct utilization review activities and provide adequate staff to conduct those activities in a timely and efficient manner. The structure shall provide for an identifiable party or parties charged with the responsibility of all utilization review activities and programs and the party or parties shall be professionally qualified to carry out that responsibility.

Statutory Authority G.S. 58-2-40(1); 58-50-60.

.0918 WRITTEN UTILIZATION REVIEW PLAN

In addition to the items listed in 11 NCAC 12 .0905(b), every utilization review plan shall contain:

- (1) The purpose, goals, and objectives of the utilization review program;
- (2) The role of the board of directors, clinical director, quality management personnel, and the clinical advisory panel;
- (3) Specific services to be monitored in accordance with 11 NCAC 12 .0903 and .0906.

Statutory Authority G.S. 58-2-40(1); 58-50-60.

.0919 TELEPHONE ACCESSIBILITY STANDARDS

Each entity shall develop standards for telephone accessibility, including call abandonment rate and average speed of answer. Each entity shall monitor adherence to or progress toward such goals on a periodic basis, but not less frequently than monthly.

Statutory Authority G.S. 58-2-40(1); 58-50-60.

CHAPTER 20 - MANAGED CARE HEALTH BENEFIT PLANS

SECTION .0100 - MANAGED CARE DEFINITIONS

.0101 DEFINITIONS

As used in this Chapter:

- (1) "Accessibility of provider services" means the ability of a network plan carrier to deliver access

to health care services to members in a manner that provides access to qualified preferred providers on a timely basis as appropriate to medical necessity and affords additional administrative protection to members making use of such preferred providers.

- (2) "Health care provider" or "provider" includes any person who, under G.S. 90 is licensed, registered, or certified to engage in the practice of or performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, social work, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a health care facility as defined in G.S. 131E-176(9b).
- (3) "Health maintenance organization" or "HMO" has the same meaning as in G.S. 58-67-5(f).
- (4) "Intermediary organization" or "intermediary" means any entity that employs or contracts with health care providers for the provision of health care services, and that also contracts with a network plan carrier or its intermediary.
- (5) "Member" means an individual who is covered by a network plan carrier.
- (6) "Network plan carrier" or "carrier" means an insurer, health maintenance organization, or any other entity that undertakes to provide reimbursement or provides or arranges to provide health care services and uses any incentives to encourage persons relying on the carrier for coverage or services to use health care providers belonging to the network used by the carrier.
- (7) "PPO" means a preferred provider organization or arrangement that is offered by a licensed insurance company, HMO, or hospital or medical service corporation, in which: there is no transfer of insurance risk to health care providers through capitated payment arrangements, fee withholds, bonuses, or other risk-sharing arrangements; health care services are provided by participating providers who are paid on negotiated or discounted fee-for-service bases; and either or both of the following features are present:
 - (a) Utilization review and quality assurance programs are used to manage the provision of covered services.
 - (b) Enrollees are given incentives to limit the receipt of covered services to those furnished by participating providers.
- (8) "Preferred provider" has the same meaning as in G.S. 58-50-50 and 58-65-1.
- (9) "Quality management" means a program of reviews, studies, evaluations, and other activities employed by a Plan for the purpose of monitoring

and enhancing quality of health care and services provided to members.

- (10) "Service area" means a geographic area in North Carolina approved by and on file with the Commissioner in which:
 - (a) An HMO enrolls persons who either work in the service area, reside in the service area, or work and reside in the service area.
 - (b) An HMO contracts with or employs providers for the provision of health care services to its members.
- (11) "Service corporation" means a medical or hospital service corporation operating under G.S. 58, Article 65.
- (12) "Single service HMO" means an organization that undertakes to provide or arrange for the delivery of a single type or single group of health care services to a defined population on a prepaid or capitated basis, except for an member's responsibility for non-covered services, coinsurance, copayments, or deductibles."
- (13) "Utilization review" means those methodologies used to improve the quality and maximize the efficiency of the health care delivery system through review of particular instances of care, including, whenever performed, precertification, concurrent review, discharge planning, and retrospective review.

Statutory Authority G.S. 58-2-40(1); 58-50-50; 58-50-55; 58-65-1; 58-65-140; 58-67-150.

SECTION .0200 - HEALTH CARE PROVIDER CONTRACTS

.0201 WRITTEN CONTRACTS

(a) All contracts between network plan carriers and health care providers and health care network arrangements created by intermediary organizations used by network plan carriers for the provision of care on a preferred or in-network basis shall be in writing and shall comply with 11 NCAC 20 .0202.

(b) The form of every contract under Paragraph (a) of this Rule shall be filed with the Division before its execution.

(c) As used in this Section and in Section .0600 of this Chapter, "Division" means the Managed Care and Health Benefits Division of the Department of Insurance.

Statutory Authority G.S. 58-2-40(1); 58-50-55; 58-65-25; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-150.

.0202 CONTRACT PROVISIONS

All contracts shall contain provisions addressing the following:

- (1) A statement that the contract and any attached amendments, exhibits, or appendices constitute the

- entire contract between the parties.
- (2) Definitions of technical insurance or managed care terms utilized within the contract, which definitions may reference other documents distributed to providers and shall be consistent with definitions included in the evidence of coverage issued in conjunction with the network plan.
- (3) An indication of the term of the contract.
- (4) Requirements for written notice of termination and stipulation of each party's right to terminate.
- (5) The provider's continuing obligations after termination of the contract or in the case of the carrier or intermediary's insolvency. The obligations shall address:

 - (a) Transition of administrative duties and records.
 - (b) Continuation of care, when inpatient care is ongoing. Where the carrier, intermediary, or provider accepts risk for the delivery of health care services, as opposed to reimbursement for services, inpatient care shall be continued until the patient is ready for discharge or until the expiration of the contract period for which premiums have been paid, whichever is later.
- (6) The provider's credentials.

 - (a) The provider shall warrant that the provider has and will maintain licensure, accreditation, and credentials sufficient to meet the carrier's or intermediary's credentialing program requirements.
 - (b) The provider shall notify the carrier or intermediary of subsequent changes in status of any credentialing information.
- (7) The provider's professional liability insurance.

 - (a) The provider shall warrant that the provider has and will maintain malpractice insurance coverage.
 - (b) The provider shall notify the carrier or intermediary of subsequent changes in status of malpractice insurance on a timely basis.
- (8) Member billing.

 - (a) In cases where the carrier, intermediary, or provider accepts risk for the delivery of health care services, as opposed to reimbursement for services, the provider shall not bill any network plan member for covered services, except for specified coinsurance, copayments, and applicable deductibles.
 - (b) The provider's responsibility to collect applicable member deductibles, copayments, coinsurance, and fees for noncovered services shall be specified.
- (9) The provider's obligation to arrange for appropriate coverage in accordance with the carrier's or intermediary's standards for provider accessibility.
- (10) The carrier's or intermediary's obligation to provide a mechanism that allows providers to verify member eligibility before rendering healthcare services.
- (11) Provider requirements regarding patients' records. The provider shall:

 - (a) Maintain confidentiality of enrollee medical and other health records as required by law.
 - (b) Maintain adequate medical and other health records according to industry and carrier or intermediary standards.
 - (c) Make such records available to the carrier, intermediary, and Division in conjunction with an examination of the carrier or intermediary.
- (12) An agreement between the provider and carrier or intermediary that all professional decisions, judgments, treatments, diagnoses, and other professional services delivered to plan members by the provider are the provider's sole responsibility.
- (13) The provider's agreement to cooperate with member and carrier or intermediary in member grievance procedures.
- (14) The provider's cooperation and participation with the carrier's coordination of benefits and third party recovery programs.
- (15) A provision that the provider shall not discriminate against members on the basis of race, color, national origin, gender, age, religion, marital status, health status, or health insurance coverage.
- (16) A detailed explanation of the payment methodology, including disclosure of the units of service or services upon which payment is based.
- (17) The carrier's or intermediary's obligations to provide data and information to the provider:

 - (a) To provide performance feedback reports or information to the provider on a regular basis, if compensation is related to efficiency criteria.
 - (b) To provide information on benefit plans; administrative and utilization management requirements; credentialing and recredentialing; quality assessment programs; and provider sanction policies. Timely notification of changes in such requirements shall also be provided by the carrier or intermediary.
- (18) The provider's cooperation with and participation in the carrier's and intermediary's utilization management programs, credentialing and recredentialing programs, quality assessment programs, and provider sanctions programs.
- (19) The carrier's or intermediary's obligation to include name, address, and telephone number of the provider or the provider group in the provider directory distributed to its members.
- (20) The carrier's or intermediary's requirement to notify the provider of its current approved service area and subsequent changes in the service area.
- (21) A description of the procedures to be followed to resolve differences between the carrier or intermediary and the provider.
- (22) The indemnification of the carrier or intermediary

- and the provider for each other's actions.
- (23) An independent contractor relationship between the provider and the carrier or the intermediary.
- (24) Assignment of the contract:
- (a) The provider's duties and obligations under the contract shall not be assigned, delegated, or transferred without the prior written consent of the carrier or intermediary.
- (b) The carrier or intermediary shall notify the provider, in writing, of any duties or obligations that are to be delegated or transferred, before the delegation or transfer.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55; 58-65-25; 58-65-105; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-100; 58-67-150.

.0203 CHANGES REQUIRING APPROVAL

All material changes to an approved contract must be filed with the Division for approval before use. For the purpose of this Section, a "material change" includes a change in the method of payment, a change in the distribution of risk between parties, a change in the clinical or administrative responsibilities delegated or a change to any provision required by 11 NCAC 20 .0202.

Statutory Authority G.S. 58-2-40(1); 58-50-55; 58-65-25; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-150.

.0204 CARRIER AND INTERMEDIARY CONTRACTS

(a) If a carrier contracts with an intermediary, the carrier shall file with the Division for prior approval its contract with the intermediary. The filing shall be accompanied by a certification from the carrier that the intermediary will comply with all applicable statutory and regulatory requirements applicable to the functions delegated with which the carrier must comply and that the carrier will monitor such compliance.

(b) A carrier's contract with the intermediary shall state that:

- (1) All provider contracts used by the intermediary shall comply with 11 NCAC 20 .0202.
- (2) The network carrier retains its legal responsibility to monitor and oversee the offering of services to its members and financial responsibility to its members.
- (3) The intermediary may not subcontract for its services without the carrier's written permission.
- (4) The carrier may approve or disapprove participation of individual providers contracting with the intermediary for inclusion in the carrier's own network plan.
- (5) The carrier shall retain copies or the intermediary shall make available for review by the division all provider contracts and subcontracts held by the intermediary.

- (6) If the intermediary organization assumes risk from the carrier or pays its providers on a risk basis or is responsible for claims payment to its providers:

- (A) The carrier shall receive documentation of utilization and claims payment on a regular basis and maintain appropriate accounting systems and records necessary to support the arrangement.
- (B) The carrier shall arrange for adequate financial protection through such approaches as hold harmless language, retention of signatory control of the funds to be disbursed or financial reporting requirements.
- (C) The Division shall have access to the books, records, financial information, and other information necessary to examine activities performed on behalf of the carrier to the extent provided by law. Such books and records shall be maintained in the State of North Carolina.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55; 58-65-25; 58-65-105; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-100; 58-67-150.

.0205 FILING REQUIREMENTS

(a) All contract filings shall be submitted to the Division in the following manner:

- (1) New contracts shall be submitted in triplicate and accompanied by a self-addressed, stamped envelope.
- (2) Amendments shall be submitted in redline format, and accompanied by three copies of non-redlined format and a self-addressed, stamped envelope.
- (3) Each contract shall be designated by a unique form number assigned by the carrier or intermediary for identification purposes.
- (4) Contract filings shall be held open for a 90-day period beginning on the date that the Division notifies the filer of its disapproval of a contract.

(b) During the 90-day period in Paragraph (a) of this Rule, the carrier or intermediary shall submit revised contracts that are responsive to each of the Division's reasons for disapproval of the initial filing.

(c) The Division shall close the file if the filer fails to respond to the Division's disapproval letter within 90 days after the Division sends the letter.

Statutory Authority G.S. 58-2-40(1); 58-50-55; 58-65-25; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-150.

SECTION .0300 - PROVIDER ACCESSIBILITY AND AVAILABILITY

.0301 PROVIDER AVAILABILITY STANDARDS

(a) Each network plan carrier shall develop a methodology to determine the size and adequacy of the provider network necessary to serve the members. The methodology shall include all services covered by the benefit plan. The methodology standards shall include the following:

- (1) The number and type of primary care physicians and specialty care providers, as defined by the carrier.
- (2) A method to determine the addition of providers to the network as membership in the network plan carrier increases.
- (3) A method for obtaining health care services in another location when providers are not available in the area.

(b) Each carrier shall develop and utilize contracting criteria for tertiary care and acute care hospitals, psychiatric and substance abuse facilities and programs, skilled nursing facilities, and rehabilitation hospitals and programs, and any other contracted providers.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-140; 58-67-10(c)(14); 58-67-35; 58-67-150.

.0302 PROVIDER ACCESSIBILITY STANDARDS

Each carrier shall establish minimum standards for provider accessibility to primary and specialty care physician services and hospital based services. Carriers shall also establish appropriate similar standards for health care services provided by providers who are not physicians. Written policies and standards shall address the following:

- (1) The minimum driving distance or time a member must travel to obtain primary and specialty care services.
- (2) The minimum driving distance or time a member must travel to obtain hospital services.
- (3) The provision of 24-hour, seven day per week coverage by or for primary care services.
- (4) Emergency provisions within the service area.
- (5) Emergency provisions outside of the service area.
- (6) The waiting time for urgent and routine appointments.
- (7) The waiting time in a provider's office.
- (8) The approval of and waiting time for appointments with consulting specialty physicians.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-140; 58-67-10(c)(14); 58-67-35; 58-67-150.

.0303 PROVIDER NETWORK SAFEGUARDS

In order to promote accessibility, each carrier and intermediary shall use the following as safeguards for their use of a contracted network of providers:

- (1) A provider credentialing program in accordance with 11 NCAC 20 .0400.
- (2) Written provider contracts in accordance with 11 NCAC 20 .0200.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-140; 58-67-10(c)(14); 58-67-35; 58-67-150.

.0304 MONITORING ACTIVITIES

Each carrier shall regularly monitor compliance with this Section and evaluate its availability and accessibility on at least annually to ensure that the needs of its members are met. Supporting documentation of these activities shall be maintained for a period of three years or until the completion of the next triennial examination, whichever is later.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-35; 58-67-100; 58-67-150.

SECTION .0400 - PROVIDER CREDENTIALING

.0401 CREDENTIALING PROGRAM

In order to assure accessibility and availability of services, each intermediary or carrier shall establish a program that demonstrates that its preferred providers are appropriately credentialed in accordance with the intermediary's or carrier's credentialing requirements before the listing of those providers in the carrier's provider directory, handbooks, or other marketing or member materials.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-140; 58-67-10(c)(14); 58-67-150.

.0402 ORGANIZATION STRUCTURE

Each intermediary or carrier shall develop an organization structure to conduct provider credentialing and provide adequate staff to credential and recredential all preferred providers. The structure shall provide for an identifiable person or persons responsible for all credentialing activities, which said person or persons shall be professionally qualified to carry out that responsibility.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-140; 58-67-10(c)(14); 58-67-150.

.0403 WRITTEN CREDENTIALING PLAN

Each intermediary or carrier shall develop and adopt a written credentialing plan that contains a comprehensive set of policies and procedures to support the credentialing program. The plan shall include:

- (1) The purpose, goals, and objectives of the credentialing program.
- (2) The roles of those persons responsible for the credentialing program.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-150.

.0404 APPLICATION

Each intermediary or carrier shall obtain and retain on file

a complete, signed, and dated credentialing application from each provider applying for participation in the plan network. The credentialing application shall include:

- (1) Personal information (e.g., name, address, telephone number).
- (2) Practice information, including call coverage.
- (3) Education and training history.
- (4) The current provider license, registration, or certification, and the names of other states where the applicant is or has been licensed, registered, or certified.
- (5) Drug Enforcement Agency (DEA) registration number and prescribing restrictions, if any.
- (6) Specialty board certification or eligibility, if applicable.
- (7) Professional and hospital affiliations.
- (8) The amount of professional liability coverage and any malpractice history.
- (9) Any history of disciplinary actions by medical organizations and regulatory agencies.
- (10) Any history of felony or misdemeanor convictions.
- (11) Any physical or mental impairments, including present or past substance abuse problems.
- (12) Professional references.
- (13) The type of affiliation requested (i.e.; primary care, consulting specialists, ambulatory care, etc.).
- (14) A statement of completeness, veracity, and release of information, signed and dated by the applicant.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-100; 58-67-150.

.0405 VERIFICATION OF CREDENTIALS

(a) Upon the receipt of credentialing application and all supporting documents, each intermediary or carrier shall verify all information provided in 11 NCAC 20 .0404.

(b) The carrier or intermediary shall verify the following information regarding facility credentials:

- (1) Joint Commission on Accreditation of Healthcare Organizations' Certification.
- (2) State licensure.
- (3) Medicare and Medicaid certification.
- (4) Evidence of current malpractice insurance.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-150.

.0406 PROVIDER FILES

Each intermediary or carrier shall maintain, in centralized files, an individual file for each provider making application to affiliate with the intermediary or carrier. Each file shall include information in accordance with 11 NCAC 20 .0405.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b);

58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-100; 58-67-150.

