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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant

IN THIS ISSUE

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The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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Publication Schedule For January 2000 - December 2000

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					non-substantial economic impact			substantial economic impact			
volume and issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	270th day from issue date
14:13	01/04/00	12/09/99	03/15/00	01/19/00	02/03/00	02/21/00	05/09/00	03/06/00	03/20/00	05/09/00	09/30/00
14:14	01/14/00	12/21/99	03/15/00	01/31/00	02/14/00	02/21/00	05/09/00	03/14/00	03/20/00	05/09/00	10/10/00
14:15	02/01/00	01/10/00	04/03/00	02/16/00	03/02/00	03/20/00	05/09/00	04/03/00	04/20/00	01/26/01	10/28/00
14:16	02/15/00	01/25/00	04/17/00	03/01/00	03/16/00	03/20/00	05/09/00	04/17/00	04/20/00	01/26/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/26/01	05/01/00	05/22/00	01/26/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/26/01	05/15/00	05/22/00	01/26/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/26/01	06/02/00	06/20/00	01/26/01	12/29/00
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15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/26/01	09/15/00	09/20/00	01/26/01	04/13/01
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15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/26/01	12/15/00	12/20/00	05/2002	07/13/01
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15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/2002	01/16/01	01/22/01	05/2002	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/2002	01/30/01	02/20/01	05/2002	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/2002	02/13/01	02/20/01	05/2002	09/11/01

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 2C .0302 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 proceed-ings;
(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.

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

NOTICE OF PUBLIC HEARING AND DRAFT GENERAL PERMIT

BY

THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

SUBJECT: A draft Stormwater NPDES General permit has been prepared by the Division of Water Quality for a State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges of Stormwater associated with the following activities:

NCG220000 - this general permit is applicable to the owners or operators of stormwater point source discharges associated with Wood Chip Mills [a part of standard industrial classification (SIC) 24] who were covered by NPDES General Stormwater Permit NCG040000 on August 30, 1997.

The following activities are specifically excluded from coverage under this Draft General Permit: those chip mills not previously permitted, expansion of existing chip mills as described above and discharges of non-stormwater, such as wet decking.

PURPOSE: On the basis of preliminary staff review and application of Article 21 of Chapter 143, General Statutes of North Carolina, and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue a State - NPDES General permit subject to specific conditions. The Director of the Division of Water Quality pursuant to NCGS 143-215. 1(c) (3) and Regulation 15 NCAC 2H, Section .0100 has determined that it is in the public interest that a meeting be held to receive all pertinent public comment on whether to issue the general permit as drafted, issue a modified version of the draft general permit, or to not issue a general permit.

HEARING PROCEDURE: The hearing will be conducted in the following manner:

1. Explanation of the NC Environmental Management Commission's General Permit Procedure and components of the draft general permit proposed for issuance – staff of the Division of Water Quality

2. Public Comment - Comments, statements, data and other information may be submitted in writing prior to or during the meeting or may be presented orally at the meeting. Persons desiring to speak will indicate this intent at the time of registration at the meeting. So that all persons desiring to speak may do so, lengthy statements may be limited at the discretion of the meeting officer. Oral presentations which exceed three minutes must be accompanied by three (3) written copies which will be filed with the meeting clerk at the time of registration.

4. Cross examination of persons presenting testimony will not be allowed; however, the hearing officer may ask questions for clarification.

5. The hearing record will be closed at the conclusion of the meeting.

6. Written comments regarding the draft permit may be submitted in writing to the Division of Water Quality at the address shown below. The deadline for comments to be submitted is August 22, 2000. All comments received by the Division whether in writing prior to the hearing or presented at the hearing, will be taken into consideration by the Director of the Division of Water Quality prior to making a final decision on the matter of permit issuance.

WHEN: August 22, 2000 at 7:00 pm

WHERE: Forsyth Technical Community College
West Campus (Old Bolton School) Auditorium
1300 Bolton St. (just off Silas Creek Parkway near Hanes Mall)
Winston-Salem, NC

INFORMATION: A copy of the draft general NPDES permit and a fact sheet are available by writing or calling:

Mr. William C. Mills, P.E.
NC Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Telephone number: (919) 733-5083, extension 548

All such comments and requests regarding this matter should make reference to draft general permit number NCG220000.

Date June 22, 2000

(*signed)* John William Reid
for K. Tommy Stevens, Director
Division of Water Quality

U.S. Department of Justice

Civil Rights Division

JDR:GS:NT:nj
DJ 166-012-3
2000-11264

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

May 22, 2000

Susan K. Nichols, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, NC 27602-0629

Dear Ms. Nichols:

This refers to the reduction in absentee voting period from 50 to 45 days for the May 2, 2000, primary in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 23, 2000.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 15 – ELEVATOR AND AMUSEMENT DEVICE DIVISION

Notice of Rule-making Proceedings *is hereby given by the North Carolina Department of Labor in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *13 NCAC 15 .0101-.0107, .0201-.0206, .0301-.0309, .0401-.0429, .0501-.0503, .0601-.0613 - Other rules may be proposed in the course of the rule-making process.*

Authority for the rulemaking: *G.S. 95-4; 95-106; 95-110.5; 95-111.4; 95-120*

Statement of the Subject Matter: *The Elevator and Amusement Device Bureau proposes to amend its rules relating to elevators, amusement devices, passenger tramways, inspection service fees and civil money penalties. Additional rules may be proposed in the course of this rulemaking.*

Reason for Proposed Action: *North Carolina's elevator, amusement device, passenger tramway, fee and civil money penalty rules are being amended in order to more accurately reflect current technology and bureau procedures and to help owners and operators to better understand compliance with bureau requirements and their responsibilities regarding safe installation, operation, maintenance, inspection, disassembly of covered devices.*

Comment Procedures: *The purpose of this announcement is to encourage all interested and potentially affected persons or parties to make known their views with regard to this proposed rulemaking. Written comments, data, or other information relevant to this proposal should be submitted to Ann B. Wall, Legal Specialist, Department of Labor, Legal Affairs Division, 4 W. Edenton St., Raleigh, NC 27601-1092. Fax transmittals may be directed to (919) 733-4235.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice of Rule-making Proceedings *is hereby given by the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *21 NCAC 50 - Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 87-18; 87-22*

Statement of the Subject Matter: *Requirements of continuing education as a condition of license renewal, including content and approval of courses, qualifications of lecturers, number of hours, maintenance of course roster, types of courses allowed, treatment of illness or retirement and fees.*

Reason for Proposed Action: *The Board desires to receive comment on the feasibility and effectiveness of mandatory continuing education as a mechanism to raise the level of skill and knowledge in business, design and installation practices in the industry, so as to rectify many common complaints from the public.*

Comment Procedures: *Comments may be provided to the Board on or before September 15, 2000, by mailing to the Board at 3801 Wake Forest Rd., Suite 201, Raleigh, NC 27609, addressed to John N. Fountain, Rule-making Coordinator.*

* * * * * * * * * * * * * * * * * * * *

CHAPTER 63 – CERTIFIED BOARD FOR SOCIAL WORK

Notice of Rule-making Proceedings *is hereby given by the NC Social Work Certification and Licensure Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *21 NCAC 63 .0504, .0506-.0507 - Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 90B-6(h)*

Statement of the Subject Matter: *Rules regarding ethical guidelines for social workers licensed and certified under G.S. 90B.*

Reason for Proposed Action: *To clarify existing rules and to address differences between existing rules and model ethical guidelines adopted by the state and national clinical societies.*

Comment Procedures: *Written comments may be submitted to Grady L. Balentine, Jr., NC Department of Justice, PO Box 629, Raleigh, NC 27602-0629.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars ($5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .6250, .6252-.6261, .6263-.6293 and amend rules cited as 10 NCAC 3R .0213, .0304-.0305, .1613, .1615, .1713-.1715, .1912-.1914, .2113, .2713, .2715. Notice of Rule-making Proceedings was published in the Register on January 14, 2000.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 10:00 a.m. on September 7, 2000 at the Division of Facility Services, Council Building, Room 201, 701 Barbour Dr., Raleigh, NC 27603.*

Reason for Proposed Action: *Permanent rules must be adopted to replace the temporary rules.*

Comment Procedures: *Any interested person may submit written comments on the proposed rules by mailing the comments to Jackie Sheppard, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.*

Fiscal Impact				
State	Local	Sub.	None	
			√	*10 NCAC 3R .0213, .0304-.0305, .1613, .1615, .1713-.1715, .1912-.1914, .2113, .2713 .2715, .4203, .6250, .6252-.6255, .6257-.6260, .6263-.6268, .6271, .6274, .6277, .6279, .6281-.6284, .6287-.6293*
√	√			*10 NCAC 3R .6256, .6261, .6269-.6270, .6272-.6273, .6275-.6276, .6278, .6280, .6285-.6286*

CHAPTER 3 – FACILITY SERVICES

SUBCHAPTER 3R – CERTIFICATE OF NEED REGULATIONS

SECTION .0200 – EXEMPTIONS

.0213 HEALTH MAINTENANCE ORGANIZATIONS

(a) Applications for an exemption under G.S. 131E-180 shall be reviewed pursuant to the review schedule in ~~10 NCAC 3R .3020~~ Section .6200 of this Subchapter that is applicable for the new institutional health service for which the inpatient health service facility is requesting the exemption.
(b) An applicant proposing to request an exemption under G.S. 131E-180 shall complete the certificate of need application form for the new institutional health service for which the exemption is requested and the supplemental form for a health maintenance organization exemption.
(c) Applications for an exemption shall be filed and reviewed in accordance with 10 NCAC 3R .0305-.0309.
(d) The Agency shall determine whether the applicant for the exemption is a qualified applicant and whether the application for exemption demonstrates that the proposed new institutional health service:

(1) is required to meet the needs of what the Agency determines to be a reasonably projected membership of the HMO; and
(2) is a cost-effective alternative to providing the service to the projected membership of the HMO.