.0407 RECREDENTIALING

(a) Each intermediary or carrier shall recredential all preferred providers no less frequently than once every three years.

(b) Each intermediary or carrier shall have a mechanism in place to reduce, suspend, or terminate the participation status of any preferred provider.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-150.

.0408 CONFIDENTIALITY

Each intermediary or carrier shall develop written policies and procedures to protect the confidentiality of patient health or medical record information and personal information, as provided by law.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-67-10(c)(14); 58-67-100.

.0409 RECORDS AND EXAMINATIONS

Each intermediary or carrier shall maintain all credentialing records in a manner that the carrier deems to be adequate for a period of three years or until the completion of the triennial examination, whichever is later.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-55(b); 58-65-1; 58-65-25; 58-65-105; 58-65-140; 58-67-10(c)(14); 58-67-100; 58-67-150.

.0410 DELEGATION OF CREDENTIALING ACTIVITIES

Whenever any intermediary or carrier delegates credentialing activities to a contracting entity, the intermediary or carrier shall review and approve the contracting entity's credentialing program before contracting and shall continuously monitor the contracting entity's credentialing activities. The intermediary or carrier shall implement oversight mechanisms, including:

- (1) Reviewing the contracting entity's credentialing plans, policies, procedures, forms, and adherence to verification procedures.
- (2) Requiring the contract entity to submit an updated list of providers no less frequently than quarterly.
- (3) Conducting an evaluation of the contracting entity's credentialing program no less frequently than every three years.

Statutory Authority G.S. 58-2-40(1); 58-50-55(b); 58-65-1; 58-65-25; 58-67-10(c)(14); 58-67-150.

SECTION .0500 - QUALITY MANAGEMENT

.0501 PROGRAM

(a) Each HMO shall have a program for monitoring, evaluating, improving, and promoting the quality of health care and quality of services provided, which program shall address all areas and aspects of health care covered by the HMO's benefit plan or plans.

(b) For full service HMOs, the program shall include hospital inpatient and outpatient care, including ancillary services; surgical services provided in inpatient and outpatient settings; ambulatory care, including care provided in participating physicians' offices; mental health and substance abuse treatment provided in inpatient, partial hospitalization, intensive outpatient, and outpatient settings; and allied health provider and home health services.

(c) For single service HMOs, the program shall be commensurate with the type of care provided and shall include treatment plans, outpatient care in providers' offices, and inpatient and ambulatory care, if provided.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-20; 58-67-150.

.0502 STRUCTURE

Each HMO shall develop an organizational structure to conduct quality management activities and programs and provide staff to conduct such activities in a timely and efficient manner. The structure shall provide for an identifiable person or persons responsible for all quality assurance activities, which person or persons shall be professionally qualified to carry out that responsibility.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-20; 58-67-100; 58-67-150.

.0503 PLAN

Each HMO shall develop and adopt a written quality management plan that contains policies and procedures to support the quality management program. This plan shall include the following:

- (1) The purpose, goals, and objectives of the quality management program.
- (2) The role of those responsible for all quality assurance programs.
- (3) The specific services to be monitored in accordance with 11 NCAC 20 .0501.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-20; 58-67-100; 58-67-150.

.0504 ACTIVITIES

(a) Each HMO shall develop a comprehensive set of quality of care and quality of service standards and establish a mechanism to determine if the standards are being met.

(b) Each HMO shall employ a variety of quality management tools designed to assess and monitor the quality of care and quality of service in all treatment settings for all types of medical care provided.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-20; 58-67-150.

.0505 QUALITY OF CARE COMPLAINTS

Each HMO shall maintain policies and procedures to record, investigate, and take appropriate corrective action in response to patient complaints regarding the quality of care delivered by participating providers. The policies and procedures shall provide for the following:

- (1) Complaints about quality of care issues shall be forwarded to and investigated by qualified, clinically trained persons.
- (2) A method of aggregating, categorizing, and reporting quality of care complaints as a means of monitoring the number and types of complaints over time and identifying providers who may be persistent violators of quality standards.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-20; 58-67-100; 58-67-150.

.0506 DELEGATION OF ACTIVITIES

Whenever any HMO delegates quality management activities to another entity, the HMO shall review and approve the entity's quality management program before contracting with the entity and shall continuously monitor the entity's quality management activities. The HMO shall implement oversight mechanisms, including:

- (1) Reviewing the contracting entity's quality management plans, policies, procedures, and quality management activities and provider contracting forms; and verifying that they meet the HMO's standards.
- (2) Requiring the contracting entity to submit, at least annually, periodic reports of its quality management activities and operations.
- (3) Conducting periodic audits of the contracting entity's quality assurance activities and operations.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-150; 58-67-150.

.0507 CORRECTIVE ACTION

Each HMO shall have procedures for identifying and taking corrective action on quality of care and quality of service problems, whether provider-specific or system-wide.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-150.

.0508 CONFLICTS OF INTEREST

Each HMO shall develop written policies and procedures about conflicts of interest. No person shall review health care that is provided if that person was directly responsible for providing that health care in or by an institution, organization, or agency in which that person or any member of his or her family has, directly or indirectly, a financial interest or has any other reason for prejudicial bias. That

person shall recuse himself or herself from such review.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-150.

.0509 CONFIDENTIALITY

Each HMO shall develop written policies and procedures to protect the confidentiality of medical record information and personal information, as those terms are defined in G.S. 58-39-15.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-150.

.0510 RECORDS AND EXAMINATIONS

Each HMO shall maintain or cause to be maintained, in writing, records of quality management plans, procedures, activities, studies, operations, and other related information. The records shall be accessible to the Commissioner and shall be retained for a period of three years or until the completion of the next triennial examination, whichever is longer.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-100; 58-67-150.

.0511 INTERNAL AUDIT

Each HMO shall periodically evaluate its quality management program to assure that it complies with North Carolina law and the HMO's internal standards, policies and procedures. The effectiveness and efficiency of the program shall also be evaluated. The results of the evaluation shall be used in continuous improvement efforts.

Statutory Authority G.S. 58-2-40(1); 58-67-10; 58-67-150.

SECTION .0600 - SIGNIFICANT MODIFICATIONS TO HMO OPERATIONS

.0601 APPLICATION

(a) All requests to expand an HMO's service area shall be submitted in writing as an application to the Division for review and approval. An HMO shall submit an original and seven copies of the application, which shall include the following information:

- (1) A description of operational changes that will result from the expansion.
- (2) Financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605.
- (3) A description of provider interest and network development in the service area requested and information as to the HMO's existing provider network.
- (4) Copies of any form contracts to be made as a result of the expansion, including providers and subcontractors.

(b) All changes in the product lines offered by an HMO shall be submitted in writing as an application to the

Division for review and approval. These changes include the addition of a point of service product; the addition of or changes to the HMO's existing health care delivery model, such as the addition of an IPA product or group model product or the addition of a gatekeeper product; and the addition of a single-service product, such as dental or vision plans. HMOs shall submit an original and seven copies of the application, which shall include the following information:

- (1) A description of operational changes that will result from the expansion.
- (2) Financial and actuarial information as required by 11 NCAC 11C .0311 and 11 NCAC 16 .0605.
- (3) A description of provider interest and network development in the service area requested and information as to the HMO's existing provider network.
- (4) Copies of form contracts to be made as a result of the expansion, including providers and subcontractors.

(c) All additions and deletions of subcontractors must be filed with the Division.

(d) The addition of subcontractors shall be submitted in writing, along with copies of any contracts, to the Division for review and approval before the execution of any contract or subcontract. The contracts must be accompanied by a certification from the HMO that the subcontractor will comply with all applicable requirements for HMO operations.

(e) The deletion of a subcontractor shall be submitted in writing within 30 days after termination of the contract, unless termination is immediate, along with a plan to select another subcontractor or for the HMO to perform the once delegated functions in-house.

(f) All health care provider and vendor contracts and changes shall be submitted to the Division for review and approval in accordance with 11 NCAC 20 .0200 before execution.

(g) Each HMO shall submit written notice to the Division of its intent to engage in any arrangement through which that HMO owns or controls or manages any operations of another HMO in any other state, before entering into the arrangement.

Statutory Authority G.S. 58-2-40; 58-67-10; 58-67-150.

.0602 WRITTEN NOTICE

In addition to those modifications set out in G.S. 58-67-10(d)(1), an HMO shall submit written notice to the Division of the following:

- (1) Expansion of its provider network into counties outside its current service area. The notice shall be submitted before the execution of any provider contracts in these areas.
- (2) Changes to the members of the HMO's Board of Directors, Trustees, Officers, or any entity main-

taining at least 10 percent ownership in the HMO, within 15 days after the change.

- (3) Reductions in the number of providers that exceed 10 percent of the total number of providers in a particular service area within 15 days after the change.
- (4) Any application made in any other state for licensure as an HMO, insurance company or any other type of managed care organization, within 15 days after making the application.
- (5) Any application made in North Carolina or any other state to engage in business arrangements involving Medicare, Medicaid, CHAMPUS or Workers Compensation, within 15 days after making the application.

Statutory Authority G.S. 58-2-40; 58-67-10; 58-67-150.

SECTION .0700 - PREFERRED PROVIDER ORGANIZATIONS

.0701 ACCESSIBILITY OF PROVIDERS

(a) Each PPO shall establish provider accessibility and availability standards in compliance with 11 NCAC 20 .0300.

(b) Each PPO shall establish and maintain qualifications of its preferred providers through compliance with 11 NCAC 20 .0400.

(c) Each PPO shall provide to those health benefit plan members making use of its preferred provider network administrative protection via written provider contracts. Such contracts shall comply with 11 NCAC 20 .0200.

Statutory Authority G.S. 58-2-40(1); 58-50-50; 58-50-55; 58-65-1; 58-65-140.

.0702 FINANCIAL SOLVENCY OF PPOs

Financial solvency of a PPO shall be demonstrated by the following documentation:

- (1) Financial statements, which shall include a balance sheet, a statement of operations, and a statement of cash flows for the two most recent fiscal years. Financial statements shall be prepared by an independent certified financial accountant. Financial statements of a PPO's parent company are acceptable if they present consolidating schedules for the PPO and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules.
- (2) Information about the PPO's system of internal controls, including a narrative discussing existing internal controls over company operations. The narrative shall address procedures to safeguard the receipt of company funds and the disbursement of company funds; and audits, including internal audits and those performed by companies with which the PPO has service agreements.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-50; 58-50-55; 58-65-1; 58-65-140.

.0703 PPOs AS NETWORK PLAN CARRIERS

Requirements for network plan carriers as provided in this Chapter shall not be applicable to PPOs before June 1, 1996.

Statutory Authority G.S. 58-2-40(1); 58-2-131; 58-50-50; 58-50-55; 58-65-1; 58-65-140.

CHAPTER 21 - THIRD PARTY ADMINISTRATORS

SECTION .0100 - APPLICATIONS FOR LICENSURE

.0101 APPLICATION

(a) In addition to those items listed in G.S. 58-56-51, the following items shall be filed in order to constitute a complete application for initial or renewal TPA licensure:

- (1) Transmittal form (TPATRN);
- (2) An application for administrator's license (TPAAP);
- (3) Biographical form(s) (TPABIO) completed by principal officers;
- (4) A narrative description specifying the TPA's services performed in North Carolina;
- (5) A power of attorney duly executed by the TPA, if not domiciled in North Carolina, appointing the Commissioner as attorney for the TPA in and for this State, upon whom process in any legal action or proceeding against the TPA on a cause of action arising in this State may be served;
- (6) Internal controls narrative (TPAICT); and
- (7) Administrator's questionnaire (TPAQSN).

(b) Copies of all forms may be obtained from the Division.

Statutory Authority G.S. 58-2-40; 58-56-51.

.0102 FINANCIAL STATEMENTS

The financial statements required by G.S. 58-56-51(b)(4) shall include a balance sheet, a statement of operations, and a statement of cash flows for the TPA's two most recent fiscal years. Financial statements shall be prepared by an independent certified public accountant. Financial statements of an TPA's parent company are acceptable if such present consolidating schedules for the TPA, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules.

Statutory Authority G.S. 58-2-40(b); 58-56-51.

.0103 DETERMINATION OF FINANCIAL RESPONSIBILITY

In determining the financial responsibility of an applicant for a TPA license, the division shall require that an appli-

cant be solvent. In addition, the division shall consider:

- (1) Liquidity;
- (2) Any internal controls the applicant may have in place to afford protection for benefit plans, which may include the manner in which benefit plan fund accounts are established; and
- (3) Segregation of duties.

Statutory Authority G.S. 58-2-40; 58-56-51.

.0104 SERVICE CONTRACTS

All administrative service agreements with insurance companies must be with insurers licensed to operate in North Carolina.

Statutory Authority G.S. 58-2-40; 58-56-51.

.0105 ADJUSTING CLAIMS BY ADMINISTRATORS

No adjuster's license is required of employees of TPAs in adjusting claims for life or accident and health insurance, annuities, or self-funded health benefit plans.

Statutory Authority G.S. 58-2-40; 58-56-51.

.0106 PAYMENT OF CLAIMS

If claims filed with a TPA or insurer are not paid within 30 days after receipt of the initial claim by the TPA or the insurer, the TPA or the insurer shall at that time mail a claim status report to the claimant.

Statutory Authority G.S. 58-2-40; 58-3-100; 58-56-31.

.0107 GENERAL ADMINISTRATION

Every TPA shall:

- (1) Establish a governing body that is authorized to set policy for the organization.
- (2) Maintain complete corporate records in a secure and accessible location.
- (3) Employ a management information system (MIS) that is able to provide information on all major areas of the TPA operations.
- (4) Set internal policies and procedures for contract management.

Statutory Authority G.S. 58-2-40; 58-56-51.

.0108 CLAIMS ADMINISTRATION

(a) Each TPA's claims administration service shall be supported by a set of written policies, procedures, and performance standards related to timeliness and financial aspects of its operations.

(b) Each TPA shall develop and implement a claims administration internal audit and quality assurance programs designed to monitor and improve claims processing services on a continuous basis.

(c) Each insurer shall conduct internal on-site audits of its TPAs semi-annually.

Statutory Authority G.S. 58-2-40; 58-56-31; 58-56-51.

.0109 MARKETING AND SALES

(a) Each TPA shall ensure that all direct sales staff and brokers are licensed by the State of North Carolina to sell health insurance and meet all continuing education requirements.

(b) Each TPA shall quote only insurance premium rates approved by the Department and shall not quote new premium rates before they are approved.

Statutory Authority G.S. 58-2-40; 58-56-31; 58-56-51; 58-63-15.

.0110 MEMBER SERVICES

(a) Each TPA's member services department shall have a set of written policies and procedures to support its activities.

(b) Each TPA's member services department shall be accessible to members by telephone.

Statutory Authority G.S. 58-2-40; 58-56-51.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend rule cited as 12 NCAC 7D .0808.

Temporary: This Rule was filed as a temporary amendment effective December 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on November 30, 1995 at the SBI Conference Room, Building 12, 3320 Old Garner Road, Raleigh, NC 27626.

Reason for Proposed Action: The current rule prohibits the carry of concealed weapon. The rule will be in conflict with the newly adopted Concealed Weapons Act, G.S. 14-415, which permits the carry of concealed weapons and which will become effective December 1, 1995.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments on the proposed text for 30 days after the text is published in the North Carolina Register or until the date of the public hearing, whichever is longer. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, NC 27626-0500.

Fiscal Note: This Rule does not affect the expenditures or

revenues of local government or state funds.

Statutory Authority G.S. 74C-5; 74C-13.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

.0808 CONCEALED WEAPONS

(a) Nothing in G.S. Chapter 74C or 12 NCAC 7D shall be construed as permitting the carrying of concealed weapons by licensees, trainees, registrants or firearms ~~trainers~~ trainers while in performance of duties regulated by the Private Protective Services Act, unless the licensee, trainer, or registrant has complied with all provisions of G.S. 14, Article 54B and applicable rules promulgated by the N.C. Criminal Justice Education and Training Standards Commission pursuant thereto and has been issued a current concealed handgun permit by a Sheriff. Additionally, applicants must comply with the concealed firearm provisions for training and qualifications set forth in 12 NCAC 7D .0808(b) as well as other requirements which the Board and Attorney General deem necessary.

(b) A licensee, trainer, or registrant must comply with each of the following requirements to carry a Concealed Firearm while engaged in a private protective services business.

- (1) An individual must hold a current Armed Security Guard Registration Permit by complying with all requirements for armed registration as prescribed in 12 NCAC 7D .0800.
- (2) An individual must complete any additional training approved by the Board and the Attorney General to comply with standards set forth by the N.C. Criminal Justice Education and Training Standards Commission to include knowledge of North Carolina firearms laws including, but not limited to, the limitation on concealed weapon possession on specified grounds and within certain buildings.
- (3) An individual meeting the requirements of this Section may be issued a concealed firearm endorsement to the current Armed Security Guard Registration Permit for the term of the Armed Security Guard Registration Permit without additional permit fees, but any additional training costs necessary to comply with this section shall be borne directly by the applicant.

(c) The endorsement may be renewed at the time of the Armed Security Guard Registration Permit renewal pursuant to the applicable provisions of 12 NCAC 7D .0800 on payment of the armed security guard registration renewal fee and proof of possession of a current Concealed Handgun Permit. There shall be no additional fee for the concealed firearms endorsement renewal.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Criminal Justice Education and Training Standards Commission intends to adopt rules cited as 12 NCAC 9F .0101 - .0107.

Temporary: *These Rules were filed as temporary adoptions effective November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on February 22, 1996 at the Hearing Room of the Alcoholic Beverage Control Commission Building, 3322 Old Garner Road, Raleigh, North Carolina.

Reason for Proposed Action: *The Commission has authorized rule-making authority to comply with G.S. 14-415 in dealing with carrying concealed handguns.*

Comment Procedures: *Any person interested in these Rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. In addition, the record of the hearing will be open for receipt of written comments. Written comments not presented at the hearing should be received no later than the commencement of the hearing on February 22, 1996 and should be directed to David D. Cashwell. The proposed rules are available for public inspection and copies may be obtained at the following address: Criminal Justice Standards Division, P.O. Drawer 149, Raleigh, NC 27602 (Room 150, Court of Appeals Building, 1 West Morgan Street, Raleigh, NC).*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 9F - CONCEALED HANDGUN TRAINING

SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM

.0101 PURPOSE

In order to ensure a minimum level of familiarization and proficiency in specific topical areas for citizens who lawfully carry handguns concealed, the Commission establishes these general guidelines for the concealed handgun training program and the administration of the program.

Statutory Authority G.S. 14-415.12; 14-415.13; 1995 S.L.,

c. 507 s. 22.

.0102 TOPICAL AREAS

The following topical areas are hereby established as minimum general guidelines to be included in the concealed handgun training courses:

- (1) Legal Issues: The student will be able to demonstrate a general knowledge of North Carolina law on concealed handguns, handgun safety, and use of deadly force. The instructor should use the lesson plan and training videos produced by the North Carolina Justice Academy. The instructor shall determine the student's level of understanding of the relevant legal issues by examination.
- (2) Handgun Nomenclature: The students will be able to either verbally or in writing list the primary parts of their personal handgun.
- (3) Handgun Safety: The students will be able to:
 - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
 - (b) list four methods of safely storing the handgun and choose the method most appropriate for their personal use;
 - (c) describe safety issues relating to the safe carry of a handgun; and
 - (d) determine the proper storage of their weapon when there are minors in the home.
- (4) Handgun Fundamentals: The students will be able to:
 - (a) demonstrate how to properly load the handgun;
 - (b) demonstrate how to properly unload the handgun; and
 - (c) describe the operational characteristics of their handgun.
- (5) Marksmanship Fundamentals: The student will be able to:
 - (a) demonstrate a proper handgun grip;
 - (b) demonstrate either the Weaver or Isosceles Stance;
 - (c) describe the elements of sight alignment and sight picture; and
 - (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The students will be able to demonstrate the draw or presentation with their handgun.
- (7) Cleaning and Maintenance: The students will be able to:
 - (a) demonstrate how to "field strip" the handgun if their weapon can be field stripped;
 - (b) describe how to perform a "Function Check" on their personal weapon; and
 - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handgun.

- (8) Ammunition: The students will be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students will be able to:
 - (a) demonstrate how to properly check the handgun in order to ensure that it is safe;
 - (b) demonstrate how to fire the weapon from a ready position;
 - (c) demonstrate how to fire weapon from the presentation;
 - (d) demonstrate the ability to fire the handgun from various distances; and
 - (e) successfully complete a proficiency test administered by the instructor.

Statutory Authority G.S. 14-415.12.

.0103 APPROVAL OF COURSES

- (a) An approved course is one that:
 - (1) meets or exceeds the criteria as specified in Rule .0102 of this Section;
 - (2) is certified or sponsored by one of the agencies listed in G.S. 14-415.12(a)(4)(a), (b), and (c); and
 - (3) is approved by the Commission.
- (b) The Commission shall review and ensure that submitted courses meet or exceed the general guidelines as specified in Rule .0102 of this Section.
- (c) Courses submitted for review must be submitted by the instructor who is to deliver the instruction by mailing the course to the Commission.
- (d) Any modification of an approved course must be submitted for approval and approved prior to the delivery of any such modified course and must be submitted by the instructor who is to deliver the instruction by mailing the course to the Commission.

Statutory Authority G.S. 14-415.12.

.0104 INSTRUCTOR QUALIFICATIONS

In order to deliver an approved course:

- (1) the approved instructor shall hold "Specific Instructor Certification - Firearms" issued by the Commission or hold "Firearms Instructor Certification" in Personal Protection, Basic Pistol, or Police Firearms issued by the National Rifle Association; and
- (2) the approved instructor shall hold a certificate issued by the North Carolina Justice Academy showing successful completion of the course on "Laws Governing Concealed Handgun and Use of Deadly Force."

Statutory Authority G.S. 14-415.12.

.0105 INSTRUCTOR RESPONSIBILITIES

In delivering an approved course, an approved instructor shall:

- (1) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the carry concealed handgun course for approval by the Commission prior to delivery of any instruction under G.S. 54B;
- (2) file a copy of any modification(s);
- (3) be issued a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal by the Commission;
- (4) affix the student's name to one certificate and issue that certificate to the student who successfully completes the firearms safety training course;
- (5) conduct the training consistent with the general guidelines as established in 12 NCAC 9F .0102;
- (6) administer an examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (7) administer a proficiency examination which shall demonstrate that the student is competent in the actual firing and safe handling of a handgun.

Statutory Authority G.S. 14-415.12; 14-415.13.

.0106 SANCTIONS

(a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval.

(b) The Commission shall deny or suspend the approval of instructor status when the Commission finds that the instructor:

- (1) has failed to meet or maintain the required standards for approval;
- (2) has failed to submit modification of courses or change in instructor status;
- (3) has submitted any non-sufficient funds check;
- (4) has falsified any successful completion of an approved course; or
- (5) has distributed, in any manner, any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor.

(c) Instructors who have lost their approved status subject to Subparagraph (b)(1), (2) or (3) of this Rule may reapply for approval upon documentation of compliance.

Statutory Authority G.S. 14-415.12; 14-415.13.

.0107 FILING AND FEES

(a) Each instructor of an approved course shall file a copy of the firearms course description, outline, and proof of instructor certification annually, or upon modification of the course if more frequently, with the Commission. A fee of

fifty dollars (\$50.00) shall be submitted for the initial and annual filing of a course. If modification of the course occurs before the renewal filing date, a fee of twenty-five dollars (\$25.00) shall be charged.

(b) Instructors shall, in writing, request the number of certificates needed and shall remit a fee of one dollar (\$1.00) per certificate with a minimum request of 25 certificates per instructor. Certificates may be obtained at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

All such fees shall be paid by certified check made payable to the North Carolina Department of Justice.

Statutory Authority G.S. 14-415.12; 1995 S.L., c. 507 s. 22.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to adopt/amend rules governing safety and health committees in Mine and Quarry operations. Existing rules for the Mine and Quarry Division are codified as 13 NCAC 6. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Proposed Effective Date: April 1, 1996.

A Public Hearing will be conducted at 9:00 am on December 15, 1995 at the NC Department of Labor, 319 Chapanoke Road, Conference Room A, Raleigh, NC.

Reason for Proposed Action: To determine what, if any, enabling regulations are required under Chapter 95, Article 22 as applicable only to those individuals or entities covered by Chapter 74 Article 2A.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Dept of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by December 15, 1995. You may present written or oral comments at the hearing; time limits may be imposed by the Chair.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend rule cited as 13 NCAC 7F .0101.

Proposed Effective Date: April 1, 1996.

A Public Hearing will be conducted at 2:00 pm on December 12, 1995 at the NC Department of Labor/OSHA Offices, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Reason for Proposed Action: Update of exposure levels reflecting new research since 1971; proposed levels are consistent with levels proposed by federal OSHA.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department three business days prior to the hearing date. Written comments will be accepted until December 15, 1995. Direct all correspondence to Jill F. Cramer, NCDOL/OSH, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

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

- (1) Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, §1910.120(q)(6) is amended by adding a new level of training:
 - "(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:
 - (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
 - (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
 - (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
 - (D) Be able to perform control, containment, or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
 - (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."
- (2) Subpart I -- Personal Protective Equipment -- 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read:
 - "(b) *Equipment.* (1) *Employer-provided equipment.* It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.
 - (2) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."
- (3) Subpart R -- Special Industries -- incorporation by reference of final rule for 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, including Appendices A through E, published in 59 FR (January 31, 1994) pages 4437 - 4475, all typographical and grammatical corrections to 1910.269 as published in 59 FR (June 30, 1994) pages 33660 - 33664, and the amendment to 1910.269(g)(2)(i) as published in 59 FR (August 9, 1994) page 40729, except that 29 CFR 1910.269(g)(2)(v) is amended to read:

- "(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers or similar structures if other fall protection has not been provided. A fall protection system as defined in 29 CFR 1926, Subpart M - *Fall Protection*, is required to be used by all employees when ascending, descending or changing locations on poles, towers or similar structures. However, the use of non-locking snap hooks with any fall protection system is prohibited as of July 1, 1995. Qualified employees may free climb wood poles if the employer can ensure (1) that the employee is able to comfortably and safely grip the pole with both hands while climbing, (2) that the pole is free from attachments or any configurations of attachments that will materially impair the ability of a qualified employee to safely free climb the pole, (3) that the pole is otherwise free from impediments, contaminants or conditions of any type, including but not limited to ice, high winds or chemical treatments which materially impair the ability of a qualified employee to safely free climb the pole, and (4) that the employee is able to climb such structures without material physical impairments including over-exertion, lack of sleep or other physical stresses."

29 CFR 1910.269 as amended above is effective January 1, 1995, except that employers have until July 1, 1995, to implement the use of locking snap hooks, and employers have until January 1, 1996, to design and implement a system of fall protection for use by employees while ascending, descending or changing locations on towers. Also, 29 CFR 1910.269(a)(2) *Training* is effective January 31, 1995, and 29 CFR 1910.269(v)(11)(xii) is effective February 1, 1996.

- (4) Subpart Z -- Toxic and Hazardous Substances:

- (A) 29 CFR 1910.1000 Air Contaminants:

Revision of 1910.1000 (a) and (f), removal of Table Z-2 and Table Z-3 and re-adoption ~~Re-adoption~~ of revised permissible exposure limits as Table Z-1 as originally published in 54 FR (January 19, 1989) pages ~~2496-2533~~ and pages ~~2668-2695~~ 2923 - 2958 as follows:

"§1910.1000 Air contaminants.

An employee's exposure to any substance listed in Table Z-1 of this Rule shall be limited in accordance with the requirements of the following paragraphs and sections.

(a) Table Z-1. (1) Substances with limits designated by "C" - Ceiling Limits. An employee's exposure to any substance in Table Z-1, the exposure limit of which is followed by a "C", shall at no time exceed the exposure limit given for that substance in Table Z-1.

(2) Current permissible exposure limits. An employee's exposure to any substance listed in Table Z-1 shall not exceed the Time Weighted Average (TWA), Short Term Exposure Limit (STEL) and Ceiling Limit specified for that substance in Table Z-1 under the Current PEL column.

(3) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Table Z-1 with an "X" in the Skin Designation column following the substance name shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls or work practices.

(4) Definitions. The following definitions are applicable to the Current PEL column of Table Z-1:

(i) Time weighted average (TWA) is the employee's average airborne exposure in any 8-hour work shift of a 40-hour work week which shall not be exceeded.

(ii) Short term exposure limit (STEL) is the employee's 15-minute time weighted average exposure which shall not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period shall not be exceed at any time during the working day.

(iii) Ceiling is the employee's exposure which shall not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time over a working day.

(5) Additional Definition. The terms "substance," "air contaminant," and "material" are equivalent in meaning for 29 CFR 1910.1000.

(b) and (c) are reserved.

(d) and (e) are not amended.

(f) Effective dates. (1) The effective date for the permissible exposure limits specified in the following Current PEL column of Table Z-1 is April 1, 1996.

LIMITS FOR AIR CONTAMINANTS

NOTE: Because of the length of the table, explanatory Footnotes applicable to all substances are given below.

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Footnote (1) The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit. They are to be determined from breathing-zone air samples.

Footnote (2) Parts of vapor or gas per million parts of contaminated air by volume at 25 degrees C and 760 torr.

Footnote (3) Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.

Footnote (4) The CAS number is for information only. Enforcement is based on the substance name.

Footnote (5) Regarding Styrene Only: OSHNC recognizes that the permissible exposure limits for styrene may not be achievable solely through engineering and work practice controls for boat-building and operations comparable to boat building. Comparable operations are those that (1) employ the manual layup and sprayup process, (2) the manufactured items that utilize the same equipment and technology as that found in boat building, and (3) the same considerations of large part size, configuration interfering with air-flow control techniques, and resin usage apply. Examples of operations comparable to boat building would include the manufacture of large above-ground or below-ground storage tanks, large parts for recreational vehicles, and large duct work. Because it is impossible to define in advance every manual layup and sprayup process for which compliance may not be feasible solely through engineering and work practice controls, some guidelines concerning part size and configuration issues are necessary. The primary question for manual layup and sprayup operations is whether the part's size and configuration interfere with normal air-flow techniques. For operations making parts (such as tubs and vanities) that do not meet the guidelines described, beginning April 1, 1996, the hierarchy of controls specified in 29 CFR 1910.1000(e) will apply to reduce styrene exposures to the new 50 ppm TWA and 100 ppm STEL. In consequence, the burden of proof will be on the employer to show that engineering and work practice controls are not feasible for specific operations. However, with respect to boat-building operations the burden of proof would be on OSHNC to prove that the level could be attained solely through engineering and work practice controls.

Footnote (6) Regarding Carbon Dioxide only: no change was made to the PEL.

Footnote (7) Regarding Subtilisins only: this substance is not included in Table Z-1 below.

TABLE Z - 1. - LIMITS FOR AIR CONTAMINANTS

Substance	CAS No.	(c)	FORMER PEL	CURRENT PEL	Skin design- nation
Acetaldehyde.....	75-07-0		200 ppm TWA	100 ppm TWA	
				150 ppm STEL	
Acetic acid.....	64-19-7		10 ppm TWA	10 ppm TWA	
Acetic anhydride.....	108-24-7		5 ppm TWA	5 ppm (Ceiling)	
Acetone.....	67-64-1		1000 ppm TWA	750 ppm TWA	
				1000 ppm STEL	
Acetonitrile.....	75-05-8		40 ppm TWA	40 ppm TWA	
				60 ppm STEL	
2-Acetylaminofluorene; see 1910.1014.....	53-96-3				
Acetylene dichloride; see					
1,2-Dichloroethylene.					
Acetylene tetrabromide.	79-27-6		1 ppm TWA	1 ppm TWA	
Acetylsalicylic acid (Aspirin).....	50-78-2			5 mg/m ³ TWA	
Acrolein.....	107-02-8		0.1 ppm TWA	0.1 ppm TWA	
				0.3 ppm STEL	
Acrylamide.....	79-06-1		0.3 mg/m ³ TWA	0.03 mg/m ³	X
Acrylic acid.....	79-10-7			10 ppm TWA	X
Acrylonitrile; see 1910.1045.....	107-13-1				
Aldrin.....	309-00-2		0.25 mg/m ³ TWA	0.25 mg/m ³ TWA	X
Allyl alcohol.....	107-18-6		2 ppm TWA	2 ppm TWA	X
				4 ppm STEL	
Allyl chloride.....	107-05-1		1 ppm TWA	1 ppm TWA	
				2 ppm STEL	
Allyl glycidyl ether... (AGE).....	106-92-3		10 ppm (C)	5 ppm TWA	

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.....			10 ppm STEL	
Allyl propyl disulfide.		2179-59-1		2 ppm TWA	
.....			3 ppm STEL	
alpha-Alumina.....		1344-28-1		
Total dust.....	|	.....	|	15 mg/m ³	|
Respirable fraction..	|	.....	|	5 mg/m ³	|
Aluminum (as Al).....	|	7429-90-5	|	.....	|
Metal	|	.....	|	.....	|
Total dust.....	|	.....	|	15 mg/m ³	|
Respirable fraction..	|	.....	|	5 mg/m ³	|
Pyropowders.....	|	.....	|	5 mg/m ³	|
Welding fumes.....	|	.....	|	5 mg/m ³	|
Alkyls.....	|	7429-90-5	|	.....	|
Aluminum(soluble salts)	|	7429-90-5	|	.....	|
4-Aminodiphenyl;	|	.....	|	.....	|
see 1910.1011.....	|	92-67-1	|	.....	|
2-Aminoethanol;	|	.....	|	.....	|
see Ethanolamine.....	|	.....	|	.....	|
2-Aminopyridine.....	|	504-29-0	|	0.5 mg/m ³ TWA	|
Amitrole.....	|	61-82-5	|	.....	|
Ammonia.....	|	7664-41-7	|	50 ppm TWA	|
Ammonium chloride fume	|	12125-02-9	|	.....	|
.....	|	.....	|	10 mg/m ³ TWA	|
Ammonium sulfamate.....	|	7773-06-0	|	.....	|
Total dust.....	|	.....	|	15 mg/m ³ TWA	|
Respirable fraction..	|	.....	|	5 mg/m ³ TWA	|
n-Amyl acetate.....	|	628-63-7	|	100 ppm TWA	|
sec-Amyl acetate.....	|	626-38-0	|	125 ppm TWA	|
Aniline and homologs...	|	62-53-3	|	5 ppm TWA	|
Anisidine	|	.....	|	2 ppm TWA	|
(o-,p-isomers).....	|	29191-52-4	|	0.5 mg/m ³ TWA	|
Antimony and compounds	|	.....	|	.....	|
(as Sb).....	|	7440-36-0	|	0.5 mg/m ³ TWA	|
ANTU (alpha	|	.....	|	.....	|
Naphthylthiourea)....	|	86-88-4	|	0.3 mg/m ³ TWA	|
Arsenic, inorganic	|	.....	|	.....	|
compounds (as As);	|	.....	|	.....	|
see 1910.1018.....	|	7440-38-2	|	.....	|
Arsenic, organic	|	.....	|	.....	|
compounds (as As)....	|	7440-38-2	|	0.5 mg/m ³ TWA	|
Arsine.....	|	7784-42-1	|	0.05 mg/m ³ TWA	|
Asbestos;	|	.....	|	.....	|
see 1910.1001.....	|	(4)	|	.....	|
Atrazine.....	|	1912-24-9	|	.....	|
Azinphos-methyl.....	|	86-50-0	|	0.2 mg/m ³ TWA	|
Barium, soluble	|	.....	|	.....	|
compounds (as Ba)....	|	7440-39-3	|	0.5 mg/m ³ TWA	|
Barium sulfate.....	|	7727-43-7	|	.....	|
Total dust.....	|	.....	|	15 mg/m ³ TWA	|
Respirable fraction..	|	.....	|	5 mg/m ³ TWA	|
Benomyl.....	|	17804-35-2	|	.....	|
Total dust.....	|	.....	|	15 mg/m ³ TWA	|
Respirable fraction..	|	.....	|	5 mg/m ³ TWA	|
Benzene; See 1910.1028.	|	71-43-2	|	.....	|
See Table Z-2 for	|	.....	|	.....	|
the limits	|	.....	|	.....	|
applicable in the	|	.....	|	.....	|
operations or	|	.....	|	.....	|
sectors excluded		
in 1910.1028(d)		
Benzidine;		
See 1910.1010.....		92-87-5		
p-Benzoquinone;		
see Quinone.		