(e) If the Agency decision is to not grant the exemption, the applicant shall not develop or offer the new institutional health service without first obtaining a certificate of need.
(f) If a decision is made that a certificate of need is required, the review for the certificate of need shall be conducted in the same review period as for the exemption. The Agency shall determine if the application conforms with the applicable review criteria of G.S. 131E-183(a) and G.S. 131E-183(b). The Agency shall determine which plans, standards and criteria are applicable to the review of the proposal. If the proposal is not consistent with all applicable criteria in G.S. 131E-183(a), the Agency may approve or conditionally approve the proposal for a certificate of need if it conforms with the criteria set forth in G.S. 131E-180(e)(i)-(ii) and G.S. 131E-183(a)(10).

Authority G.S. 131E-177; 131E-180.

SECTION .0300 – APPLICATION AND REVIEW PROCESS

.0304 DETERMINATION OF REVIEW

(a) After receipt of a letter of intent, the agency shall determine whether the proposed project requires a certificate of need.
(b) When any of the equipment listed in G.S. 131E-176(16)(f1) or G.S. 131E-176(16)(p) is acquired in parts or piecemeal fashion, the acquisition shall be determined to

require a certificate of need on the date that the components are assembled.

(c) If the agency determines that the project requires a certificate of need, the agency shall determine the appropriate review category or categories for the proposed project, the type or types of application forms to be submitted, the number of separate applications to be submitted, the applicable review period for each application, and the deadline date for submitting each application, as contained in this Subchapter.

(d) Copies of the application forms may be obtained from the agency.

(e) Proposals requiring review shall be reviewed according to the categories and schedule set forth in the duly adopted State Medical Facilities Plan in effect at the time the scheduled review period commences, as contained in Section ~~.3000~~ .6200 of this Subchapter.

(f) Applications are competitive if they, in whole or in part, are for the same or similar services and the agency determines that the approval of one or more of the applications may result in the denial of another application reviewed in the same review period.

Authority G.S. 131E-177.

.0305 FILING APPLICATIONS

(a) An application shall not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be received by the agency no later than 5:00 p.m. on the ~~last working day prior to 15 days before the first day of~~ 15th day of the month preceding the scheduled review period. In instances when the 15th of the month falls on a weekend or holiday, the filling deadline is 5:00 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

(1) With each application proposing the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars ($2,000).

(2) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing no capital expenditure or a capital expenditure of up to, but not including, one million dollars ($1,000,000), the proponent shall transmit a fee in the amount of three thousand five hundred dollars ($3,500).

(3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure of one million dollars ($1,000,000) or greater, the proponent shall transmit a fee in the amount of three thousand five hundred dollars ($3,500), plus an additional fee equal to .003 of the amount of the proposed capital expenditure in excess of one million dollars ($1,000,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars ($17,500).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:

(1) the requisite fee has not been received by the agency; or

(2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:00 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

(f) If an application is withdrawn by the applicant before the first day of the applicable review period, the application fee, if paid, shall be refunded to the applicant.

Authority G.S. 131E-177; 131E-182; S.L. 1993 c. 383.

SECTION .1600 – CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

.1613 DEFINITIONS

The following definitions shall apply to all rules in this Section:

(1) "Approved" means the equipment was not in operation prior to the beginning of the review period and had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with S.L. 1993, c. 7, s. 12.

(2) "Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means ~~1270~~ 1370 diagnostic-equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at ~~1.67~~ 1.75 diagnostic-equivalent procedures. One cardiac catheterization procedure performed on a patient age 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.

(3) "Cardiac angioplasty equipment" shall have the same meaning as defined in G.S. 131E-176(2e).

(4) "Cardiac catheterization equipment" shall have the same meaning as defined in G.S. 131E-176(2f).

(5) "Cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a single episode of diagnostic or therapeutic catheterization which occurs during

one visit to a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker insertion, or procedures performed in dedicated angiography or electrophysiology rooms.

(6) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the performance of cardiac catheterization procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.

(7) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 90 road miles.

(8) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.

(9) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic and therapeutic cardiac catheterization procedures, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.

(10) "Diagnostic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects or diseases in the coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.

(11) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.

(12) "Existing" means the equipment was in operation prior to the beginning of the review period.

(13) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1991) report.

(14) "Mobile equipment" means cardiac angioplasty equipment or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.

(15) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.

(16) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 45 road miles.

(17) "Therapeutic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of treating or resolving certain anatomical or physiological conditions which have been determined to exist in the heart or coronary arteries or veins of the heart, but not the pulmonary artery.

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

.1615 REQUIRED PERFORMANCE STANDARDS

(a) ~~The~~ An applicant shall demonstrate that the project is capable of meeting the following standards:

(1) each proposed item of cardiac catheterization equipment or cardiac angioplasty equipment, including mobile equipment, shall be utilized at an annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project;

(2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures,

during the third year of operation following completion of the project;

(3) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;

~~(3)~~(4) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;~~-~~

(b) An applicant proposing to acquire mobile cardiac catheterization or mobile cardiac angioplasty equipment shall:

~~(4)~~(1) demonstrate that each existing item of cardiac catheterization equipment and cardiac angioplasty ~~equipment in each facility which has a primary cardiac catheterization service area that overlaps~~ equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;

~~(5)~~(2) demonstrate that the utilization of each existing or approved item of cardiac catheterization equipment and cardiac angioplasty ~~equipment~~ equipment, excluding mobile equipment, located in ~~each facility which has a primary cardiac catheterization service area that overlaps~~ the proposed primary cardiac catheterization service area of each host facility shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed cardiac catheterization, cardiac angioplasty, or mobile equipment;

~~(6) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;~~

~~(7)~~(3) demonstrate that each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area of each host facility shall have been performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the 12 month period preceding the submittal of the application;

~~(8)~~(4) demonstrate that each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area of each host facility shall be performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation; and

(5) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(c) An applicant proposing to acquire cardiac catheterization or cardiac angioplasty equipment that is not mobile cardiac catheterization equipment shall:

(1) demonstrate that each of its existing items of cardiac catheterization and cardiac angioplasty equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated at a level of at least 80% of capacity during the twelve month period reflected in the most recent licensure renewal application form on file with the Division of Facility Services;

(2) demonstrate that each of its existing items of cardiac catheterization equipment or cardiac angioplasty equipment, except mobile equipment, shall be utilized at an annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project; and

(3) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

~~(b)~~(d) If the applicant proposes to perform cardiac catheterization procedures on patients age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:

(1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients age 14 and under;

(2) the proposed project shall be performing at an annual rate of at least 100 cardiac catheterization procedures on patients age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization procedures for patients age 14 and under.

~~(c) An applicant shall provide documentation of all assumptions and data used in the development of the projections required in this Rule.~~

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

SECTION .1700 – CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES

.1713 DEFINITIONS

The following definitions shall apply to all rules in this Section:

(1) "Capacity" of ~~an open heart surgery room~~ a heart-lung bypass machine means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to ~~the open heart surgery~~ an operating room for an open heart operation.

(2) "Cardiac Surgical Intensive Care Unit" means a distinct intensive care unit as defined in 10 NCAC 3R .1213(2) and which is for exclusive use by post-surgical open heart patients.