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Benzo(a)pyrene; see					
Coal tar pitch					
volatiles.....					
Benzoyl peroxide.....	94-36-0	5 mg/m ³ TWA	5 mg/m ³ TWA		
Benzyl chloride.....	100-44-7	5 mg/m ³ TWA	5 mg/m ³ TWA		
Beryllium and					
beryllium compounds	7440-41-7	Table Z-2	0.002 ppm TWA		
(as Be).....			0.005 ppm STEL		
			0.025 ppm (c)		
Biphenyl; see Diphenyl.					
Bismuth telluride,					
Undoped.....	1304-82-1				
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA		
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA		
Bismuth telluride,					
Se-doped.....			5 mg/m ³ TWA		
Borates, tetra, (anhydr)	1330-43-4		10 mg/m ³ TWA		
Borates, tetra(decahyd)	1303-96-4		10 mg/m ³ TWA		
Borates, tetra(pentahy)	12179-04-3		10 mg/m ³ TWA		
Boron oxide.....	1303-86-2				
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA		
Respirable fraction...		5 mg/m ³ TWA	5 mg/m ³ TWA		
Boron tribromide.....	10294-33-4		1 ppm (C)		
Boron trifluoride.....	7637-07-2	1 ppm TWA (C)	1 ppm (C)		
Bromacil.....	314-40-9		1 ppm TWA		
Bromine.....	7726-95-6	0.1 ppm TWA	0.1 ppm TWA		
			0.3 ppm STEL		
Bromine pentafluoride..	7789-30-2		0.1 ppm TWA		
Bromoform.....	75-25-2	0.5 ppm TWA	0.5 ppm TWA		X
Butadiene					
(1,3-Butadiene).....	106-99-0	1000 ppm TWA	1000 ppm TWA		
Butane.....	106-97-8		800 ppm TWA		
Butanethiol;					
see Butyl mercaptan.					
2-Butanone					
(Methyl ethyl ketone)	78-93-3	200 ppm TWA	200 ppm TWA		
			300 ppm STEL		
2-Butoxyethanol.....	111-76-2	50 ppm TWA	25 ppm TWA		X
n-Butyl-acetate.....	123-86-4	150 ppm TWA	150 ppm TWA		
			200 ppm STEL		
sec-Butyl acetate.....	105-46-4	200 ppm TWA	200 ppm TWA		
tert-Butyl-acetate.....	540-88-5	200 ppm TWA	200 ppm TWA		
n-Butyl acrylate.....	141-32-2		10 ppm TWA		
n-Butyl alcohol.....	71-36-3	100 ppm TWA	50 ppm (C)		X
sec-Butyl alcohol.....	78-92-2	150 ppm TWA	100 ppm TWA		
tert-Butyl alcohol.....	75-65-0	100 ppm TWA	100 ppm TWA		
			150 ppm STEL		
Butylamine.....	109-73-9	5 ppm (C)	5 ppm (C)		X
tert-Butyl chromate					
(as CrO(3)).....	1189-85-1	0.1 mg/m ³ (C)	0.1 mg/m ³ (C)		X
n-Butyl glycidyl ether					
(BGE).....	2426-08-6	50 ppm TWA	25 ppm TWA		
n-Butyl lactate	138-22-7		5 ppm TWA		
n-Butyl mercaptan	109-79-5	10 ppm TWA	0.5 ppm TWA		
Butyl mercaptan.....	109-79-5	10 ppm TWA	0.5 ppm TWA		
o-sec-Butylphenol.....	89-72-5		5 ppm TWA		X
p-tert-Butyltoluene....	98-51-1	10 ppm TWA	10 ppm TWA		
			20 ppm STEL		
Cadmium (as Cd);					
see 1910.1027.....	7440-43-9				
Calcium Carbonate.....	1317-65-3				
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA		
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA		
Calcium cyanamide.....	156-62-7		0.5 mg/m ³ TWA		

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Calcium hydroxide.....	1305-62-0	1	5 mg/m ³ TWA	1
Calcium oxide.....	1305-78-8	1	5 mg/m ³ TWA	1
Calcium silicate.....	1344-95-2	1		1
Total dust.....		1	15 mg/m ³ TWA	1
Respirable fraction..		1	5 mg/m ³ TWA	1
Calcium sulfate.....	7778-18-9	1		1
Total dust.....		1	15 mg/m ³ TWA	1
Respirable fraction..		1	5 mg/m ³ TWA	1
Camphor, synthetic.....	76-22-2	1	2 mg/m ³ TWA	1
Caprolactam (dust).....	105-60-2	1	1 mg/m ³ TWA	1
		1	3 mg/m ³ STEL	1
Caprolactam (vapor)....	105-60-2	1	5 ppm TWA	1
		1	40 ppm STEL	1
Captafol (Difolatan)...	2425-06-1	1	0.1 mg/m ³ TWA	1
Captan	133-06-2	1	5 mg/m ³ TWA	1
Carbaryl (Sevin).....	63-25-2	1	5 mg/m ³ TWA	1
Carbofuran.....	1563-66-2	1	0.1 mg/m ³ TWA	1
Carbon black.....	1333-86-4	1	3.5 mg/m ³ TWA	1
Carbon dioxide.....	124-38-9	1	5000 ppm TWA	1
Carbon disulfide.....	75-15-0	1	20 ppm TWA	1
		1	30 ppm STEL	1
		1	100 ppm (C)	1
Carbon monoxide.....	630-08-0	1	50 ppm TWA	1
		1	35 ppm TWA	1
		1	200 ppm (C)	1
Carbon tetrabromide....	558-13-4	1	0.1 ppm TWA	1
		1	0.3 ppm STEL	1
Carbon tetrachloride...	56-23-5	1	Table Z-2	1
Carbonyl fluoride.....	353-50-4	1	2 ppm TWA	1
		1	5 ppm STEL	1
Catechol (Pyrocatechol)	120-80-9	1	5 ppm TWA	1
Cellulose	9004-34-6	1		1
Total dust.....		1	15 mg/m ³ TWA	1
Respirable fraction..		1	5 mg/m ³ TWA	1
Cesium hydroxide.....	21351-79-1	1	2 mg/m ³ TWA	1
Chlordane.....	57-74-9	1	0.5 mg/m ³ TWA	1
Chlorinated camphene...	8001-35-2	1	0.5 mg/m ³ TWA	1
		1	1 mg/m ³ STEL	1
Chlorinated diphenyl		1		1
oxide.....	55720-99-5	1	0.5 mg/m ³ TWA	1
Chlorine.....	7782-50-5	1	0.5 ppm TWA	1
		1	1.0 ppm STEL	1
Chlorine dioxide.....	10049-04-4	1	0.1 ppm TWA	1
		1	0.3 ppm STEL	1
Chlorine trifluoride...	7790-91-2	1	0.1 ppm (C)	1
Chloroacetaldehyde.....	107-20-0	1	1 ppm (C)	1
α-Chloroacetophenone		1		1
(Phenacyl chloride)..	532-27-4	1	0.05 ppm TWA	1
Chloroacetyl chloride..	79-04-9	1	.05 ppm TWA	1
Chlorobenzene.....	108-90-7	1	75 ppm TWA	1
o-Chlorobenzylidene		1		1
malononitrile.....	2698-41-1	1	0.05 ppm TWA	1
Chlorobromomethane.....	74-97-5	1	200 ppm TWA	1
2-Chloro-1,3-butadiene;		1		1
See beta-Chloroprene.		1		1
Chlorodifluoromethane..	75-45-6	1	1000 ppm TWA	1
Chlorodiphenyl		1		1
(42% Chlorine) (PCB)..	53469-21-9	1	1 mg/m ³ TWA	1
Chlorodiphenyl		1		1
(54% Chlorine) (PCB)..	11097-69-1	1	0.5 mg/m ³ TWA	1
1-Chloro-2,		1		1
3-epoxypropane;		1		1
See Epichlorohydrin.		1		1
2-Chloroethanol; See		1		1
Ethylene chlorohydrin		1		1

Chloroethylene;				
see Vinyl chloride.				
Chloroform				
(Trichloromethane)...	67-66-3	50 ppm (C)	2 ppm TWA	
bis(Chloromethyl)				
ether; see 1910.1008.	542-88-1			
Chloromethyl methyl				
ether; see 1910.1006.	107-30-2			
1-Chloro-1-nitropropane	600-25-9	20 ppm TWA	2 ppm TWA	
Chloropentafluoroethane	76-15-3	1000 ppm TWA	
Chloropicrin.....	76-06-2	0.1 ppm TWA	0.1 ppm TWA	
beta-Chloroprene.....	126-99-8	25 ppm TWA	10 ppm TWA	X
o-Chlorostyrene.....	2039-87-4	50 ppm TWA	
.....	75 ppm STEL	
o-Chlorotoluene.....	95-49-8	50 ppm TWA	
Chlorpyrifos.....	2921-88-2	0.2 mg/m ³ TWA	X
2-Chloro-6				
(trichloromethyl)				
pyridine.....	1929-82-4			
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Chromic acid and				
chromates (as CrO(3))	(4)		0.1 ppm (C)	
Chromium (II) compounds				
(as Cr).....	7440-47-3	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	
Chromium (III)				
compounds (as Cr)....	7440-47-3	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	
Chromium metal and				
insol. salts (as Cr)..	7440-47-3	1 mg/m ³ TWA	1 mg/m ³ TWA	
Chrysene; see Coal tar				
pitch volatiles.....				
Clopidol.....	2971-90-6			
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Coal dust (less than				
5% SiO(2)).				
respirable fraction..		Table Z-3	2 mg/m ³ TWA	
Coal dust (greater than				
or equal to 5%				
SiO(2)), respirable				
fraction.....		Table Z-3	0.1 mg/m ³ TWA	
Coal tar pitch				
volatiles (benzene				
soluble fraction),				
anthracene, BaP,				
phenanthrene,				
acridine, chrysene,				
pyrene.....	65966-93-2	0.2 mg/m ³ TWA	0.2 mg/m ³ TWA	
Cobalt, metal; dust,				
and fume (as Co).....	7440-48-4	0.1 mg/m ³ TWA	
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m ³ TWA	
Cobalt hydrocarbonyl,..	16842-03-8	0.1 mg/m ³ TWA	
.(as Co).....				
Coke oven emissions;				
see 1910.1029.....				
Copper	7440-50-8			
Fume (as Cu).....		0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Dusts and mists				
(as Cu).....		1 mg/m ³ TWA	1 mg/m ³ TWA	
Cotton dust, raw, (e)				
see 1910.1043.....				
		The time-weighted average applies to the cotton waste processing operation of waste recycling (blending, sorting, cleaning and (willowing) and		

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		<u>garretting</u>		
<u>Crag herbicide (Sesone)</u>	<u>136-78-7</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Total dust</u>		<u>15 mg/m³ TWA</u>	<u>10 mg/m³ TWA</u>	<u>1</u>
<u>Respirable fraction</u> ..		<u>5 mg/m³ TWA</u>	<u>5 mg/m³ TWA</u>	<u>1</u>
<u>Cresol, all isomers</u>	<u>1319-77-3</u>	<u>1</u>	<u>5 ppm TWA</u>	<u>1</u> X
<u>Crotonaldehyde</u>	<u>123-73-9</u>	<u>1</u>	<u>2 ppm TWA</u>	<u>1</u>
.....	<u>4170-30-3</u>	<u>1</u>		<u>1</u>
<u>Crufomate</u>	<u>299-86-5</u>	<u>1</u>	<u>5 mg/m³ TWA</u>	<u>1</u>
<u>Cumene</u>	<u>98-82-8</u>	<u>1</u>	<u>50 ppm TWA</u>	<u>1</u> X
<u>Cyanamide</u>	<u>420-04-2</u>	<u>1</u>	<u>2 mg/m³ TWA</u>	<u>1</u>
<u>Cyanides (as CN)</u>	<u>(4)</u>	<u>1</u>	<u>5 mg/m³ TWA</u>	<u>1</u>
<u>Cyanogen</u>	<u>460-19-5</u>	<u>1</u>	<u>10 ppm TWA</u>	<u>1</u>
<u>Cyanogen chloride</u>	<u>506-77-4</u>	<u>1</u>	<u>0.3 ppm (C)</u>	<u>1</u>
<u>Cyclohexane</u>	<u>110-82-7</u>	<u>1</u>	<u>300 ppm TWA</u>	<u>1</u>
<u>Cyclohexanol</u>	<u>108-93-0</u>	<u>1</u>	<u>50 ppm TWA</u>	<u>1</u> X
<u>Cyclohexanone</u>	<u>108-94-1</u>	<u>1</u>	<u>25 ppm TWA</u>	<u>1</u> X
<u>Cyclohexene</u>	<u>110-83-8</u>	<u>1</u>	<u>300 ppm TWA</u>	<u>1</u>
<u>Cyclohexylamine</u>	<u>108-91-8</u>	<u>1</u>	<u>10 ppm TWA</u>	<u>1</u>
<u>Cyclonite</u>	<u>121-82-4</u>	<u>1</u>	<u>1.5 mg/m³ TWA</u>	<u>1</u> X
<u>Cyclopentadiene</u>	<u>542-92-7</u>	<u>1</u>	<u>75 ppm TWA</u>	<u>1</u>
<u>Cyclopentane</u>	<u>287-92-3</u>	<u>1</u>	<u>600 ppm TWA</u>	<u>1</u>
<u>Cyhexatin</u>	<u>13121-70-5</u>	<u>1</u>	<u>5 mg/m³ TWA</u>	<u>1</u>
<u>2,4-D (Dichlorophen-</u>		<u>1</u>		<u>1</u>
<u>oxyacetic acid)</u>	<u>94-75-7</u>	<u>1</u>	<u>10 mg/m³ TWA</u>	<u>1</u>
<u>Decaborane</u>	<u>17702-41-9</u>	<u>1</u>	<u>0.05 ppm TWA</u>	<u>1</u> X
.....		<u>1</u>	<u>.15 ppm STEL</u>	<u>1</u>
<u>Demeton (Systox)</u>	<u>8065-48-3</u>	<u>1</u>	<u>0.1 mg/m³ TWA</u>	<u>1</u> X
<u>Diacetone alcohol</u>		<u>1</u>		<u>1</u>
<u>(4-Hydroxy-4-methyl-</u>		<u>1</u>		<u>1</u>
<u>2-pentanone)</u>	<u>123-42-2</u>	<u>1</u>	<u>50 ppm TWA</u>	<u>1</u>
<u>1,2-Diaminoethane;</u>		<u>1</u>		<u>1</u>
<u>see Ethylenediamine</u> ..		<u>1</u>		<u>1</u>
<u>Diazinon</u>	<u>333-41-5</u>	<u>1</u>	<u>0.1 mg/m³ TWA</u>	<u>1</u> X
<u>Diazomethane</u>	<u>334-88-3</u>	<u>1</u>	<u>0.2 ppm TWA</u>	<u>1</u>
<u>Diborane</u>	<u>19287-45-7</u>	<u>1</u>	<u>0.1 ppm TWA</u>	<u>1</u>
<u>1,2-Dibromo-3-</u>		<u>1</u>		<u>1</u>
<u>chloropropane (CBCP);</u>		<u>1</u>		<u>1</u>
<u>see 1910.1044</u>	<u>96-12-8</u>	<u>1</u>		<u>1</u>
<u>1,2-Dibromoethane; see</u>		<u>1</u>		<u>1</u>
<u>Ethylene dibromide</u> ...		<u>1</u>		<u>1</u>
<u>2-N-Dibutylaminoethanol</u>	<u>02-81-8</u>	<u>1</u>	<u>2 ppm TWA</u>	<u>1</u>
<u>Dibutyl phosphate</u>	<u>107-66-4</u>	<u>1</u>	<u>1 ppm TWA</u>	<u>1</u>
.....		<u>1</u>	<u>2 ppm STEL</u>	<u>1</u>
<u>Dibutyl phthalate</u>	<u>84-74-2</u>	<u>1</u>	<u>5 mg/m³ TWA</u>	<u>1</u>
<u>Dichloroacetylene</u>	<u>7572-29-4</u>	<u>1</u>	<u>0.1 ppm (C)</u>	<u>1</u>
<u>o-Dichlorobenzene</u>	<u>95-50-1</u>	<u>1</u>	<u>50 ppm (C)</u>	<u>1</u>
<u>p-Dichlorobenzene</u>	<u>106-46-7</u>	<u>1</u>	<u>75 ppm TWA</u>	<u>1</u>
.....		<u>1</u>	<u>110 ppm STEL</u>	<u>1</u>
<u>3,3'-Dichlorobenzidine;</u>		<u>1</u>		<u>1</u>
<u>see 1910.1007</u>	<u>91-94-1</u>	<u>1</u>		<u>1</u>
<u>Dichlorodifluoromethane</u>	<u>75-71-8</u>	<u>1</u>	<u>1000 ppm TWA</u>	<u>1</u>
<u>1,3-Dichloro-5,5-</u>		<u>1</u>		<u>1</u>
<u>dimethyl hydantoin</u> ...	<u>118-52-5</u>	<u>1</u>	<u>0.2 mg/m³ TWA</u>	<u>1</u>
.....		<u>1</u>	<u>0.4 mg/m³ STEL</u>	<u>1</u>
<u>Dichlorodiphenyltri-</u>		<u>1</u>		<u>1</u>
<u>chloroethane (DDT)</u> ...	<u>50-29-3</u>	<u>1</u>	<u>1 mg/m³ TWA</u>	<u>1</u> X
<u>1,1-Dichloroethane</u>	<u>75-34-3</u>	<u>1</u>	<u>100 ppm TWA</u>	<u>1</u>
<u>1,2-Dichloroethane; see</u>		<u>1</u>		<u>1</u>
<u>Ethylene dichloride</u> ..		<u>1</u>		<u>1</u>
<u>1,2-Dichloroethylene</u> ...	<u>540-59-0</u>	<u>1</u>	<u>200 ppm TWA</u>	<u>1</u>
<u>Dichloroethyl ether</u>	<u>111-44-4</u>	<u>1</u>	<u>5 ppm TWA</u>	<u>1</u>
.....		<u>1</u>	<u>10 ppm STEL</u>	<u>1</u> X
<u>Dichloromethane; see</u>		<u>1</u>		<u>1</u>
<u>Methylene chloride</u> ...		<u>1</u>		<u>1</u>

PROPOSED RULES

Dichloromonofluoro-	1		1		1	
methane.....	1	75-43-4	1000 ppm TWA	1	10 ppm TWA	1
1,1-Dichloro-1-	1			1		1
nitroethane.....	1	594-72-9	10 ppm (C)	1	2 ppm TWA	1
1,2-Dichloropropane;	1			1		1
see	1			1		1
Propylene dichloride.	1			1		1
1,3 Dichloropropene....	1	542-75-6	.....	1	1 ppm TWA	X
2,2-Dichloropropionic	1			1		1
acid	1	75-99-0	.....	1	1 ppm TWA	1
Dichlorotetrafluoro-	1			1		1
ethane.....	1	76-14-2	1000 ppm TWA	1	1000 ppm TWA	1
Dichlorvos (DDVP).....	1	62-73-7	1 mg/m ³ TWA	1	1 mg/m ³ TWA	X
Dicrotophos.....	1	141-66-2	.....	1	0.25 mg/m ³ TWA	X
Dicyclopentadiene.....	1	77-73-6	.....	1	5 ppm TWA	1
Dicyclopentadienyl iron	1	102-54-5		1		1
Total dust.....	1		15 mg/m ³ TWA	1	10 mg/m ³ TWA	1
Respirable fraction..	1		5 mg/m ³ TWA	1	5 mg/m ³ TWA	1
Dieldrin.....	1	60-57-1	0.25 mg/m ³ TWA	1	0.25 mg/m ³ TWA	X
Diethanolamine.....	1	111-42-2	.....	1	3 ppm TWA	1
Diethylamine.....	1	109-89-7	25 ppm TWA	1	10 ppm TWA	1
.....	1		.....	1	25 ppm STEL	1
2-Diethylaminoethanol..	1	100-37-8	10 ppm TWA	1	10 ppm TWA	X
Diethyl ether;	1			1		1
see Ethyl ether.....	1			1		1
Diethyl ketone.....	1	96-22-0	.....	1	200 ppm TWA	1
Diethyl phthalate.....	1	84-66-2	.....	1	5 mg/m ³ TWA	1
Diethylene triamine....	1	111-40-0	.....	1	1 ppm TWA	1
Difluorodibromomethane.	1	75-61-6	100 ppm TWA	1	100 ppm TWA	1
Diglycidyl ether (DGE)..	1	2238-07-5	0.5 ppm (C)	1	0.1 ppm TWA	1
Dihydroxybenzene;	1			1		1
see Hydroquinone.....	1			1		1
Diisobutyl ketone.....	1	108-83-8	50 ppm TWA	1	25 ppm TWA	1
Diisopropylamine.....	1	108-18-9	5 ppm TWA	1	5 ppm TWA	X
4-Dimethylaminoazo-	1			1		1
benzene;	1			1		1
see 1910.1015.....	1	60-11-7		1		1
Dimethoxymethane;	1			1		1
see Methylal.....	1			1		1
Dimethyl acetamide.....	1	127-19-5	10 ppm TWA	1	10 ppm TWA	X
Dimethylamine.....	1	124-40-3	10 ppm TWA	1	10 ppm TWA	1
Dimethylaminobenzene;	1			1		1
see Xylidine.....	1			1		1
Dimethylaniline	1	121-69-7	5 ppm TWA	1	5 ppm TWA	X
(N,N-Dimethylaniline)	1		.....	1	10 ppm STEL	X
Dimethylbenzene;	1			1		1
see Xylene.....	1			1		1
Dimethyl-1,2-dibromo-2,	1			1		1
2-dichloroethyl	1			1		1
phosphate.....	1	300-76-5	3 mg/m ³ TWA	1	3 mg/m ³ TWA	X
Dimethylformamide.....	1	68-12-2	10 ppm TWA	1	10 ppm TWA	X
2,6-Dimethyl-4-	1			1		1
heptanone; see	1			1		1
Diisobutyl ketone....	1			1		1
1,1-Dimethylhydrazine..	1	57-14-7	0.5 ppm TWA	1	0.5 ppm TWA	X
Dimethylphthalate.....	1	131-11-3	5 mg/m ³ TWA	1	5 mg/m ³ TWA	1
Dimethyl sulfate.....	1	77-78-1	1 ppm TWA	1	0.1 ppm TWA	X
Dinitolmide	1			1		1
(3,5-dinitro-	1			1		1
O-toluamide).....	1	148-01-6	.....	1	5 mg/m ³ TWA	1
Dinitrobenzene	1			1		1
(all isomers).....	1			1		1
(ortho).....	1	528-29-0	1 mg/m ³ TWA	1	1 mg/m ³ TWA	X
(meta).....	1	99-65-0		1		1
(para).....	1	100-25-4		1		1

PROPOSED RULES

Dinitro-o-cresol.....	534-52-1	10.2 mg/m ³ TWA	0.2 mg/m ³ TWA	X
Dinitrotoluene.....	25321-14-6	11.5 mg/m ³ TWA	1.5 mg/m ³ TWA	X
Dioxane				
(Diethylene dioxide)...	123-91-1	100 ppm TWA	25 ppm TWA	X
Dioxathion.....	78-34-2		0.2 mg/m ³ TWA	X
Diphenyl (Biphenyl)....	92-52-4	0.2 ppm TWA	0.2 ppm TWA	
Diphenylamine.....	122-39-4		10 mg/m ³ TWA	
Diphenylmethane				
diisocyanate; see				
Methylene bisphenyl				
isocyanate.....				
Dipropyl ketone.....	123-19-3		50 ppm TWA	
Dipropylene glycol	34590-94-8	100 ppm TWA	100 ppm TWA	X
methyl ether.....	34590-94-8		150 ppm STEL	
Diquat.....	85-00-7		0.5 mg/m ³ TWA	
Di-sec octyl phthalate				
(Di-(2-ethylhexyl)	117-81-7	5 mg/m ³ TWA	5 mg/m ³ TWA	
phthalate).....			10 mg/m ³ STEL	
Disulfiram (Antabuse)...	97-77-8		2 mg/m ³ TWA	
Disulfoton.....	298-04-4		0.1 mg/m ³ TWA	X
2,6-Di-tert-butyl-				
p-cresol.....	128-37 0		10 mg/m ³ TWA	
Diuron.....	330-54-1		10 mg/m ³ TWA	
Divinyl benzene.....	108-57-6		10 ppm TWA	
Emery.....	12415-34-8			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Endosulfan.....	115-29-7		0.1 mg/m ³ TWA	X
Endrin.....	72-20-8	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
Epichlorohydrin.....	106-89-8	5 ppm TWA	2 ppm TWA	X
EPN.....	2104-64-5	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	X
1,2-Epoxypropane; see				
Propylene oxide.....				
2,3-Epoxy-1-propanol;				
see Glycidol.....				
Ethanethiol; see				
Ethyl mercaptan.....				
Ethanolamine.....	141-43-5	3 ppm TWA	3 ppm TWA	
			6 ppm STEL	
Ethion.....	563-12-2		0.4 mg/m ³ TWA	X
2-Ethoxyethanol				
(Cellosolve).....	110-80-5	200 ppm TWA	200 ppm TWA	X
2-Ethoxyethyl acetate				
(Cellosolve acetate)...	111-15-9	100 ppm TWA	100 ppm TWA	X
Ethyl acetate.....	141-78-6	400 ppm TWA	400 ppm TWA	
Ethyl acrylate.....	140-88-5	25 ppm TWA	5 ppm TWA	X
			25 ppm STEL	
Ethyl alcohol (Ethanol)...	64-17-5	1000 ppm TWA	1000 ppm TWA	
Ethylamine.....	75-04-7	10 ppm TWA	10 ppm TWA	
Ethyl amyl ketone				
(5-Methyl-3-				
heptanone).....	106-68-3	25 ppm TWA	25 ppm TWA	
Ethyl benzene.....	100-41-4	100 ppm TWA	100 ppm TWA	
			125 ppm STEL	
Ethyl bromide.....	74-96-4	200 ppm TWA	200 ppm TWA	
			250 ppm STEL	
Ethyl butyl ketone				
(3-Heptanone).....	106-35-4	50 ppm TWA	50 ppm TWA	
Ethyl chloride.....	75-00-3	1000 ppm TWA	1000 ppm TWA	
Ethyl ether.....	60-29-7	400 ppm TWA	400 ppm TWA	
			500 ppm STEL	
Ethyl formate.....	109-94-4	100 ppm TWA	100 ppm TWA	
Ethyl mercaptan.....	75-08-1	10 ppm (C)	0.5 ppm TWA	
Ethyl silicate.....	78-10-4	100 ppm TWA	10 ppm TWA	

PROPOSED RULES

Ethylene chlorohydrin...	107-07-3	5 ppm TWA	1 ppm (C)	X
Ethylenediamine.....	107-15-3	10 ppm TWA	10 ppm TWA	
Ethylene dibromide.....	106-93-4	Table Z-2	.....
Ethylene dichloride				
(1,2-Dichloroethane)...	107-06-2	50 ppm TWA	1 ppm TWA	
.....	.....	100 ppm STEL	2 ppm STEL	
.....	.....	200 ppm (C)		
Ethylene glycol.....	107-21-1	.....	50 ppm (C)	
Ethylene glycol				
dinitrate.....	628-96-6	1 mg/m ³ (C)	0.1 mg/m ³ STEL	X
Ethylene glycol methyl				
acetate; see Methyl				
cellosolve acetate...				
Ethyleneimine;				
see 1910.1012.....	151-56-4			
Ethylene oxide;				
see 1910.1047.....	75-21-8			
Ethylidene chloride;				
see 1,1-Dichloroethane				
N-Ethylmorpholine.....	100-74-3	20 ppm TWA	5 ppm TWA	X
Fenamiphos.....	22224-92-6	.....	0.1 mg/m ³ TWA	X
Fensulfothion.....	115-90-2	.....	0.1 mg/m ³ TWA	
Fenthion.....	55-38-9	.....	0.2 mg/m ³ TWA	X
Ferbam.....	14484-64-1			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction ..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Ferrovanadium dust.....	12604-58-9	1 mg/m ³ TWA	1 mg/m ³ TWA	
.....		.....	3 mg/m ³ STEL	
Fluorides (as F).....		2.5 mg/m ³ TWA	2.5 mg/m ³ TWA	
Fluorine.....	7782-41-4	0.1 ppm TWA	0.1 ppm TWA	
Fluorotrichloromethane				
(Trichloro-				
fluoromethane).....	75-69-4	1000 ppm TWA	1000 ppm (C)	
Fonofos.....	944-22-9	.....	0.1 mg/m ³ TWA	X
Formaldehyde;				
see 1910.1048.....	50-00-0			
Formamide.....	75-12-7	.....	20 ppm TWA	
.....		.....	30 ppm STEL	
Formic acid.....	64-18-6	5 ppm TWA	5 ppm TWA	
Furfural.....	98-01-1	5 ppm TWA	2 ppm TWA	X
Furfuryl alcohol.....	98-00-0	50 ppm TWA	10 ppm TWA	X
.....		.....	15 ppm STEL	
Gasoline.....	8006-61-9	.....	300 ppm TWA	
.....		.....	500 ppm STEL	
Germanium tetrahydride.	7782-65-2	.....	0.2 ppm TWA	
Glycerin (mist).....	56-81-5	15 mg/m ³ TWA		
Total dust.....		.....	10 mg/m ³ TWA	
Respirable fraction..		.....	5 mg/m ³ TWA	
Glycidol.....	556-52-5	50 ppm TWA	25 ppm TWA	
Glycol monoethyl ether;				
see 2-Ethoxyethanol..				
Grain dust (oat, wheat				
barley).....	.....	.....	10 mg/m ³ TWA	
Graphite, natural				
respirable dust.....	7782-42-5	Table Z-3	2.5 mg/m ³ TWA	
Graphite, synthetic	none			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable Fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Guthion;				
see Azinphos methyl..				
Gypsum	13397-24-5			
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Hafnium.....	7440-58-6	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	
Heptachlor.....	76-44-8	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	X

PROPOSED RULES

Heptane (n-Heptane).....	142-82-5	1500 ppm TWA	400 ppm TWA	1
.....		.....	500 ppm STEL	1
Hexachlorobutadiene.....	87-68-3	1	0.02 ppm TWA	1
Hexachloroethane.....	67-72-1	1 ppm TWA	1 ppm TWA	1 X
Hexachloronaphthalene..	1335-87-1	0.2 mg/m ³ TWA	0.2 mg/m ³ TWA	1 X
Hexafluoroacetone.....	684-16-2	1	0.1 ppm TWA	1 X
n-Hexane.....	110-54-3	1500 ppm TWA	50 ppm TWA	1
Hexane isomers.....	Varies	1	500 ppm TWA	1
.....		.....	1000 ppm STEL	1
2-Hexanone (Methyl		1		1
n-butyl ketone).....	591-78-6	100 ppm TWA	5 ppm TWA	1
Hexone (Methyl		1		1
isobutyl ketone).....	108-10-1	100 ppm TWA	50 ppm TWA	1
.....		.....	75 ppm STEL	1
sec-Hexyl acetate.....	108-84-9	50 ppm TWA	50 ppm TWA	1
Hexylene glycol.....	107-41-5	1	25 ppm (C)	1
Hydrazine.....	302-01-2	1 ppm TWA	0.1 ppm TWA	1 X
Hydrogen bromide.....	10035-10-6	3 ppm TWA	3 ppm (C)	1
Hydrogen chloride.....	7647-01-0	5 ppm (C)	5 ppm (C)	1
Hydrogen cyanide.....	74-90-8	10 ppm TWA	4.7 ppm STEL	1 X
Hydrogen fluoride		1		1
(as F).....	7664-39-3	1	6 ppm STEL	1
Hydrogen peroxide.....	7722-84-1	1 ppm TWA	1 ppm TWA	1
Hydrogen selenide		1		1
(as Se).....	7783-07-5	0.05 ppm TWA	0.05 ppm TWA	1
Hydrogen sulfide.....	7783-06-4	Table Z-2	10 ppm TWA	1
.....		.....	15 ppm STEL	1
Hydrogenated terphenyls	61788-32-7	1	0.5 ppm TWA	1
Hydroquinone.....	123-31-9	2 mg/m ³ TWA	2 mg/m ³ TWA	1
2-Hydroxypropyl		1		1
acrylate.....	999-61-1	1	0.5 ppm TWA	1 X
Indene.....	95-13-6	1	10 ppm TWA	1
Indium & compounds		1		1
(As In).....	7440-74-6	1	0.1 mg/m ³ TWA	1
Iodine.....	7553-56-2	0.1 mg/m ³ (C)	0.1 ppm (C)	1
Iodoform.....	75-47-8	1	0.6 ppm TWA	1
Iron oxide, dust & fume		1		1
Total particulate....	1309-37-1	10 mg/m ³ TWA	10 mg/m ³ TWA	1
Iron pentacarbonyl.....	13463-40-6	1	0.1 ppm TWA	1
.....		.....	0.2 ppm STEL	1
Iron salts (soluble)	Varies with	1		1
(as Fe).....	compound	1	1 mg/m ³ TWA	1
Isomyl acetate.....	123-92-2	100 ppm TWA	100 ppm TWA	1
Isomyl alcohol		1		1
(primary and		100 ppm TWA	100 ppm TWA	1
secondary).....	123-51-3	1	125 ppm STEL	1
Isobutyl acetate.....	110-19-0	150 ppm TWA	150 ppm TWA	1
Isobutyl alcohol.....	78-83-1	100 ppm TWA	50 ppm TWA	1
Isooctyl alcohol.....	26952-21-6	1	50 ppm TWA	1 X
Isophorone.....	78-59-1	25 ppm TWA	4 ppm TWA	1
Isophorone diisocyanate	4098-71-9	1	0.005 ppm TWA	1 X
.....		.....	0.02 ppm STEL	1
2-Isopropoxyethanol....	109-59-1	1	25 ppm TWA	1
Isopropyl acetate.....	108-21-4	250 ppm TWA	250 ppm TWA	1
.....		.....	310 ppm STEL	1
Isopropyl alcohol.....	67-63-0	400 ppm TWA	400 ppm TWA	1
.....		.....	500 ppm STEL	1
Isopropylamine.....	75-31-0	5 ppm TWA	5 ppm TWA	1
.....		.....	10 ppm STEL	1
n-Isopropylaniline.....	768-52-5	1	2 ppm TWA	1 X
Isopropyl ether.....	108-20-3	500 ppm TWA	500 ppm TWA	1
Isopropyl glycidyl		1		1
ether (IGE).....	4016-14-2	50 ppm TWA	50 ppm TWA	1
.....		.....	175 ppm STEL	1