(3) "Heart-lung bypass machine" shall have the same meaning as defined in G.S. 131E-176(10a).
(4) "Open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, except that the open heart surgery service area of an academic medical center teaching hospital designated in 10 NCAC 3R .3050 shall not be limited to 90 road miles.
(5) "Open heart surgery services" shall have the same meaning as defined in G.S. 131E-176(18b).
(6) "Open heart surgical procedures" means highly specialized surgical procedures which:
(a) utilize a heart-lung bypass machine (the "pump") to perform extra-corporeal circulation and oxygenation during surgery;
(b) are designed to correct congenital and acquired cardiac and coronary disease; and
(c) are identified by Medicare Diagnostic Related Group ("DRG") numbers 104, 105, 106, 107, and 108.
~~(7) "Open heart surgery room" means an operating room primarily used to perform open heart surgical procedures, as reported on the most current hospital licensure application.~~
~~(8) "Open heart surgery program" means all of the open heart surgery rooms operated in one hospital.~~
~~(9)~~(7) "Primary open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, except that the primary open heart surgery service area of an academic medical center teaching hospital designated to 10 NCAC 3R .3050 shall not be limited to 45 road miles.

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

.1714 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to add an open heart surgery room or to acquire a heart-lung bypass machine shall use the acute care facility/medical equipment application form.
(b) The applicant shall also provide the following additional information:
(1) ~~the projected number of open heart surgical procedures to be completed in each open heart surgery room and~~ the projected number of open heart surgical procedures to be performed on each heart-lung bypass machine owned by or operated in the facility for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used to make these projections;
(2) the projected number of cardiac catheterization procedures to be completed in the facility for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;
(3) the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:
(A) the number of patients receiving stress tests;
(B) the number of patients receiving intravenous thrombolytic therapies;
(C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;
(D) the number of cardiac catheterization procedures performed, by type of procedure;
(E) the number of patients referred to other facilities for cardiac catheterization or open heart surgical procedures, by type of procedure;
(F) the number of patients referred to the applicant's facility for cardiac catheterization or open heart surgical procedures, by type of procedure;
(G) the number of open heart surgery procedures performed by type of procedure during the twelve month period reflected in the most recent licensure form on file with the Division of Facility Services;
(4) the number of patients from the proposed open heart surgery service area who are projected to receive open heart surgical procedures by patient's county of residence in each of the first 12 quarters of operation including the methodology and assumptions used to make the projections;
(5) the number of patients from the proposed primary open heart surgery service area who are projected to receive open heart surgical procedures by patient's county of residence in each of the first 12 quarters, including the methodology and assumptions used to make these projections;
(6) the projected patient referral sources;
(7) evidence of the applicant's capability to communicate efficiently with emergency transportation agencies and with all hospitals serving the proposed service area;
(8) the number and composition of open heart surgical teams available to the applicant;
(9) a brief description of the applicant's in-service training or continuing education programs for open heart surgical team members; and
(10) evidence of the applicant's capability to perform both cardiac catheterization and open heart surgical procedures 24 hours per day, 7 days per week.

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

.1715 REQUIRED PERFORMANCE STANDARDS

The applicant shall demonstrate that the proposed project is capable of meeting the following standards:
~~(1) each open heart surgery room shall be utilized at an annual rate of at least 50 percent of capacity, measured during the twelfth quarter following completion of the project;~~
~~(2)~~(1) the applicant shall perform at least 4 diagnostic catheterizations per open heart surgical procedure during each quarter;
~~(3)~~(2) ~~a~~ an applicant's existing and new or additional heart-lung bypass ~~machine~~ machines

shall be utilized at an annual rate of 200 open heart surgical procedures ~~per year~~ per machine, measured during the twelfth quarter following completion of the ~~project;~~ project, with the exception that this standard may be waived for a second machine exclusively used for backup and owned by any hospital that is proposing to develop new open heart surgery services and acquired its heart-lung bypass machines prior to March 18, 1993, but was unable to use such machines because it did not have a certificate of need authorizing it to provide open heart surgery services;

~~(4)~~(3) at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;

~~(5) each existing open heart surgery program in each facility which has a primary open heart surgery service area that overlaps the proposed primary open heart surgery service area operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;~~

~~(6) the utilization of existing open heart surgery programs whose primary open heart surgery service area overlaps the proposed primary open heart surgery service area is not expected to fall below 50 percent of capacity due to the institution of the new or expanded open heart surgery program;~~

~~(7)~~(4) the applicant's projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at an annual rate of at least 150 open heart surgical procedures by the end of the third year following completion of the project;

~~(8)~~(5) the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and

~~(9)~~(6) heart-lung bypass machines that have been acquired for non-surgical use, or for non-heart surgical procedure use, and that are dedicated for services that are not related to the open heart surgery ~~program~~ services, shall not be utilized in the performance of open heart surgical procedures.

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

SECTION .1900 – CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

.1912 DEFINITIONS

These definitions shall apply to all rules in this Section:

(1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period but which had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with S.L. 1993 c. 7, s. 12.

(2) "Complex Radiation treatment" is equal to ~~2~~ 1.25 ESTVs and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.

(3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to fifteen (15) minutes for the uncomplicated set-up and treatment of a patient on a modern megavoltage teletherapy unit including the time necessary for portal filming.

(4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.

(5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to ~~2~~ 1.10 ESTVs.

(6) "Linear accelerator" means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.

(7) "Linear accelerator service area" means a ~~geographical area, defined by the applicant, in which a linear accelerator provides services and in which no less than 120,000 persons reside~~. single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.

(8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.

(9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.

(10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.

(11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.

(12) "Radiation therapy services" means those services which involve the delivery of precisely controlled and monitored doses of radiation to a well defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.

(13) "Radiation therapy service area" means ~~the geographic area in which radiation therapy services are proposed to be provided by the applicant~~ a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.

(14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.

(15) "Simulator" means a machine that precisely reproduces the geometric relationships of the MRT equipment to the patient.

(16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
- (a) total body irradiation (photons or electrons) which equals 4.0 ESTVs;
- (b) hemi-body irradiation which equals 2.0 ESTVs;
- (c) intraoperative radiation therapy which equals 10.0 ESTVs;
- (d) particle radiation therapy which equals 2.0 ESTVs;
- (e) dynamic conformational radiation therapy with moving gantry, collimators or couch which equals 1.5 ESTVs;
- (f) limb salvage irradiation at lengthened SSD which equals ~~2.0~~ 1.0 ESTV;
- (g) additional field check radiographs which equals ~~.05~~ .50 ESTV; and
- (h) stereotactic radiosurgery treatment management which equals ~~6.0~~ 3.0 ESTVs.

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

.1913 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire radiation therapy equipment shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire radiation therapy equipment shall also provide the following additional information:

~~(1) a description of the boundaries of the proposed radiation therapy service area or the proposed linear accelerator service area if the applicant proposes to acquire a linear accelerator;~~

~~(2)~~ a list ~~of the existing radiation therapy equipment in the proposed radiation therapy service area or linear accelerator service area;~~

~~(3)~~(1) a list of all the radiation therapy equipment to be acquired and documentation of the capabilities and capacities of each item of equipment;

~~(4)~~(2) documentation of the purchase price and fair market value of each piece of radiation therapy equipment, each simulator, and any other related equipment proposed to be acquired;

~~(5)~~(3) the projected number of patient treatments by county and by simple, intermediate and complex treatments to be performed on each piece of radiation therapy equipment for each of the first eight calendar quarters following the completion of the proposed project and documentation of all assumptions by which utilization is projected;

~~(6)~~(4) documentation that the proposed radiation therapy equipment shall be operational at least seven hours per day, five days a week;

~~(7)~~(5) documentation that no more than one simulator is available for every two linear accelerators in the applicant's facility, except that an applicant that has only one linear accelerator may have one simulator;

~~(8)~~(6) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies; and

~~(9)~~(7) the projected number of patients that will be treated for cure and the number of patients that will be treated for palliation on each linear accelerator on an annual basis.

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

.1914 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:
- (1) ~~each~~ an applicant's existing linear accelerator ~~in the proposed service area~~ served at least 250 patients or provided 6,500 ESTV treatments in the twelve months prior to the date the application was submitted;
- (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or 6,500 ESTV treatments during the third year of operation of the new equipment; and
- (3) ~~each~~ an applicant's existing ~~and approved~~ linear accelerator shall be projected to be utilized at an annual rate of 250 patients or 6,500 ESTV treatments during the third year of operation of the new equipment.

(b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:
- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
- (2) the maximum number and type of procedures that the proposed equipment is capable of performing.

(d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

Authority G.S. 131E-177(1).

SECTION .2100 – CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES

.2113 DEFINITIONS

The following definitions shall apply to all rules in this Section:
- (1) "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an ambulatory surgical operating room during a single operative encounter.
- (2) "Ambulatory surgical service area" means a single or multi-county area as used in the development of ~~10 NCAC 3R .3030~~ the ambulatory surgical facility

need determination in the applicable State Medical Facilities Plan.

(3) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E-5(A).

(4) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1a).

(5) "Ambulatory surgical operating room" means a dedicated or shared operating room in a licensed ambulatory surgical facility, or a general acute care hospital licensed under G.S. 131E-5(A), that is fully equipped to perform surgical procedures and is constructed to meet the specifications and standards, including fire and life safety code requirements, appropriate to the type of facility as utilized by the Construction Section of the Division of Facility Services. Ambulatory surgical operating rooms exclude operating rooms dedicated for the performance of inpatient surgical procedures, cast rooms, procedures rooms that do not meet operating room specifications, suture rooms, YAG laser rooms, and cystoscopy and endoscopy procedure rooms that do not meet the specifications of an operating room.

(6) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1b).

(7) "Ambulatory surgical procedure" means a surgical procedure performed in a surgical operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours. Ambulatory surgical procedures exclude those procedures which are generally performed more than 50 percent of the time in a physician's office.

(8) "Existing ambulatory surgical operating rooms" means those ambulatory surgical operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.

(9) "Approved ambulatory surgical operating rooms" means those ambulatory surgical operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified. The term also means those operating rooms which the Certificate of Need Section determined were not subject to certificate of need review and which were under construction prior to the date the applicant's proposal was submitted to the Agency.

(10) "Dedicated ambulatory surgical operating room" means an ambulatory surgical operating room used solely for the performance of ambulatory surgical procedures.

(11) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).

(12) "Shared surgical operating room" means an ambulatory surgical operating room that is used for the performance of both ambulatory and inpatient surgical procedures.

(13) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.

(14) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).

(15) "Practical utilization" is 4.3 surgical cases per day for a dedicated ambulatory surgical operating room and 3.5 surgical cases per day for a shared surgical operating room.

Authority G.S. 131E-177; 131E-183(b).

SECTION .2700 – CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER

.2713 DEFINITIONS

The following definitions shall apply to all rules in this Section:

(1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with S.L. 1993, c. 7, s. 12.

(2) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.

(3) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.

(4) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).

(5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved to provide services at two or more host facilities.

(6) "MRI procedure" means a single discrete MRI study of one patient.

(7) "MRI service area" means ~~the geographic area defined by the applicant~~ the Magnetic Resonance Imaging Planning Areas, as defined in 10 NCAC 3R .6253(f).

(8) "MRI study" means one or more scans relative to a single diagnosis or symptom.

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

.2715 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner, ~~including a mobile MRI scanner,~~ shall:

(1) demonstrate that all existing MRI scanners, ~~except mobile MRI scanners,~~ except those moved to provide services at more than one site, operating in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located performed at least ~~2,032~~ 2900 MRI procedures in the last year;

(2) project annual utilization in the third year of operation of at least ~~2,032~~ 2900 MRI procedures per year, for each ~~proposed~~ MRI scanner or mobile MRI scanner to be operated by the applicant in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located.

(3) demonstrate that all of the existing MRI scanners, except mobile, operating in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located, shall be performing at least ~~2,032~~ 2900 MRI procedures per year in the applicant's third year of operation;

(4) demonstrate that all of the approved MRI scanners, except mobile, in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located, shall be performing at least ~~2,032~~ 2900 MRI procedures per year in the applicant's third year of operation;

(5) demonstrate that all existing mobile MRI scanners operating in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the ~~proposed~~ MRI service ~~area~~ area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the ~~proposed~~ MRI service ~~area~~ area(s) in the applicant's third year of operation;

(6) demonstrate that all approved mobile MRI scanners to be operating in the ~~proposed~~ MRI service ~~area~~ area(s) in which the proposed MRI scanner will be located, shall be performing at least an average of eight procedures per day per site in the ~~proposed~~ MRI service ~~area~~ area(s) in the applicant's third year of operation; and

(7) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner that is not a mobile MRI scanner shall:

(1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year, with the exception that applicants proposing to acquire an MRI scanner to replace MRI services provided pursuant to a service agreement with a mobile provider shall demonstrate that 2080 MRI procedures were performed at the applicant's facility in the last year;

(2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and

(3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

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

SECTION .4200 – CRITERIA AND STANDARDS FOR HOSPICES, HOSPICE INPATIENT FACILITIES, AND HOSPICE RESIDENTIAL CARE FACILITIES

.4203 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

(1) the average occupancy rate of the licensed beds in the facility is projected to be at least 50% for the last six months of the first operating year following completion of the project;

(2) the average occupancy rate for the licensed beds in the facility is projected to be at least 65% for the second operating year following completion of the project; and

(3) if the application is submitted to address the need for a hospice residential care facility or hospice inpatient facility for a contiguous grouping of counties, each existing facility which is located in the hospice service area and which has licensed beds of the type proposed by the applicant attained an occupancy rate of at least 65% for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential care facility shall document that the average occupancy of the licensed hospice inpatient and hospice residential care facility beds in its existing facility was at least 65% for the nine months immediately preceding the submittal of the proposal.

(c) An applicant proposing to develop a hospice shall demonstrate that no less than 80% of the total number of days of hospice care furnished to Medicaid and Medicare patients will be provided in the patient's residence in accordance with 42 CFR 418.302(f)(2).

Authority G.S. 131E-177(1).

SECTION .6200 – PLANNING POLICIES AND NEED DETERMINATIONS FOR 2000

.6250 APPLICABILITY OF RULES RELATED TO THE 2000 STATE MEDICAL FACILITIES PLAN

Rules .6250 through .6254 and .6256 through .6293 of this Section apply to certificate of need applications for which

the scheduled review period begins during calendar year 2000. In addition, Rule .6255 of this Section shall be used to implement procedures described within it during calendar year 2000.

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

.6251 (RESERVED FOR FUTURE CODIFICATION)

.6252 CERTIFICATE OF NEED REVIEW SCHEDULE

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

(1) Acute Care Beds (in accordance with the need determination in 10 NCAC 3R .6256):

Hospital Service System	CON Beginning Review Date
Onslow County	March 1, 2000

(2) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 3R .6261):

Hospital Service System	CON Beginning Review Date
Cabarrus County	October 1, 2000

(3) Radiation Oncology Treatment Centers (in accordance with the need determination in 10 NCAC 3R .6269):

Radiation Oncology Treatment Center Service Area	CON Beginning Review Date
13 (Durham, Caswell, Granville, Person, Vance, Warren)	October 1, 2000

(4) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 3R .6270):

Magnetic Resonance Imaging Planning Area	CON Beginning Review Date
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	April 1, 2000
9 (Cabarrus, Montgomery, Rowan, Stanly)	October 1, 2000
12 (Alamance)	April 1, 2000
13 (Caswell, Durham, Granville, Person, Vance, Warren)	April 1, 2000
15 (Davidson, Guilford, Randolph, Rockingham)	October 1, 2000
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	April 1, 2000

(5) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 3R .6271):

Magnetic Resonance Imaging Planning Area	CON Beginning Review Date
13 (Caswell, Durham, Granville, Person, Vance, Warren)	October 1, 2000

(6) Nursing Care Beds (in accordance with the need determinations in 10 NCAC 3R .6272 and .6273):

County	CON Beginning Review Date
Caswell	October 1, 2000

Rockingham	April 1, 2000
Perquimans	September 1, 2000
Statewide Demonstration Project	June 1, 2000

(7) Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 3R .6274):

County	CON Beginning Review Date
Pamlico	April 1, 2000

(8) Dialysis Stations Adjusted Need Determination (in accordance with the need determination in 10 NCAC 3R .6276):

County	CON Beginning Review Date
McDowell	March 1, 2000

(9) Chemical Dependency (SubstanceAbuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 3R .6280):

Mental Health Planning Area	CON Beginning Review Date
1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)	June 1, 2000
4 (Henderson, Transylvania)	June 1, 2000
5 (Alexander, Burke, Caldwell, McDowell)	June 1, 2000
6 (Rutherford, Polk)	June 1, 2000
7 (Cleveland)	June 1, 2000
11 (Rowan, Stanly, Cabarrus, Union)	June 1, 2000
12 (Surry, Yadkin, Iredell)	June 1, 2000
14 (Rockingham)	June 1, 2000
16 (Alamance, Caswell)	June 1, 2000
17 (Orange, Person, Chatham)	June 1, 2000
19 (Vance, Granville, Franklin, Warren)	June 1, 2000
20 (Davidson)	March 1, 2000
22 (Bladen, Columbus, Robeson, Scotland)	March 1, 2000
25 (Johnston)	March 1, 2000
26 (Wake)	March 1, 2000
30 (Wayne)	June 1, 2000
31 (Wilson, Greene)	June 1, 2000
32 (Edgecombe, Nash)	June 1, 2000
33 (Halifax)	June 1, 2000
34 (Carteret, Craven, Jones, Pamlico)	June 1, 2000
35 (Lenoir)	June 1, 2000
37 (Bertie, Gates, Hertford, Northampton)	June 1, 2000
38 (Beaufort, Hyde, Martin, Tyrrell, Washington)	June 1, 2000

39 (Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)	June 1, 2000
40 (Duplin, Sampson)	June 1, 2000

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

(a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.