PROPOSED RULES

Kaolin.....	1332-58-7	1	1	1	1
Total dust.....		15 mg/m ³	10 mg/m ³ TWA	1	1
Respirable fraction..		5 mg/m ³	5 mg/m ³ TWA	1	1
Ketene.....	463-51-4	0.5 ppm TWA	0.5 ppm TWA	1	1
.....		.....	1.5 ppm STEL	1	1
Lead inorganic (as Pb);		1	1	1	1
see 1910.1025.....	7439-92-1	1	1	1	1
Limestone.....	1317-65-3	1	1	1	1
Total dust.....		15 mg/m ³	15 mg/m ³ TWA	1	1
Respirable fraction..		5 mg/m ³	5 mg/m ³ TWA	1	1
Lindane.....	58-89-9	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	1	X
Lithium hydride.....	7580-67-8	0.025 mg/m ³ TWA	0.025 mg/m ³ TWA	1	1
L.P.G. (Liquified		1	1	1	1
petroleum gas).....	68476-85-7	1000 ppm TWA	1000 ppm TWA	1	1
Magnesite.....	546-93-0	1	1	1	1
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	1	1
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	1	1
Magnesium oxide fume...	1309-48-4	1	1	1	1
Total Particulate....		15 mg/m ³ TWA	10 mg/m ³ TWA	1	1
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	1	1
Malathion.....	121-75-5	1	1	1	1
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	1	X
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	1	1
Maleic anhydride.....	108-31-6	0.25 ppm TWA	0.25 ppm TWA	1	1
Manganese compounds		1	1	1	1
(as Mn).....	7439-96-5	5 mg/m ³ (C)	5 mg/m ³ TWA (C)	1	1
Manganese fume (as Mn)..	7439-96-5	5 mg/m ³ (C)	1 mg/m ³ TWA	1	1
.....		1	3 mg/m ³ STEL	1	1
Manganese cyclopentadi-		1	1	1	1
enyl tricaronyl (as Mn)	12079-65-1	.....	0.1 mg/m ³ TWA	1	X
Manganese tetroxide (Mn)	1317-35-7	.....	1 mg/m ³ TWA	1	1
Marble.....	1317-65-3	1	1	1	1
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	1	1
Respirable fraction..		.....	5 mg/m ³ TWA	1	1
Mercury (aryl and		1	1	1	1
inorganic) (as Hg)....	7439-97-6	0.1 mg/m ³ TWA	0.1 mg/m ³ (C)	1	X
Mercury (organo) alkyl	7439-97-6	0.01 mg/m ³ TWA	0.01 mg/m ³ TWA	1	X
compounds (as Hg)....	7439-97-6	0.04 mg/m ³ (C)	0.03 mg/m ³ STEL	1	1
Mercury (vapor) (as Hg)	7439-97-6	0.1 mg/m ³ TWA	0.05 mg/m ³ TWA	1	X
Mesityl oxide.....	141-79-7	25 ppm TWA	25 ppm TWA	1	1
.....		1	25 ppm STEL	1	1
Methacrylic acid.....	79-14-4	.....	20 ppm TWA	1	X
Methanethiol;		1	1	1	1
see Methyl mercaptan..		1	1	1	1
Methomyl.....	16752-77-5	.....	2.5 mg/m ³ TWA	1	1
Methoxychlor	72-43-5	1	1	1	1
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	1	1
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	1	1
2-Methoxyethanol;		1	1	1	1
(Methyl cellosolve)...	109-86-4	25 ppm TWA	1	1	X
2-Methoxyethyl acetate		1	1	1	1
(Methyl cellosolve		1	1	1	1
acetate).....	110-49-6	25 ppm TWA	1	1	X
4-Methoxyphenol.....	150-76-5	.....	5 mg/m ³ TWA	1	1
Methyl acetate.....	79-20-9	200 ppm TWA	200 ppm TWA	1	1
.....		1	250 ppm STEL	1	1
Methyl acetylene		1	1	1	1
(Propyne).....	74-99-7	1000 ppm TWA	1000 ppm TWA	1	1
Methyl acetylene		1	1	1	1
propadiene mixture		1	1	1	1
(MAPP).....		1000 ppm TWA	1000 ppm TWA	1	1
.....		1	1250 ppm STEL	1	1
Methyl acrylate.....	96-33-3	10 ppm TWA	10 ppm TWA	1	X
Methylacrylonitrile....	126-98-7	1 ppm TWA	1	X
Methylal		1	1	1	1

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(Dimethoxymethane)....	109-87-5	1000 ppm TWA	1000 ppm TWA		
Methyl alcohol.....	67-56-1	200 ppm TWA	200 ppm TWA		X
.....	.....	.....	250 ppm STEL	|	
Methylamine.....	74-89-5	10 ppm TWA	10 ppm TWA	|	
Methyl amyl alcohol;				|	
see Methyl Isobutyl				|	
carbinol.....				|	
Methyl n-amyl ketone....	110-43-0	100 ppm TWA	100 ppm TWA	|	
Methyl bromide.....	74-83-9	20 ppm (C)	5 ppm TWA	|	X
Methyl butyl ketone;				|	
see 2-Hexanone.....				|	
Methyl cellosolve;				|	
see 2-Methoxyethanol..				|	
Methyl cellosolve				|	
acetate;				|	
see 2-Methoxyethyl				|	
acetate.....				|	
Methyl chloride.....	74-87-3	100 ppm TWA	50 ppm TWA	|	
.....		200 ppm (C)	100 ppm STEL	|	
Methyl chloroform				|	
(1,1,1-Trichloro-	71-55-6	350 ppm TWA	350 ppm TWA	|	
ethane).....		.....	450 ppm STEL	|	
Methyl 2-cyanoacrylate	137-05-3		2 ppm TWA	|	
.....			4 ppm STEL	|	
Methylcyclohexane.....	108-87-2	500 ppm TWA	400 ppm TWA	|	
Methylcyclohexanol.....	25639-42-3	100 ppm TWA	50 ppm TWA	|	
o-Methylcyclohexanone..	583-60-8	100 pm TWA	50 ppm TWA	|	X
.....			75 ppm STEL	|	
2-Methylcyclopenta-				|	
dienyl manganese				|	X
tricarbonyl (as Mn)...	12108-13-3	.....	0.2 mg/m ³ TWA	|	X
Methyl demeton.....	8022-00-2	.....	0.5 mg/m ³ TWA	|	X
4,4'-Methylene bis(2-				|	
chloroaniline) (MBOCA)..	101-14-4	.....	0.02 ppm TWA	|	X
Methylene chloride.....	75-09-2	Table Z-2		|	
Methyl ethyl ketone				|	
(MEK); see 2-Butanone|				|	
Methyl ethyl ketone	1338-23-4	.....	0.7 ppm (C)	|	
peroxide (MEKP).....				|	
Methyl formate.....	107-31-3	100 ppm TWA	100 ppm TWA	|	
.....			150 ppm STEL	|	
Methyl hydrazine				|	
(Monomethyl				|	
hydrazine).....	60-34-4	0.2 ppm (C)	0.2 ppm (C)	|	X
Methyl iodide.....	74-88-4	5 ppm TWA	2 ppm TWA	|	X
Methyl isoamyl ketone..	110-12-3	.....	50 ppm TWA	|	
Methyl isobutyl				|	
carbinol.....	108-11-2	25 ppm TWA	25 ppm TWA	|	X
.....			40 ppm STEL	|	
Methyl isobutyl ketone;				|	
see Hexone.....				|	
Methyl isocyanate.....	624-83-9	0.02 ppm TWA	0.02 ppm TWA	|	X
Methyl isopropyl ketone|	563-80-4	.....	200 ppm TWA	|	
Methyl mercaptan.....	74-93-1	10 ppm (C)	10 ppm (C)	|	
Methyl methacrylate....	80-62-6	100 ppm TWA	100 ppm TWA	|	
Methyl parathion.....	298-00-0	.....	0.2 mg/m ³ TWA	|	X
Methyl propyl ketone;				|	
see 2-Pentanone.....				|	
Methyl silicate	681-84-5	.....	1 ppm TWA	|	
alpha-Methyl styrene....	98-83-9	100 ppm (C)	100 ppm (C)	|	
.....			100 ppm STEL	|	
Methylene bis(4-					
cyclohexylisocyanate)	5124-30-1		0.01 ppm (C)		X
Methylene bisphenyl					

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isocyanate (MDI).....	101-68-8	0.02 ppm (C)	0.2 ppm (C)	
Metribuzin.....	21087-64-9		5 mg/m ³ TWA	
Mica; see Silicates....				
Molybdenum (as Mo).....	7439-98-7			
Soluble compounds....		5 mg/m ³ TWA	5 mg/m ³ TWA	
Insoluble Compounds				
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction		5 mg/m ³ TWA	5 mg/m ³ TWA	
Monocrotophos.....	6923-22-4		0.25 mg/m ³ TWA	
Monomethyl aniline.....	100-61-8	2 ppm TWA	0.5 ppm TWA	X
Monomethyl hydrazine;				
see Methyl hydrazine.				
Morpholine.....	110-91-8	20 ppm TWA	20 ppm TWA	X
.....			30 ppm STEL	
Naphtha (Coal tar).....	8030-30-6	100 ppm TWA	100 ppm TWA	
Naphthalene.....	91-20-3	10 ppm TWA	10 ppm TWA	
.....			15 ppm STEL	
alpha-Naphthylamine;				
see 1910.1004.....	134-32-7			
beta-Naphthylamine;				
see 1910.1009.....	91-59-8			
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm TWA	0.001 ppm TWA	
Nickel, metal and				
insoluble compounds				
(as Ni).....	7440-02-0	1 mg/m ³ TWA	1 mg/m ³ TWA	
Nickel, soluble				
compounds (as Ni)....	7440-02-0	1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Nicotine.....	54-11-5	0.5 mg/m ³ TWA	0.5 mg/m ³ TWA	X
Nitric acid.....	7697-37-2	2 ppm TWA	2 ppm TWA	
.....			4 ppm STEL	
Nitric oxide.....	10102-43-9	25 ppm TWA	25 ppm TWA	
p-Nitroaniline.....	100-01-6	6 mg/m ³ TWA	3 mg/m ³ TWA	X
Nitrobenzene.....	98-95-3	1 ppm TWA	1 ppm TWA	X
p-Nitrochlorobenzene...	100-00-5	1 mg/m ³ TWA	1 mg/m ³ TWA	X
4-Nitrodiphenyl;				
see 1910.1003.....	92-93-3			
Nitroethane.....	79-24-3	100 ppm TWA	100 ppm TWA	
Nitrogen dioxide.....	10102-44-0	5 ppm (C)	1 ppm STEL	
Nitrogen trifluoride...	7783-54-2	10 ppm TWA	10 ppm TWA	
Nitroglycerin.....	55-63-0	1 mg/m ³ (C)	0.1 mg/m ³ STEL	X
Nitromethane.....	75-52-5	100 ppm TWA	100 ppm TWA	
1-Nitropropane.....	108-03-2	25 ppm TWA	25 ppm TWA	
2-Nitropropane.....	79-46-9	25 ppm TWA	10 ppm TWA	
N-Nitrosodimethylamine;				
see 1910.1016				
Nitrotoluene				
(all isomers).....				
o-isomer.....	88-72-2	5 ppm TWA	2 ppm TWA	X
m-isomer.....	99-08-1			
p-isomer.....	99-99-0			
Nitrotrichloromethane;				
see Chloropicrin.....				
Nonane.....	111-84-2		200 ppm TWA	
Octachloronaphthalene..	2234-13-1	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
.....			0.3 mg/m ³ STEL	
Octane.....	111-65-9	500 ppm TWA	300 ppm TWA	
.....			375 ppm STEL	
Oil mist, mineral.....	8012-95-1	5 mg/m ³ TWA	5 mg/m ³ TWA	
Osmium tetroxide				
(as Os).....	20816-12-0		0.006 mg/m ³ STEL	
Oxalic acid.....	144-62-7	1 mg/m ³ TWA	1 mg/m ³ TWA	
.....			2 mg/m ³ STEL	
Oxygen difluoride.....	7783-41-7	0.05 ppm TWA	0.05 ppm (C)	
Ozone.....	10028-15-6	0.1 ppm TWA	0.1 ppm TWA	
.....			0.3 ppm STEL	

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Paraffin wax fume.....	8002-74-2	1	1	2 mg/m ³ TWA	1	
Paraquat, respirable		1		1		1	
dust.....	4685-14-7	1	0.5 mg/m ³ TWA	1	0.1 mg/m ³ TWA	1	X
	1910-42-5	1		1		1	
	2074-50-2	1		1		1	
Parathion.....	56-38-2	1	0.1 mg/m ³ TWA	1	0.1 mg/m ³ TWA	1	X
Particulates not		1		1		1	
otherwise regulated		1		1		1	
(PNOR) (f).....		1		1		1	
Total dust.....		1	15 mg/m ³ TWA	1	15 mg/m ³ TWA	1	
Respirable fraction..		1	5 mg/m ³ TWA	1	5 mg/m ³ TWA	1	
PCB; see Chlorodiphenyl		1		1		1	
(42% and 54%		1		1		1	
chlorine).....		1		1		1	
Pentaborane.....	19624-22-7	1	0.005 ppm TWA	1	0.005 ppm TWA	1	
		1	.....	1	0.015 ppm STEL	1	
Pentachloronaphthalene..	1321-64-8	1	0.5 mg/m ³ TWA	1	0.5 mg/m ³ TWA	1	X
Pentachlorophenol.....	87-86-5	1	0.5 mg/m ³ TWA	1	0.5 mg/m ³ TWA	1	X
Pentaerythritol.....	115-77-5	1		1		1	
Total dust.....		1	15 mg/m ³ TWA	1	10 mg/m ³ TWA	1	
Respirable fraction..		1	5 mg/m ³ TWA	1	5 mg/m ³ TWA	1	
Pentane.....	109-66-0	1	1000 ppm TWA	1	600 ppm TWA	1	
		1	.....	1	750 ppm STEL	1	
2-Pentanone (Methyl	107-87-9	1	200 ppm TWA	1	200 ppm TWA	1	
propyl ketone).....		1	.....	1	250 ppm STEL	1	
Perchloroethylene		1		1		1	
(Tetrachloroethylene)	127-18-4	1	Table Z-2	1	25 ppm TWA	1	
Perchloromethyl		1		1		1	
mercaptan.....	594-42-3	1	0.1 ppm TWA	1	0.1 ppm TWA	1	
Perchloryl fluoride....	7616-94-6	1	3 ppm TWA	1	3 ppm TWA	1	
		1		1	6 ppm STEL	1	
Perlite.....	93763-70-3	1		1		1	
Total dust.....		1	15 mg/m ³ TWA	1	15 mg/m ³ TWA	1	
Respirable fraction..		1	5 mg/m ³ TWA	1	5 mg/m ³ TWA	1	
Petroleum distillates		1		1		1	
(Naphtha) (Rubber		1		1		1	
Solvent).....	8002-05-9	1	500 ppm TWA	1	400 ppm TWA	1	
Phenol.....	108-95-2	1	5 ppm TWA	1	5 ppm TWA	1	X
Phenothiazine.....	92-84-2	1	.....	1	5 mg/m ³ TWA	1	X
p-Phenylene diamine....	106-50-3	1	0.1 mg/m ³ TWA	1	0.1 mg/m ³ TWA	1	X
Phenyl ether, vapor....	101-84-8	1	1 ppm TWA	1	1 ppm TWA	1	
Phenyl ether-biphenyl		1		1		1	
mixture, vapor.....		1	1 ppm TWA	1	1 ppm TWA	1	
Phenylethylene;		1		1		1	
see Styrene.....		1		1		1	
Phenyl glycidyl ether		1		1		1	
(PGE).....	122-60-1	1	10 ppm TWA	1	1 ppm TWA	1	
Phenylhydrazine.....	100-63-0	1	5 ppm TWA	1	5 ppm TWA	1	X
		1	.....	1	10 ppm STEL	1	
Phenyl mercaptan.....	108-98-5	1	.....	1	0.5 ppm TWA	1	
Phenylphosphine.....	638-21-1	1	.....	1	0.05 ppm (C)	1	
Phorate (Thimet).....	298-02-2	1	.....	1	0.05 mg/m ³ TWA	1	X
		1	.....	1	0.2 mg/m ³ STEL	1	
Phosdrin (Mevinphos)...	7786-34-7	1	0.1 mg/m ³ TWA	1	0.1 mg/m ³ TWA	1	X
		1	.....	1	0.3 mg/m ³ STEL	1	
Phosgene (Carbonyl		1		1		1	
chloride).....	75-44-5	1	0.1 ppm TWA	1	0.1 ppm TWA	1	
Phosphine.....	7803-51-2	1	0.3 ppm TWA	1	0.3 ppm TWA	1	
		1	.....	1	1 ppm STEL	1	
Phosphoric acid.....	7664-38-2	1	1 mg/m ³ TWA	1	1 mg/m ³ TWA	1	
		1	.....	1	3 mg/m ³ STEL	1	
Phosphorus (yellow)....	7723-14-0	1	0.1 mg/m ³ TWA	1	0.1 mg/m ³ TWA	1	
Phosphorus oxychloride..	10025-87-3	1	1	0.1 ppm TWA	1	
Phosphorus		1		1		1	