(b) Category B. Proposals for nursing care beds; new continuing care retirement communities applying for exemption under 10 NCAC 3R .6286; and relocations of nursing care beds under 10 NCAC 3R .6288.

(c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities, with the exception of proposals in Category G.

(d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county, with the exception of proposals in Category G.

(e) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.

(f) Category F. Proposals for new home health agencies or offices, new hospices, new hospice inpatient facility beds, and new hospice residential care facility beds.

(g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 3R .6285; new dialysis stations as the result of an "adjusted need determination" in McDowell County; and Adult Detox-Only beds in the South Central Mental Health Region.

(h) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac catheterization equipment, cardiac angioplasty equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).

(i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 3R .6286 for exemption from need determinations in 10 NCAC 3R .6272; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 3R .6282(c) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through H and Category J.

(j) Category J. Proposals for demonstration projects; and conversions of acute care hospitals to long-term acute care hospitals.

(11) A service, facility, or equipment for which a need determination is identified in Items (1) through (9) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year, even though the following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (9) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 3R .6275.

CON Beginning Review Date	Review Categories for HSA I, II, III	Review Categories for HSA IV, V, VI

January 1, 2000	--	--
February 1, 2000	--	--
March 1, 2000	A, E, G, I	A, B, E, G, I
April 1, 2000	B, F, H, I	F, H, I
May 1, 2000	--	--
June 1, 2000	A, C, D, I, J	C, D, I, J
July 1, 2000	--	A, I
August 1, 2000	E, I	--
September 1, 2000	--	B, E, I
October 1, 2000	A, B, F, H, I	F, H, I
November 1, 2000	--	--
December 1, 2000	C, D, I	A, C, D, I

(12) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the month preceding the "CON Beginning Review Date." In instances when the 15th day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

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

.6253 MULTI-COUNTY GROUPINGS

(a) Health Service Areas. The Department of Health and Human Services (DHHS) has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

HEALTH SERVICE AREAS (HSA)

I	II	III	IV	V	VI
County	County	County	County	County	County
Alexander	Alamance	Cabarrus	Chatham	Anson	Beaufort
Alleghany	Caswell	Gaston	Durham	Bladen	Bertie
Ashe	Davidson	Iredell	Franklin	Brunswick	Camden
Avery	Davie	Lincoln	Granville	Columbus	Carteret
Buncombe	Forsyth	Mecklenburg	Johnston	Cumberland	Chowan
Burke	Guilford	Rowan	Lee	Harnett	Craven
Caldwell	Randolph	Stanly	Orange	Hoke	Currituck
Catawba	Rockingham	Union	Person	Montgomery	Dare
Cherokee	Stokes		Vance	Moore	Duplin
Clay	Surry		Wake	New Hanover	Edgecombe
Cleveland	Yadkin		Warren	Pender	Gates
Graham				Richmond	Greene
Haywood				Robeson	Halifax
Henderson				Sampson	Hertford
Jackson				Scotland	Hyde
McDowell					Jones
Macon					Lenoir
Madison					Martin
Mitchell					Nash

Polk	Northampton
Rutherford	Onslow
Swain	Pamlico
Transylvania	Pasquotank
Watauga	Perquimans
Wilkes	Pitt
Yancey	Tyrrell
	Washington
	Wayne
	Wilson

(b) Mental Health Planning Areas. The DHHS has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING AREAS

Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2	Buncombe, Madison, Mitchell, Yancey
3	Alleghany, Ashe, Avery, Watauga, Wilkes
4	Henderson, Transylvania
5	Alexander, Burke, Caldwell, McDowell
6	Rutherford, Polk
7	Cleveland
8	Gaston, Lincoln
9	Catawba
10	Mecklenburg
11	Cabarrus, Rowan, Stanly, Union
12	Surry, Yadkin, Iredell
13	Forsyth, Stokes, Davie
14	Rockingham
15	Guilford
16	Alamance, Caswell
17	Orange, Person, Chatham
18	Durham
19	Vance, Granville, Franklin, Warren
20	Davidson
21	Anson, Hoke, Montgomery, Moore, Richmond
22	Bladen, Columbus, Robeson, Scotland
23	Cumberland
24	Lee, Harnett
25	Johnston
26	Wake

27	Randolph
28	Brunswick, New Hanover, Pender
29	Onslow
30	Wayne
31	Wilson, Greene
32	Edgecombe, Nash
33	Halifax
34	Carteret. Craven. Jones, Pamlico
35	Lenoir
36	Pitt
37	Bertie, Gates, Hertford, Northampton
38	Beaufort, Hyde, Martin, Tyrrell, Washington
39	Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
40	Duplin, Sampson

(c) Mental Health Planning Regions. The DHHS has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)
Western (W)
1 Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
2 Buncombe, Madison, Mitchell, Yancey
3 Alleghany, Ashe, Avery, Watauga, Wilkes
4 Henderson, Transylvania
5 Alexander, Burke, Caldwell, McDowell
6 Rutherford, Polk
7 Cleveland
8 Gaston, Lincoln
9 Catawba
10 Mecklenburg
11 Cabarrus, Rowan, Stanly, Union
North Central (NC)
12 Surry, Yadkin, Iredell
13 Forsyth, Stokes, Davie
14 Rockingham
15 Guilford
16 Alamance, Caswell
17 Orange, Person, Chatham
18 Durham
19 Vance, Granville, Franklin, Warren
South Central (SC)

20 Davidson
21 Anson, Hoke, Montgomery, Moore, Richmond
22 Bladen, Columbus, Robeson, Scotland
23 Cumberland
24 Lee, Harnett
25 Johnston
26 Wake
27 Randolph
Eastern (E)
28 Brunswick, New Hanover, Pender
29 Onslow
30 Wayne
31 Wilson, Greene
32 Edgecombe, Nash
33 Halifax
34 Carteret, Craven, Jones, Pamlico
35 Lenoir
36 Pitt
37 Bertie, Gates, Hertford, Northampton
38 Beaufort, Hyde, Martin, Tyrrell, Washington
39 Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
40 Duplin, Sampson

(d) Radiation Oncology Treatment Center Planning Areas. The DHHS has assigned the counties of the state to the following Radiation Oncology Treatment Center Planning Areas for purposes of the State Medical Facilities Plan:

RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS	
Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Buncombe, Haywood, Madison, McDowell, Mitchell, Yancey
3	Ashe, Avery, Watauga
4	Henderson, Polk, Transylvania
5	Alexander, Burke, Caldwell, Catawba
6	Rutherford, Cleveland, Gaston, Lincoln
7	Mecklenburg, Anson, Union
8	Iredell, Rowan
9	Cabarrus, Stanly
10	Alleghany, Forsyth, Davidson, Davie, Stokes, Surry, Wilkes, Yadkin
11	Guilford, Randolph, Rockingham
12	Alamance, Chatham, Orange
13	Durham, Caswell, Granville, Person, Vance, Warren
14	Moore, Hoke, Lee, Montgomery, Richmond, Scotland

15	Cumberland, Bladen, Sampson, Robeson
16	New Hanover, Brunswick, Columbus, Pender
17	Wake, Franklin, Harnett, Johnston
18	Lenoir, Duplin, Wayne
19	Craven, Carteret, Onslow, Jones, Pamlico
20	Nash, Halifax, Wilson, Northampton, Edgecombe
21	Pitt, Beaufort, Bertie, Greene, Hertford, Hyde, Martin, Washington
22	Pasquotank, Camden, Chowan, Currituck, Dare, Gates, Perquimans, Tyrrell

(e) Ambulatory Surgical Facility Planning Areas. The DHHS has assigned the counties of the state to the following Ambulatory Surgical Facility Planning Areas for purposes of the State Medical Facilities Plan:

AMBULATORY SURGICAL FACILITY PLANNING AREAS

Area	Constituent Counties
1	Alamance
2	Alexander, Iredell
3	Alleghany, Surry, Wilkes
4	Anson, Gaston, Mecklenburg, Union
5	Ashe, Avery, Watauga
6	Beaufort, Hyde
7	Bertie, Gates, Hertford
8	Bladen, Cumberland, Robeson, Sampson
9	Brunswick, Columbus, Duplin, New Hanover, Pender
10	Buncombe, Haywood, Madison, Mitchell, Yancey
11	Burke, McDowell, Rutherford
12	Cabarrus, Rowan, Stanly
13	Caldwell, Catawba, Lincoln
14	Camden, Currituck, Dare, Pasquotank, Perquimans
15	Carteret, Craven, Jones, Onslow, Pamlico
16	Caswell, Chatham, Orange
17	Cherokee, Clay, Graham, Jackson, Macon, Swain
18	Chowan, Tyrrell, Washington
19	Cleveland
20	Davidson, Davie, Forsyth, Stokes, Yadkin
21	Durham, Granville, Person
22	Edgecombe, Halifax, Nash, Northampton
23	Franklin, Harnett, Johnston, Wake
24	Greene, Lenoir, Martin, Pitt
25	Guilford, Randolph, Rockingham
26	Henderson, Polk, Transylvania
27	Hoke, Lee, Montgomery, Moore, Richmond, Scotland
28	Vance, Warren
29	Wayne