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pentachloride.....	10026-13-8	1 mg/m ³ TWA	1 mg/m ³ TWA	
Phosphorus pentasulfide	1314-80-3	1 mg/m ³ TWA	1 mg/m ³ TWA	
.....		.....	3 mg/m ³ STEL	
Phosphorus trichloride.	7719-12-2	0.5 ppm TWA	0.2 ppm TWA	
.....		.....	0.5 ppm STEL	
Phthalic anhydride.....	85-44-9	2 ppm TWA	1 ppm TWA	
m-Phthalodinitrile.....	626-17-5	.....	5 mg/m ³ TWA	
Picloram.....	1918-02-1			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Picric acid.....	88-89-1	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
Pindone (2-Pivalyl-1, 3-indandione).....	83-26-1	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Piperazine dihydro- chloride	142-64-3	.....	5 mg/m ³ TWA	
Plaster of paris.....	26499-65-0			
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Platinum (as Pt).....	7440-06-4			
Metal.....		.....	1 mg/m ³ TWA	
Soluble Salts.....		0.002mg/m ³ TWA	0.002 mg/m ³ TWA	
Portland cement.....	65997-15-1			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Propane.....	74-98-6	1000 ppm TWA	1000 ppm TWA	
Propargyl alcohol.....	107-19-7	.....	1 ppm TWA	X
Propionic acid.....	79-09-4	.....	10 ppm TWA	
Propoxur.....	114-26-1	.....	0.5 mg/m ³ TWA	
beta-Propiolactone; see 1910.1013.....	57-57-8			
n-Propyl acetate.....	109-60-4	200 ppm TWA	200 ppm TWA	
.....		.....	250 ppm STEL	
n-Propyl alcohol.....	71-23-8	200 ppm TWA	200 ppm TWA	
.....		.....	250 ppm STEL	
n-Propyl nitrate.....	627-13-4	25 ppm TWA	25 ppm TWA	
.....		.....	40 ppm STEL	
Propylene dichloride...	78-87-5	75 ppm TWA	75 ppm TWA	
.....		.....	110 ppm STEL	
Propylene glycol dinitrate.....	6423-43-4	.....	0.05 ppm TWA	
Propylene glycol mono- methyl ether.....	107-98-2	.....	100 ppm TWA	
.....		.....	150 ppm STEL	
Propylene imine.....	75-55-8	2 ppm TWA	2 ppm TWA	X
Propylene oxide.....	75-56-9	100 ppm TWA	20 ppm TWA	
Propyne; see Methyl acetylene.....				
Pyrethrum.....	8003-34-7	5 mg/m ³ TWA	5 mg/m ³ TWA	
Pyridine.....	110-86-1	5 ppm TWA	5 ppm TWA	
Quinone.....	106-51-4	0.1 ppm TWA	0.1 ppm TWA	
RDX; see Cyclonite.....				
Resorcinol	108-46-3	.....	10 ppm TWA	
.....		.....	20 ppm STEL	
Rhodium (as Rh), metal fume and insoluble compounds.....	7440-16-6	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Rhodium (as Rh), soluble compounds....	7440-16-6	0.001mg/m ³ TWA	0.001 mg/m ³ TWA	
Ronnel.....	299-84-3	15 mg/m ³ TWA	10 mg/m ³ TWA	
Rotenone.....	83-79-4	5 mg/m ³ TWA	5 mg/m ³ TWA	
Rouge.....				
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Selenium compounds (as Se).....	7782-49-2	0.2 mg/m ³ TWA	0.2 mg/m ³ TWA	

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Selenium hexafluoride	1	1	1	1	
(as Se).....	7783-79-1	10.05 ppm TWA	0.05 ppm TWA		
Silica, amorphous,	1	1	1	1	
precipitated and gel.	112926-00-8	Table Z-3	6 mg/m ³ TWA		
Silica, amorphous,	1	1	1	1	
diatomaceous earth,	1	1	1	1	
containing less than	1	1	1	1	
1% crystalline silica	61790-53-2	Table Z-3	6 mg/m ³ TWA		
Silica, crystalline	1	1	1	1	
cristobalite,	1	1	1	1	
respirable dust.....	14464-46-1	Table Z-3	0.05 mg/m ³ TWA		
Silica, crystalline	1	1	1	1	
quartz, respirable	1	1	1	1	
dust.....	14808-60-7	Table Z-3	0.1 mg/m ³ TWA		
Silica, crystalline	1	1	1	1	
tripoli (as quartz),	1	1	1	1	
respirable dust.....	1317-95-9	Table Z-3	0.1 mg/m ³ TWA		
Silica, crystalline	1	1	1	1	
tridymite,	1	1	1	1	
respirable dust.....	15468-32-3	Table Z-3	0.05 mg/m ³ TWA		
Silica, fused,	1	1	1	1	
respirable dust.....	60676-86-0	Table Z-3	0.1 mg/m ³ TWA		
Silicates (less than 1%	1	1	1	1	
crystalline silica)	1	1	1	1	
Mica (respirable	1	1	1	1	
dust).....	12001-26-2	1	3 mg/m ³ TWA		
Soapstone, total dust	.....	Table Z-3	6 mg/m ³ TWA		
Soapstone, respirable	1	1	1	1	
dust.....	.....	Table Z-3	3 mg/m ³ TWA		
Talc (containing	1	1	1	1	
asbestos): use	1	1	1	1	
asbestos limit: see	1	1	1	1	
29 CFR 1910.1001.....	1	1	1	1	
Talc (containing no	1	1	1	1	
asbestos),	1	1	1	1	
respirable dust.....	14807-96-6	Table Z-3	2 mg/m ³ TWA		
Tremolite,	1	1	1	1	
asbestiform: see	1	1	1	1	
1910.1001.....	1	1	1	1	
Silicon.....	7440-21-3	1	1	1	
Total dust.....	1	15 mg/m ³ TWA	10 mg/m ³ TWA		
Respirable fraction..	1	5 mg/m ³ TWA	5 mg/m ³ TWA		
Silicon carbide.....	409-21-2	1	1	1	
Total dust.....	1	15 mg/m ³ TWA	10 mg/m ³ TWA		
Respirable fraction..	1	5 mg/m ³ TWA	5 mg/m ³ TWA		
Silicon tetrahydride...	7803-62-5	1	5 ppm TWA		
Silver, metal and	1	1	1	1	
soluble compounds	1	1	1	1	
(as Ag).....	7440-22-4	0.01 mg/m ³ TWA	0.01 mg/m ³ TWA		
Soapstone;	1	1	1	1	
see Silicates.....	1	1	1	1	
Sodium azide.....	26628-22-8	1	1	1	
(as HN ₃).....	1	1	0.1 ppm (C)		X
(as NaN ₃).....	1	1	0.3 mg/m ³ (C)		X
Sodium bisulfite.....	7631-90-5	1	5 mg/m ³ TWA		
Sodium fluoroacetate...	62-74-8	0.05 mg/m ³ TWA	0.05 mg/m ³ TWA		X
.....	1	1	0.15 mg/m ³ STEL		X
Sodium hydroxide.....	1310-73-2	2 mg/m ³ TWA	2 mg/m ³ (C)		
Starch.....	9005-25-8	1	1	1	
Total dust.....	1	15 mg/m ³ TWA	15 mg/m ³ TWA		
Respirable fraction..	1	5 mg/m ³ TWA	5 mg/m ³ TWA		
Stibine.....	7803-52-3	0.1 ppm TWA	0.1 ppm TWA		
Stoddard solvent.....	8052-41-3	500 ppm TWA	100 ppm TWA		
Strychnine.....	57-24-9	0.15 mg/m ³ TWA	0.15 mg/m ³ TWA		

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styrene.....	100-42-5	100 ppm TWA	50 ppm TWA	
.....		200 ppm (C)	100 ppm STEL	
Sucrose.....	57-50-1			
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Sulfur dioxide.....	7446-09-5	5 ppm TWA	5 ppm TWA	
.....			5 ppm STEL	
Sulfur hexafluoride....	2551-62-4	1000 ppm TWA	1000 ppm TWA	
Sulfuric acid.....	7664-93-9	1 mg/m ³ TWA	1 mg/m ³ TWA	
Sulfur monochloride....	10025-67-9	1 ppm TWA	1 ppm TWA	
Sulfur pentafluoride...	5714-22-7	0.025 ppm TWA	0.001 ppm (C)	
Sulfur tetrafluoride...	7783-60-0		0.1 ppm (C)	
Sulfonyl fluoride.....	2699-79-8	5 ppm TWA	5 ppm TWA	
.....			10 ppm STEL	
Sulprofos	35400-43-2		1 mg/m ³ TWA	
Systox; see Demeton...				
2,4,5-T (2,4,5-tri-				
chlorophenoxyacetic				
acid).....	93-76-5	10 mg/m ³ TWA	10 mg/m ³ TWA	
Talc; see Silicates...				
Tantalum, metal and				
oxide dust.....	7440-25-7	5 mg/m ³ TWA	5 mg/m ³ TWA	
TEDP (Sulfotep).....	3689-24-5	0.2 mg/m ³ TWA	0.2 mg/m ³ TWA	X
Tellurium and				
compounds (as Te)....	13494-80-9	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Tellurium hexafluoride				
(as Te).....	7783-80-4	0.02 ppm TWA	0.02 ppm TWA	
Temephos.....	3383-96-8			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
TEPP (Tetraethyl				
pyrophosphaaate)....	107-49-3	0.05 mg/m ³ TWA	0.05 ppm TWA	X
Terphenyls.....	26140-60-3	1 ppm (C)	0.5 ppm (C)	
1,1,1,2-Tetrachloro-				
2,2-difluoroethane...	76-11-9	500 ppm TWA	500 ppm TWA	
1,1,2,2-Tetrachloro-				
1,2-difluoroethane....	76-12-0	500 ppm TWA	500 ppm TWA	
1,1,2,2-Tetrachloro-				
ethane.....	79-34-5	5 ppm TWA	1 ppm TWA	X
Tetrachloroethylene;				
see Perchloroethylene				
Tetrachloromethane; see				
Carbon tetrachloride.				
Tetrachloronaphthalene.	1335-88-2	2 mg/m ³ TWA	2 mg/m ³ TWA	X
Tetraethyl lead (as Pb)	78-00-2	0.075mg/m ³ TWA	0.075 mg/m ³ TWA	X
Tetrahydrofuran.....	109-99-9	200 ppm TWA	200 ppm TWA	
.....			250 ppm STEL	
Tetramethyl lead,				
(as Pb).....	75-74-1	0.075mg/m ³ TWA	0.075 mg/m ³ TWA	X
Tetramethyl				
succinonitrile.....	3333-52-6	0.5 ppm TWA	0.5 ppm TWA	X
Tetranitromethane.....	509-14-8	1 ppm TWA	1 ppm TWA	
Tetrasodium				
Pyrophosphate.....	7722-88-5		5 mg/m ³ TWA	
Tetryl (2,4,6-Trinitro-				
phenylmethyl-				
nitramine).....	479-45-8	1.5 mg/m ³ TWA	1.5 mg/m ³ TWA	X
Thallium, soluble				
compounds (as Tl)....	7440-28-0	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
4,4'-Thiobis(6-tert-				
Butyl-m-cresol).....	96-69-5			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Thioglycolic acid.....	68-11-1		1 ppm TWA	X
Thionyl chloride.....	7719-09-7		1 ppm (C)	

PROPOSED RULES

Thiram.....	137-26-8	5 mg/m ³ TWA	5 mg/m ³ TWA	
Tin, inorganic compounds (except oxides) (as Sn).....	7440-31-5	.....	2 mg/m ³ TWA	
Tin, organic compounds (as Sn).....	7440-31-5	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
Tin oxide.....	7440-31-5	.....	2 mg/m ³ TWA	
Titanium dioxide.....	13463-67-7	.....	.....
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Toluene.....	108-88-3	Table Z-2	100 ppm TWA	
.....			150 ppm STEL	
Toluene-2,4-diisocyanate (TDI)....	584-84-9	0.02 ppm (C)	0.005 ppm TWA	
.....			0.02 ppm STEL	
m-Toluidine.....	108-44-1	.....	2 ppm TWA	X
o-Toluidine.....	95-53-4	5 ppm TWA	5 ppm TWA	X
p-Toluidine.....	106-49-0	.....	2 ppm TWA	X
Toxaphene; see Chlorinated camphene.				
Tremolite; see Silicates.....				
Tributyl phosphate.....	126-73-8	5 mg/m ³ TWA	2.5 mg/m ³ TWA	
Trichloroacetic acid.....	76-03-9	.....	1 ppm TWA	
1,1,1-Trichloroethane; see Methyl chloroform				
1,1,2-Trichloroethane.....	79-00-5	10 ppm TWA	10 ppm TWA	X
Trichloroethylene.....	79-01-6	100 ppm TWA	50 ppm TWA	
.....		200 ppm (C)	200 ppm STEL	
Trichloromethane; see Chloroform				
Trichloronaphthalene.....	1321-65-9	5 mg/m ³ TWA	5 mg/m ³ TWA	
1,2,3-Trichloropropane.....	96-18-4	50 ppm TWA	10 ppm TWA	
1,1,2-Trichloro-1,2,2-trifluoroethane.....	76-13-1	1000 ppm TWA	1000 ppm TWA	
.....		.....	1250 ppm STEL	
Triethylamine.....	121-44-8	25 ppm TWA	10 ppm TWA	
.....		.....	15 ppm STEL	
Trifluorobromomethane.....	75-63-8	1000 ppm TWA	1000 ppm TWA	
Trimellitic anhydride.....	552-30-7	.....	0.005 ppm TWA	
Trimethylamine.....	75-50-3	.....	10 ppm TWA	
.....		.....	15 ppm STEL	
Trimethyl benzene.....	25551-13-7	.....	25 ppm TWA	
Trimethyl phosphite.....	121-45-9	.....	2 ppm TWA	
2,4,6-Trinitrophenyl; see Picric acid.....				
2,4,6-Trinitrophenyl-methyl nitramine; see Tetryl.....				
2,4,6-Trinitrotoluene (TNT).....	118-96-7	1.5 mg/m ³ TWA	0.5 mg/m ³ TWA	X
Triorthocresyl phosphate.....	78-30-8	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	X
Triphenyl amine.....	603-34-9	.....	5 mg/m ³ TWA	
Triphenyl phosphate.....	115-86-6	3 mg/m ³ TWA	3 mg/m ³ TWA	
Tungsten Compounds (as W).....	7440-33-7	.....	5 mg/m ³ TWA	
(insoluble) .....		.....	5 mg/m ³ TWA	
.....		.....	10 mg/m ³ STEL	
(Soluble).....		.....	1 mg/m ³ TWA	
.....		.....	3 mg/m ³ STEL	
Turpentine.....	8006-64-2	100 ppm TWA	100 ppm TWA	
Uranium (as U).....	7440-61-1	.....	.....
Soluble compounds.....		0.05 mg/m ³ TWA	0.05 mg/m ³ TWA	