30	Wilson

(f) Magnetic Resonance Imaging (MRI) Planning Areas. The DHHS has assigned the counties of the state to the following Magnetic Resonance Imaging Planning Areas for purposes of the State Medical Facilities Plan:

MAGNETIC RESONANCE IMAGING PLANNING AREAS	
Area Number	Constituent Counties
1	Cherokee, Clay, Graham, Jackson, Macon, Swain
2	Haywood
3	Buncombe, Madison, McDowell, Mitchell, Yancey
4	Ashe, Avery, Watauga
5	Alexander, Burke, Caldwell, Catawba, Lincoln
6	Cleveland, Rutherford
7	Henderson, Polk, Transylvania
8	Gaston
9	Cabarrus, Montgomery, Rowan, Stanly
10	Iredell
11	Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin
12	Alamance
13	Durham, Caswell, Granville, Person, Vance, Warren
14	Chatham, Orange
15	Davidson, Guilford, Randolph, Rockingham
16	Richmond, Scotland
17	Anson, Mecklenburg, Union
18	Cumberland, Hoke, Moore, Robeson, Sampson
19	Franklin, Harnett, Johnston, Lee, Wake
20	Lenoir, Wayne, Wilson
21	Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender
22	Carteret, Craven, Jones, Onslow, Pamlico
23	Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington
24	Edgecombe, Halifax, Nash, Northampton
25	Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans, Tyrrell

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

.6254 SERVICE AREAS AND PLANNING AREAS

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed planning areas are the hospital service systems which are defined as follows:

(1) a group of hospitals located in the same city, or within ten miles of each other, or in the same county if one or more hospitals in the county are under common ownership; or,

(2) a single hospital that is not included in one of the groups of hospitals described in subparagraph (1) of this Rule.

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10 NCAC 3R .6253(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 3R .6253(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center

and linear accelarator planning areas are the multi-county groupings as defined in 10 NCAC 3R .6253(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are the multi-county groupings as defined in 10 NCAC 3R .6253(f).

(f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.

(g) A home health agency office's service area is the home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate home health agency office planning area.

(h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.

(i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.

(j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 3R .6253(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 3R .6253(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 3R .6253(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 3R .6253(b).

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

.6255 REALLOCATIONS AND ADJUSTMENTS

(a) REALLOCATIONS.

(1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 indicate that need exists after the inventories are revised and the need determinations are recalculated.

(2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.

(3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.

(4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny the application has been appealed shall not be reallocated until the appeal is resolved.

(A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a)(3) of this Rule.

(B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.

(5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed;

(B) the date on which an appeal of the withdrawal is finally resolved against the holder; or

(C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

(6) Need Determinations for which No Applications are Received

(A) Services or Beds with Scheduled Review in the Calendar Year on or Before September 1: The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.

(B) Services or Beds with Scheduled Review in the Calendar Year After September 1: Except for dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of new applications.

(7) Need Determinations not Awarded because Application Disapproved.

(A) Disapproval in the Calendar Year prior to August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.

(B) Disapproval in the Calendar Year on or After August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.

(8) Reallocation of Decertified ICF/MR Beds. If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following Sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.

(A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.

(B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.

(C) The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.

(b) CHANGES IN NEED DETERMINATIONS.

(1) The need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 shall be revised continuously throughout the calendar year to reflect all changes in the inventories of:

(A) the health services listed at G.S. 131E-176 (16)f;

(B) health service facilities;

(C) health service facility beds;

(D) dialysis stations;

(E) the equipment listed at G.S. 131E-176 (16)f1; and

(F) mobile medical equipment;

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.

(2) Inventories shall be updated to reflect:

(A) decertification of home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;

(B) delicensure of health service facilities and health service facility beds;

(C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16)(f1) and G.S. 131E-176(16)(s);

(D) elimination or reduction of a health service as listed at G.S. 131E-176(16)(fl);
(E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
(F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
(G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.

(3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

(4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Semiannual Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

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

.6256 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)

It is determined that there is a need for 30 additional acute care beds in Onslow County. It is determined that there is no need for additional acute care beds in any other county.

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

.6257 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)

It is determined that there is no need for additional rehabilitation beds in any HSA.

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

.6258 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)

It is determined that there is no need for an additional Ambulatory Surgical Facility in any Ambulatory Surgical Facility Planning Area.

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

.6259 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)

It is determined that there is no need for additional open heart surgery services anywhere in the State.

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

.6260 HEART-LUNG BYPASS MACHINES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for an additional heart-lung bypass machine in any county.

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

.6261 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY J)

It is determined that there is a need for one additional fixed unit of cardiac catheterization or cardiac angioplasty equipment in Cabarrus County. It is determined that there is no need for additional fixed units of cardiac catheterization or cardiac angioplasty equipment in any other county.

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

.6262 (RESERVED FOR FUTURE CODIFICATION)

.6263 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional burn intensive care services anywhere in the State.

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

.6264 POSITRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional positron emission tomography scanners anywhere in the State.

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

.6265 BONE MARROW TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services anywhere in the State.

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

.6266 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for new solid organ transplant services anywhere in the State.

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

.6267 GAMMA KNIFE NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for an additional gamma knife anywhere in the State.

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

.6268 LITHOTRIPTER NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is no need for additional lithotripters anywhere in the State.

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

.6269 RADIATION ONCOLOGY TREATMENT CENTERS NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is a need for three additional Radiation Oncology Treatment Centers in Radiation Oncology Treatment Center Service Area 13 (Durham, Caswell, Granville, Person, Vance, Warren). It is determined that there is no need for an additional Radiation Oncology Treatment Center in any other service area in the State.

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

.6270 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)

It is determined that there is a need for seven additional fixed Magnetic Resonance Imaging (MRI) scanners in the following Magnetic Resonance Imaging Planning Areas. It is determined that there is no need for an additional fixed MRI scanner in any other planning area in the State, except as otherwise provided in 10 NCAC 3R. 6271:

Magnetic Resonance Imaging Planning Areas (Constituent Counties)	MRI Scanners Need Determination
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	1
9 (Cabarrus, Montgomery, Rowan, Stanly)	1
12 (Alamance)	1
13 (Caswell, Durham, Granville, Person, Vance, Warren)	1
15 (Davidson, Guilford, Randolph, Rockingham)	2
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	1

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

.6271 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION FOR PLANNING RADIATION ONCOLOGY TREATMENTS (REVIEW CATEGORY H)

(a) It is determined that there is a need for one Magnetic Resonance Imaging (MRI) scanner that shall be limited for use in radiation oncology treatments in the following magnetic resonance imaging planning area. It is determined that there is no need for any other MRI scanner for radiation oncology treatments in any other planning area in the State.

(b) Only hospitals and radiation oncology treatment centers in Magnetic Resonance Imaging Planning Area 13 can apply to acquire the Magnetic Resonance Imaging (MRI) Scanner referenced in paragraph (a) of this Rule. Applications for certificates of need shall show that the proposed Magnetic Resonance Imaging (MRI) Scanner:

(1) shall be developed concurrently with, or subsequent to construction on the same site of a radiation oncology treatment center as defined in G.S. 131E-176(18a); and

(2) shall be used exclusively for and dedicated to therapeutic purposes in the treatment of radiation oncology patients.

Magnetic Resonance Imaging Planning Area (Constituent Counties)	MRI Scanners Need Determination
13 (Caswell, Durham, Granville, Person, Vance, Warren)	1

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

.6272 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)

It is determined that the counties listed in this Rule need additional Nursing Care Beds as specified. It is determined that there is no need for additional Nursing Care Beds in any other counties, except as otherwise provided in 10 NCAC 3R .6273:

County	Number of Nursing Care Beds Needed
Caswell	20
Rockingham	50
Perquimans	10

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

.6273 DEMONSTRATION PROJECT FOR CONTINUING CARE OF ADULTS WITH DEVELOPMENTAL DISABILITIES AND THEIR AGING CAREGIVERS (REVIEW CATEGORY J)

(a) It is determined that five Medicaid-certified nursing care beds are needed as part of a Continuing Care Retirement Community (CCRC) to demonstrate the efficacy of serving persons with developmental disabilities and their aging care givers in an environment that assures permanence and continuity of care.

(b) The five Medicaid-certified nursing care beds for adults with developmental disabilities are available for development by any CCRC licensed by the Department of Insurance, in any area of the State.

(c) The five Medicaid-certified nursing care beds for adults with developmental disabilities shall be developed at a single site.

(d) The five Medicaid-certified nursing care beds shall be used exclusively by adults with developmental disabilities. For purposes of this Rule, the definition of "developmental disability" found in the North Carolina General Statutes [G.S. 11C-3(12A)] shall apply.

(e) An applicant shall document arrangements with the Area Mental Health Authority for interagency screening in compliance with "single portal" statutes, with emphasis on coordination of services and resources between the CCRC and the community at-large.

(f) The five Medicaid-certified nursing care beds shall be used exclusively to meet the needs of adults with developmental disabilities with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when an adult with a developmental disability is admitted to the nursing unit at the time that individual's parent or guardian moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract. Priority shall always be given to allowing persons with developmental disabilities to live in the "least restrictive" setting possible. Individuals recommended for placement in Medicaid-certified nursing care beds must meet all Medicaid eligibility criteria for reimbursement to be obtained. The CCRC shall document that "nursing level care" is essential and that less restrictive alternatives have been exhausted.

(g) The demonstration project shall guarantee continuity of care for adults with developmental disabilities within the CCRC, including access to all health and rehabilitation services. Specialized training shall be provided for all CCRC staff on the care and management of adults with developmental disabilities. General activities within the CCRC shall be designed to promote inclusion of residents with developmental disabilities and to promote the quality of life for all residents. The applicant shall demonstrate that residents of the CCRC will be treated with dignity and respect, maintaining independence as long as possible and allowing an orderly transition between levels of care.

(h) The demonstration project shall provide data to evaluate the effectiveness of this type of program, including an annual report to the Long-Term Care Committee of the NC State Health Coordinating Council with regard to at least the following measures:

(1) number of adults with developmental disabilities admitted to the CCRC;
(2) patient origin data (for all CCRC residents) – county or state of residence before coming to the CCRC;
(3) occupancy rate of the five Medicaid-certified DD nursing care beds;
(4) occupancy rate of other nursing care beds;
(5) average length of stay for DD adults in independent or assisted living before placement in a Medicaid-certified DD nursing care bed;
(6) average length of stay for patients in the five Medicaid-certified DD nursing care beds;
(7) average length of stay for patients in other nursing care beds;
(8) cost data -- particularly with regard to provision of specialized training for all staff regarding persons with developmental disabilities; and
(9) consumer satisfaction -- anecdotal information and ratings from DD adults and their family members, including evaluation of special training for staff.

(i) Annual data reporting shall continue, until directed otherwise by the North Carolina State Health Coordinating Council.

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

.6274 HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is a need in Pamlico County for one Medicare-certified home health agency or office. It is determined that there is no need for additional Medicare-certified home health agencies or offices in any other county.

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

.6275 DIALYSIS STATION NEED DETERMINATION METHODOLOGY

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

(1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc. as of December 31, 1999 for the March SDR and as of June 30, 2000 for the September SDR;

(2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS.

(3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and

(4) Need determinations for which certificate of need decisions have not been made, from MFPS records;

Need determinations in this report shall be an integral part of the State Medical Facilities Plan, as provided in G.S. 131E-l83.

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

(1) County Need

(A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1995 to the end of 1999 is multiplied by the county's 1999 year end total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total 2000 patients;

(B) The percent of each county's total patients who were home dialysis patients at the end of 1999 is multiplied by the county's projected total 2000 patients, and the product is subtracted from the county's projected total 2000 patients. The remainder is the county's projected 2000 in-center dialysis patients;

(C) The projected number of each county's 2000 in-center patients is divided by 3.2. The quotient is the projection of the county's 2000 in-center dialysis stations;

(D) From each county's projected number of 2000 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's 2000 projected surplus or deficit; and

(E) If a county's 2000 projected station deficit is ten or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the 2000 county station need determination is the same as the 2000 projected station deficit. If a county's 2000 projected station deficit is less than ten or if the utilization of any dialysis facility in the county is less than 80%, the county's 2000 station need determination is zero.

(2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the reference Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

(A) Its utilization, reported in the current SDR, is 3.2 patients per station or greater;

(B) Such need, calculated as follows, is reported in an application for a certificate of need:

(i) The facility's number of in-center dialysis patients reported in the previous SDR (SDR_1) is subtracted from the number of in-center dialysis patients reported in the current SDR (SDR_2). The difference is multiplied by 2 to project the net in-center change for 1 year. Divide the projected net in-center change for the year by the number of in-center patients from SDR_1 to determine the projected annual growth rate;

(ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;

(iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current SDR until the end of calendar 2000;

(iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current SDR and that product is added to such reported number of in-center patients; and

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

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

(c) The schedule for publication of the North Carolina Semiannual Dialysis Reports (SDR) and for receipt of

certificate of need applications based on each issue of this report in 2000 shall be as follows:

Data for Period Ending	Receipt of SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Dates
Dec. 31, 1999	Feb. 29, 2000	March 20, 2000	May 15, 2000	June 1, 2000
June 30, 2000	Aug. 31, 2000	Sept. 20, 2000	Nov. 15, 2000	Dec. 1, 2000

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.
(e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week, except as otherwise provided in 10 NCAC 3R .6276.
(f) Home patients shall not be included in determination of need for new stations.

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

.6276 DIALYSIS STATION ADJUSTED NEED DETERMINATION (REVIEW CATEGORY G)

It is determined that there is a need in McDowell County for six dialysis stations. Need for additional dialysis stations in other counties will be determined as provided in 10 NCAC 3R .6275.

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

.6277 HOSPICE NEED DETERMINATION (REVIEW CATEGORY F)

It is determined that there is no need for additional Hospices in any county.

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

.6278 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)

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

County	Hospice Inpatient Bed Deficit
Transylvania	1
Haywood	1
Jackson	1
Rutherford	2
Watauga	1
Wilkes	1
Yadkin	1
Stokes	1
Davidson	2
Randolph	2
Rockingham	2
Surry	2
Alexander	1
Cabarrus	2

Gaston	3
Iredell	2
Lincoln	1
Mecklenburg	3
Rowan	1
Stanly	1
Union	2
Lenoir	1
Durham	3
Johnston	1
Bladen	1
Brunswick	1
Columbus	2
Cumberland	3
Moore	2
Richmond	3
Montgomery	1
Robeson	1
Scotland	1
Hoke	1
Bertie	1
Franklin	1
Craven	1
Duplin	1
Edgecombe	1
Hertford	1
Nash	1
Northampton	1
Halifax	1
Onslow	1
Pitt	1
Wilson	1

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

.6279 PSYCHIATRIC BED NEED DETERMINATION (REVIEW CATEGORY C)
It is determined that there is no need for additional psychiatric beds in any Mental Health Planning Region.

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

.6280 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)
(a) Adult Treatment Beds. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for adults.
(b) Adult Detox-Only Beds. It is determined that there is a need for additional detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed

in each planning area. It is determined that there is no need for additional detox-only beds for adults in any other mental health planning area.

Mental Health Planning Areas (Constituent Counties)		Mental Health Planning Regions	Number of Detox-Only Beds Needed
1	(Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)	W	10
4	(Transylvania, Henderson)	W	10
5	(Caldwell, Burke, Alexander, McDowell)	W	10
6	(Rutherford, Polk)	W	10
7	(Cleveland)	W	10
11	(Rowan, Cabarrus, Stanly, Union)	W	10
12	(Surry, Yadkin, Iredell)	NC	2
14	(Rockingham)	NC	10
16	(Alamance, Caswell)	NC	6
17	(Orange, Person, Chatham)	NC	2
19	(Vance, Granville, Franklin, Warren)	NC	10
20	(Davidson)	SC	10
22	(Robeson, Bladen, Scotland, Columbus)	SC	5
25	(Johnston)	SC	7
26	(Wake)	SC	31
30	(Wayne)	E	4
31	(Wilson, Greene)	E	10
32	(Edgecombe, Nash)	E	6
33	(Halifax)	E	10
34	(Craven, Jones, Pamlico, Carteret)	E	10
35	(Lenoir)	E	10
37	(Hertford, Bertie, Gates, Northampton)	E	4
38	(Beaufort, Washington, Tyrrell, Hyde, Martin)	E	5
39	(Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)	E	10
40	(Duplin, Sampson)	E	10

(c) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.

(d) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:

(1) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 3R .6253(c); and

(2) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.

(e) Child/Adolescent Treatment Beds. It is determined that there is no need for additional chemical dependency (substance abuse) treatment beds for children/adolescents.