PROPOSED RULES

Insoluble compounds...		0.25mg/m ³ TWA	0.2 mg/m ³ TWA	
.....			0.6 mg/m ³ STEL	
n-Valeraldehyde.....	110-62-3	.....	50 ppm TWA	
Vanadium	1314-62-1			
Respirable dust				
(as V ₂ O ₅).....		0.5 ppm (C)	0.5 ppm (C)	
Fume (as V ₂ O ₅).....		0.1 ppm (C)	0.1 ppm (C)	
Vegetable oil mist.....				
Total dust.....		15 mg/m ³ TWA	15 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Vinyl acetate.....	108-05-4	.....	10 ppm TWA	
			20 ppm STEL	
Vinyl benzene;				
see Styrene.....				
Vinyl bromide.....	593-60-2	.....	5 ppm TWA	
Vinyl chloride;				
see 1910.1017.....	75-01-4			
Vinyl cyanide;				
see Acrylonitrile				
Vinyl cyclohexene				
dioxide.....	106-87-6	.....	10 ppm TWA	X
Vinylidene chloride				
(1,1-dichloroethylene)	75-35-4	.....	1 ppm TWA	
Vinyl toluene.....	25013-15-4	100 ppm TWA	100 ppm TWA	
VM&P Naptha.....	8032-32-4	.....	300 ppm TWA	
			400 ppm STEL	
Warfarin.....	81-81-2	0.1 mg/m ³ TWA	0.1 mg/m ³ TWA	
Welding fumes			5 mg/m ³ TWA	
(Total particulate)..				
Wood dust				
all soft and hard -				
woods except Western				
red cedar.....	NONE		5 mg/m ³ TWA	
			10 mg/m ³ STEL	
Wood dust, allergenic				
(Western Red Cedar)...	NONE		2.5 mg/m ³ TWA	
m-Xylene-alpha, alpha',				
diamine.....	1477-55-0	.....	0.1 mg/m ³ (C)	X
Xylenes				
(o-, m-, p-isomers)...	1330-20-7	100 ppm TWA	100 ppm TWA	
			150 ppm STEL	
Xylidine.....	1300-73-8	5 ppm TWA	2 ppm TWA	X
Yttrium.....	7440-65-5	1 mg/m ³ TWA	1 mg/m ³ TWA	
Zinc chloride fume.....	7646-85-7	1 mg/m ³ TWA	1 mg/m ³ TWA	
			2 mg/m ³ STEL	
Zinc chromate	varies with			
(as CrO ₃).....	compound	Table Z-2	0.1 mg/m ³ (C)	
Zinc oxide fume.....	1314-13-2	15 mg/m ³ TWA	5 mg/m ³ TWA	
			10 mg/m ³ STEL	
Zinc oxide.....	1314-13-2			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Zinc stearate.....	557-05-1			
Total dust.....		15 mg/m ³ TWA	10 mg/m ³ TWA	
Respirable fraction..		5 mg/m ³ TWA	5 mg/m ³ TWA	
Zirconium compounds				
(as Zr).....	7440-67-7	5 mg/m ³ TWA	5 mg/m ³ TWA	
			10 mg/m ³ STEL	

"RESPIRATORY EFFECTS

Chemical Name _____ CAS No. _____ PEL _____

PROPOSED RULES

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

PROPOSED RULES

Wood dust, allergenic _____ None _____ 2.5 mg/m³ TWA
 (Western Red Cedar)

AVOIDANCE OF CANCER

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

- (B) Incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1910.1200(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency."

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

(1) Subpart H -- Hazardous Materials:

- (A) Technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and effective on December 31, 1993.
- (B) Technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and effective on December 31, 1993.
- (C) Technical amendments to the existing Appendix B and addition of non-mandatory Appendix E to 1910.120, *Hazardous waste operations and emergency response* as published in 59 FR (August 22, 1994) pages 43270 - 43280 and effective on November 1, 1994.

(2) Subpart I -- Personal Protective Equipment:

- (A) Addition of paragraphs (d), (e) and (f) to 1910.132 - *General requirements*; revisions to 1910.133 - *Eye and face protection*, 1910.135 - *Head protection*, 1910.136 - *Foot protection*; and addition of 1910.138 - *Hand protection*, including non-mandatory Appendices A and B, published in 59 FR (April 6, 1994) pages 16360 - 16364 and effective on September 1, 1994; addition of paragraph (g) to 1910.132 - *General requirements*; technical and clarifying amendments to 1910.133 - *Eye and face protection*, 1910.136 - *Foot protection*, and 1910.138 - *Hand protection*, as published in 59 FR (July 1, 1994) pages 33910 - 33911 and effective on September 1, 1994.
- (B) Revisions to 1910.137, *Electrical Protective Equipment*, published in 59 FR (January 31, 1994) pages 4435 - 4437 and effective on November 1, 1994.

(3) Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit-Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and effective on September 24, 1993; a metric equivalent addition of "1.52 m" to 1910.146 (k) (3) (ii) and revisions to "Atmospheric monitoring" section of Appendix E as published in 59 FR (May 19, 1994) pages 26114 - 26116 and effective on September 1, 1994; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993).

(4) Subpart R - Special Industries:

- (A) Amendment to Authority Citation for Subpart R of 1910 as published in 59 FR (October 12, 1994) page 51741.
- (B) Amendments to 1910.266, *Logging operations*, including Appendices A, B, and C as published in 59 FR (October 12, 1994) pages 51741 - 51748 and effective on April 1, 1995.
- (C) Amendment to *Electrical Protective Equipment* at 1910.269(r)(5) that requires gasoline-engine power saw

operations to also meet the requirements of 1910.266(e) as published in 59 FR (October 12, 1994) page 51748 and effective on April 1, 1995.

- (5) Subpart S -- *Electrical* -- amendment to citation authority for Subpart S of 1910, and amendments to Notes 2 and 3 for 1910.133(c)(1) and the Note for 1910.133(c)(3), published in 59 FR (January 31, 1994) pages 4475 - 4576 and effective on November 1, 1994.
- (6) Subpart Z -- Toxic and Hazardous Substances:
 - (A) Revision of Authority Citation for Subpart Z of Part 1910 published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (B) Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and effective on September 24, 1993.
 - (C) Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants, published in 58 FR (July 27, 1993) page 40191 and effective on December 31, 1993.
 - (D) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and effective on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).
 - (E) Addition of 1910.1201 "Retention of DOT markings, placards, and labels," published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (F) Final rule revisions to 1910.19(a), Special provisions for air contaminants, and revisions to 1910.1001, Asbestos, with amendments to Appendices A, B, D, F, G, and H and the addition of Appendix J, as published in 59 FR (August 10, 1994) pages 41057 - 41080; effective on February 1, 1995 with corresponding delayed effective dates as follows: 1910.1001(o)(3)(i) is effective May 1, 1995; 1910.1001(o)(3)(ii) is effective May 31, 1995; 1910.1001(o)(3)(iii) is effective May 1, 1995; 1910.1001(o)(3)(iv) is effective October 31, 1995; 1910.1001(o)(3)(v) is effective July 31, 1995; 1910.1001(o)(3)(vi) is effective May 1, 1995; 1910.1001(o)(3)(vii) is effective May 31, 1995; and 1910.1001(o)(3)(viii) is effective July 31, 1995; typographical and technical corrections to 1910.1001 including corrections to Appendices B, F, G and J, published in 60 FR (June 29, 1995) pages 33984 - 33987.

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor, Division of Occupational Safety and Health intends to amend rule cited as 13 NCAC 7F .0201.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 3:00 pm on December 5, 1995 at the NC Department of Labor/OSH, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Reason for Proposed Action: To make a conforming amendment to Subpart E, Personal Protective & Life Saving Equipment.

Comment Procedures: Persons wishing to make an oral presentation at the public hearing should provide a written statement of the proposed testimony to the Division three business days prior to the hearing. Written comments will be accepted until December 15, 1995. Direct all correspondence and questions to Jill Cramer, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

.0201 CONSTRUCTION

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 as of August 2, 1993, are incorporated by reference except as follows:

- (1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."
- (2) Subpart D -- Occupational Health and Environmental Controls:
 - (A) Addition to 29 CFR 1926.54, Nonionizing radiation, after subpart (a) to read:

"(a1) This standard shall apply to all direct or reflected laser equipment except properly maintained unmodified Class I equipment. Class I equipment is defined as intrinsically safe lasers having less than 0.001 milliwatt power and lasers which cannot create eye damage if viewed accidentally or which present no direct ocular hazard, diffuse ocular hazard or fire hazards."
 - (B) Incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1926.59(b)(6)(ii) is amended to read:

"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"
- (3) Subpart E -- Personal Protective and Life Saving Equipment -- addition of (g) to 1926.104 Safety belts, lifelines, and lanyards, as follows:

"(g) Snaphooks shall be a locking type designed and used to prevent disengagement of the snaphook keeper by the connected member. Locking type snaphooks have self-closing, self-locking keepers which remain closed and locked until unlocked and pressed open for connection or disconnection."
- (4) ~~(3)~~ Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030, excluding subparagraph (e) HIV and HBV Research Laboratories and Production Facilities, into the Safety & Health Regulations for Construction at 29 CFR 1926.1130. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- Hepatitis B Vaccine Declination (Mandatory) -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of Occupational Exposure under subsection (b) Definitions:

"Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, or repair, including painting and decorating."

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

- (1) Incorporation of existing General Industry Standards (Part 1910) applicable to construction work into the Safety & Health Regulations for Construction (Part 1926). Final rule as published in 58 FR (June 30, 1993) pages 35076 - 35311 and effective on December 1, 1993; correction to Appendix D to §1926.1147 as published in 58 FR (July 28, 1993) page 40468 and effective on December 31, 1993. The General Industry Standards which are applicable to the Construction Standards are as follows:
 - Subpart C -- General Safety and Health Provisions,
 - 1926.33 Access to employee exposure and medical records.
 - 1926.34 Means of egress.
 - 1926.35 Employee emergency action plans.
 - Subpart D -- Occupational Health and Environmental Control,
 - 1926.64 Process safety management of highly hazardous chemicals.
 - 1926.65 Hazardous waste operations and emergency response.
 - 1926.66 Criteria for design and construction for spray booths.
 - Subpart E -- Personal Protective Equipment and Life Saving Equipment,
 - 1926.95 Criteria for personal protective equipment.
 - 1926.96 Occupational foot protection.
 - 1926.97 Protective clothing for fire brigades.
 - 1926.98 Respiratory protection for fire brigades.
 - Subpart F -- Fire Protection and Prevention,
 - Fixed Fire Suppression Equipment
 - 1926.156 Fire extinguishing systems, general.
 - 1926.157 Fire extinguishing systems, gaseous agent.

- Other Fire Protection Systems
 - 1926.158 Fire detection systems.
 - 1926.159 Employee alarm systems.
- Subpart I -- Tools - Hand and Power,
 - 1926.306 Air receivers.
 - 1926.307 Mechanical power-transmission apparatus.
- Subpart L -- Scaffolding,
 - 1926.453 Manually propelled mobile ladder stands and scaffolds (towers).
- Subpart Y -- Commercial Diving Operations,
 - General*
 - 1926.1071 Scope and application.
 - 1926.1072 Definitions.
 - Personnel Requirements*
 - 1926.1076 Qualifications of dive team.
 - General Operations Procedures*
 - 1926.1080 Safe practices manual.
 - 1926.1081 Pre-dive procedures.
 - 1926.1082 Procedures during dive.
 - 1926.1083 Post-dive procedures
 - Specific Operations Procedures*
 - 1926.1084 SCUBA diving
 - 1926.1085 Surface-supplied air diving
 - 1926.1086 Mixed-gas diving.
 - 1926.1087 Liveboating.
 - Equipment Procedures and Requirements*
 - 1926.1090 Equipment.
 - Recordkeeping*
 - 1926.1091 Recordkeeping requirements.
 - 1926.1092 Effective date.
- Appendix A to Subpart Y - *Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions.*
- Appendix B to Subpart Y - *Guidelines for Scientific Diving.*
- Subpart Z -- Toxic and Hazardous Substances
 - 1926.1100-1926.1101 [Reserved].
 - 1926.1102 Coal tar pitch volatiles; interpretation of term.
 - 1926.1103 4-Nitrobiphenyl.
 - 1926.1104 alpha-Naphthylamine.
 - 1926.1105 [Reserved].
 - 1926.1106 Methyl chloromethyl ether.
 - 1926.1107 3,3'-Dichlorobenzidine [and its salts].
 - 1926.1108 bis-Chloromethyl ether.
 - 1926.1109 beta-Naphthylamine.
 - 1926.1110 Benzidine.
 - 1926.1111 4-Aminodiphenyl.
 - 1926.1112 Ethyleneimine.
 - 1926.1113 beta-Propiolactone.
 - 1926.1114 2-Acetylaminofluorene.
 - 1926.1115 4-Dimethylaminoazobenzene.
 - 1926.1116 N-Nitrosodimethylamine.
 - 1926.1117 Vinyl chloride.
 - 1926.1118 Inorganic arsenic.
 - 1926.1128 Benzene.
 - 1926.1129 Coke emissions.
 - 1926.1144 1,2-dibromo-3-chloropropane.
 - 1926.1145 Acrylonitrile.
 - 1926.1147 Ethylene oxide.
 - 1926.1148 Formaldehyde.

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

- (2) Subpart D -- Occupational Health and Environmental Controls:
 - (A) Revision of Authority Citation for Subpart D of Part 1926 published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (B) Addition of 1926.61 "Retention of DOT markings, placards, and labels," published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (C) 29 CFR 1926.62, Lead in Construction. Interim final rule and appendices A through D as published in 58 FR (May 4, 1993) pages 26627-26649 and effective on October 4, 1993.
 - (D) Typographical and technical corrections at 1926.63, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21780 and 21787 and effective on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).
 - (E) Technical amendments to the existing Appendix B and addition of non-mandatory Appendix E to 1926.65, *Hazardous Waste Operations and Emergency Response* as published in 59 FR (August 22, 1994) pages 43270 - 43280 and effective on November 1, 1994.
- (3) Subpart E -- Personal Protective and Life Saving Equipment -- revision of Authority Citation for Subpart E of Part 1926 as published in 59 FR (August 9, 1994) page 40729 and effective on February 6, 1995.
- (4) Subpart H -- Materials Handling, Storage, Use and Disposal -- revision of Authority Citation for Subpart H of Part 1926, and revision of 1926.250(b)(2) as published in 59 FR (August 9, 1994) pages 40729 - 40730 and effective on February 6, 1995.
- (5) Subpart M -- Fall Protection -- revision of Authority Citation for Subpart M of Part 1926 and replacement of Subpart M with 1926.500, 1926.501, 1926.502, 1926.503 and non-mandatory Appendices A through E as published in 59 FR (August 9, 1994) pages 40730 - 40753 and effective on February 6, 1995, with the requirement for the use of locking snaphooks under 29 CFR 1926.500(b) [definition for *Snaphook*], 1926.502(d)(5), 1926.502(e)(7) and Appendix C, Part II(j)(1) having an effective date of July 1, 1995; amendments to 1926.500(a)(2)(iii), 1926.500(a)(3)(iv) and 1926.500(a)(4) that eliminate the application of Subpart M to steel erection activities as published in 60 FR (August 2, 1995) page 39255 and effective on October 1, 1995.
- (6) Subpart N -- Cranes, Derricks, Hoists, Elevators, and Conveyors -- revision of Authority Citation for Subpart N of Part 1926, and revision of 1926.550(c)(2) and 1926.550(g)(4)(i)(C) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (7) Subpart P -- Excavations -- revision of Authority Citation for Subpart P of Part 1926, revision of section heading of 1926.651, *Specific excavation requirements*, and revision of 1926.651(l) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (8) Subpart Q -- Concrete and Masonry -- revision of Authority Citation for Subpart Q of Part 1926, removal of 1926.701(f)(2) and removal of subparagraph designation (1) of 1926.701(f) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (9) Subpart R -- Steel Erection -- revision of Authority Citation for Subpart R of Part 1926 as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (10) Subpart V -- Power Transmission and Distribution -- revision of Authority Citation for Subpart V of Part 1926, and revision of 1926.951(b)(4)(i) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (11) Subpart Z -- Toxic and Hazardous Substances:
 - (A) Correction to 29 CFR 1926 by adding text and redesignation for *Cadmium* as published in 59 FR (January 3, 1994) page 215 and effective on April 15, 1994.
 - (B) Final rule redesignation of 1926.58 to 1926.1101, and revision of 1926.1101, Asbestos, including amendments to Appendix A, Appendix B, Appendix D, and Appendix F, removal of Appendix G, and amendments to Appendix H, Appendix I, and Appendix K, as published in 59 FR (August 10, 1994) pages 41131 - 41162; effective on February 1, 1995 with corresponding delayed effective dates as follows: 1926.1101(q)(3)(i) is effective July 31, 1995; 1926.1101(q)(3)(ii) is effective May 31, 1995; 1926.1101(q)(3)(iii) is effective May 31, 1995; 1926.1101(q)(3)(iv) is effective July 31, 1995; 1926.1101(q)(3)(v) is effective May 1, 1995; 1926.1101(q)(3)(vi) is effective May 1, 1995; and 1926.1101(q)(3)(vii) is effective July 31, 1995; typographical and technical corrections to 1926.1101 including corrections to Appendices B, F, H, and K, published in 60 FR (June 29, 1995) pages 33995 - 34002 and in 60 FR (July 13, 1995) page 36044.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at a cost of ten dollars and sixty cents (\$10.60) (inclusive of tax); each additional copy will be

the same price.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to adopt/amend rules in 13 NCAC 15 that govern elevators and amusement devices. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Proposed Effective Date: April 1, 1996.

A Public Hearing will be conducted at 2:00 pm on December 15, 1995 at the NC Department of Labor, 319 Chapanoke Road, Conference Room A, Raleigh, NC.

Reason for Proposed Action: To update the administrative rules regarding elevators and amusement devices.

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Dept of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 715-5629; Telephone (919) 733-0368 by December 15, 1995. You may present written or oral comments at the hearing; time limits may be imposed by the Chair.

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