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

.6281 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)

(a) Adult Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Adult Intermediate Care Beds for the Mentally Retarded (ICF/MR beds), except as provided in Rule 10 NCAC 3R .6255(a)(8).

(b) Child/Adolescent Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Child/Adolescent Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

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

.6282 POLICIES FOR GENERAL ACUTE CARE HOSPITALS

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .6200 and 10 NCAC 3C .3102(d).

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in paragraph (d) of this Rule are assumed to have underutilized space. Any such hospital proposing new construction must clearly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .6256 through 10 NCAC 3R .6281.

(1) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
   (A) Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.
   (B) Houses extensive basic medical science and clinical research programs, patients and equipment.
   (C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

(2) Exemption from the provisions of 10 NCAC 3R .6256 through .6281 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:
   (A) Necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
   (B) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
   (C) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(3) A project submitted by an Academic Medical Center Teaching Hospital under this Policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital.

(4) Any service, facility or equipment that results from a project submitted under this Policy after January 1, 1999 shall be excluded from the inventory of that service, facility or equipment in the State Medical Facilities Plan.

(d) Reconversion to Acute Care. Facilities that have redistributed beds from acute care bed capacity to psychiatric, rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 3R .6256.

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

(e) Replacement of Acute Care Bed Capacity. The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to the target occupancy of the total number of beds in that hospital which is determined as follows:

Total Licensed Acute Care Beds	Target Occupancy (Percent)
1 - 49	65%
50 - 99	70%
100 - 199	75%
200 - 699	80%
700 +	81.5%

(f) Allogeneic Bone Marrow Transplantation Services. Allogeneic bone marrow transplants shall be provided only in facilities having the capability of doing HLA matching and of management of patients having solid organ transplants. At their present stage of development it is determined that allogeneic bone marrow transplantation services shall be limited to Academic Medical Center Teaching Hospitals.

(g) Solid Organ Transplantation Services. Solid organ transplant services shall be limited to Academic Medical Center Teaching Hospitals at this stage of the development of this service and availability of solid organs.

(h) Cardiac Catheterization Equipment and Services. Mobile cardiac catheterization equipment, as defined in 10 NCAC 3R .1613(14), and services shall only be approved for development on hospital sites. Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac catheterization equipment, as that term is defined in 10 NCAC 3R .1613(14).

(i) Magnetic Resonance Imaging Scanners Need Determination for Planning Radiation Oncology Treatments. Magnetic resonance imaging scanners for planning radiation oncology treatments, as defined in 10 NCAC 3R .6271, shall not be counted in the inventory for magnetic resonance imaging (MRI) scanners.

(j) Magnetic Resonance Imaging Scanners. Fixed magnetic resonance imaging (MRI) scanners means MRI scanners that are not mobile MRI scanners, as that term is defined in 10 NCAC 3R .2713(5).

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

.6283 POLICIES FOR INPATIENT REHABILITATION SERVICES

(a) After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to proposals that make rehabilitation services more accessible to patients and their families or are part of a regional rehabilitation network.

(b) Rehabilitation care which can be provided in an outpatient or home setting shall be provided in these settings. All new inpatient rehabilitation programs are required to provide outpatient rehabilitation services as part of their service delivery programs.

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

.6284 POLICY FOR AMBULATORY SURGICAL FACILITIES

After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to "multi-specialty programs" over "specialty programs" in areas where need is demonstrated in 10 NCAC 3R .6258. A multi-specialty ambulatory surgical program shall have the same meaning as defined in G.S. 131E-176(15a) and an ambulatory surgical facility shall have the same meaning as defined in G.S. 131E-176(1a).

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

.6285 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM NURSING CARE

(a) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and in 10 NCAC 3R .1100, to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .6272 if the hospital:

(1) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2000; and

(2) on January 1, 2000, had a licensed acute care bed capacity of 150 beds or less.

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

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

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

against the hospital's service needs utilizing target occupancies shown in 10 NCAC 3R .6282(d), without regard to the acute care bed need shown in 10 NCAC 3R .6256.

(d) A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

(1) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;

(2) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;

(3) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

(e) The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.

(f) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

(1) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 3R .6272; or

(2) currently has nursing home beds licensed as a part of the hospital under G.S. 131E-5; or

(3) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E-175 through 131E-190, may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 3R .6272 and this Rule.

(g) Beds certified as a "distinct part" under this Rule shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the March 1 review cycle. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 3R .6272. The Department of Health and Human Services shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

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

.6286 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES

(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .6272. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

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

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

(B) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.

(2) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract;

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

(4) Will not be certified for participation in the Medicaid program.

(b) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. All long-term nursing beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

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

.6287 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES

When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to no more than 80 nursing beds

without regard to the nursing bed need determination for that county as listed in 10 NCAC 3R .6272.

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

.6288 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS

A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E-6(A), provided that the conditions set forth in this Rule and in 10 NCAC 3R .1100 and the review criteria in G.S. 131E-183(a) are met.

(1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
   (a) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
   (b) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
   (c) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide long-term nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
   (d) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
   (e) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.

(2) Exemption from the provisions of 10 NCAC 3R .6272 shall be granted to a nursing facility for purposes of relocating existing licensed nursing beds to another county provided that it complies with all of the criteria listed in this Rule.

(3) Any certificate of need issued under this Rule shall be subject to the following conditions:
   (a) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make acceptable discharge arrangements for residents not desiring to transfer to the new facility; and
   (b) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
   (c) subsequent to providing the letter to the Licensure and Certification Section described in Subparagraph (3)(b) of this Rule, the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

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

.6289 POLICIES FOR HOME HEALTH SERVICES

(a) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of Medicare-certified home health services and to decertify the office; and
   (1) the agency is the only home health agency with an office physically located in the county; and
   (2) the agency is not being lawfully transferred to another entity;

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

(b) Need Determination for at Least One Home Health Agency per County. When a county has no Medicare-certified home health agency office physically located within the county's borders, need for a new home health agency office in the county is thereby established through this Paragraph.

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

.6290 POLICY FOR RELOCATION OF DIALYSIS STATIONS

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

(1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report, and
(2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report.

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

.6291 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES

(a) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 3R .6282(d) and multiply the difference by the number of its existing licensed acute care beds.

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

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

.6292 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for chemical dependency treatment beds, as defined in G. S. 131E-176(5b), shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

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

.6293 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for intermediate care beds for the mentally retarded shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

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

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt the rules cited as 10 NCAC 14V .3804-.3817. Notice of Rule-making Proceedings was published in the Register on April 15, 1998.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 10:00 a.m. on August 7, 2000 at the Brownstone Hotel, 1707 Hillsborough St, Raleigh, NC 27605.*

Reason for Proposed Action: *These rules currently exist in 10 NCAC 18F .0300 Substance Abuse Assessments For Individuals Charged With Or Convicted of Driving While Impaired (DWI), and are cross-referenced in 10 NCAC 14V .3803 Rules for Mental Health, Development Disabilities and Substance Abuse Facilities and Services. In order to respond to requests and to further clarify the Rules, the agency is proposing to more appropriately place the rules in 10 NCAC 14V .3800, the Section in which the rules are currently cross-referenced. This would enable providers to view the actual text rather than having to search another document.*

Comment Procedures: *Written comments should be sent to Charlotte F. Hall, Rule-making Coordinator, Division of MH/DD/SAS, 3012 Mail Service Center, Raleigh, NC 27699-3012. The comment period will last through August 16, 2000.*

Fiscal Impact

State	Local	Sub.	None
			√

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14V – RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .3800 – ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS)

.3804 PURPOSE AND SCOPE

(a) These rules set forth procedures for providing, supervising and reporting DWI substance abuse assessments and the treatment and education (ADETS) provided to DWI offenders.

(b) Assessments may be sought either voluntarily on a pre-trial basis, by order of the presiding judge and as a condition for driver license reinstatement.

(c) These Rules apply to any facility that conducts DWI assessments and alcohol and drug education traffic schools (ADETS) or treatment.

(d) In order to perform DWI assessments, a facility shall be authorized by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to provide services to this population (See Rule .3806); and

(1) be licensed by the State to provide services to individuals with substance abuse disorders; or

(2) provide substance abuse services and be exempt from licensure under G.S. 122C-22; and

(3) follow state DWI laws, administrative rules contained in this Section; and

(4) the generic rules for substance abuse facilities contained in "RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES, Division publication" (APSM 30-1); including any subsequent editions and amendments. This publication may be obtained through the Division of MHDDSAS at a cost of $5.75.

Authority G.S. 20-179(e)(6); G.S.122C-142.1.

.3805 DEFINITIONS

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

(1) "American Society of Addiction Medicine (ASAM) Placement Criteria" means the Patient Placement Criteria for the Treatment of Substance-Related Disorders, copyright 1996 by the American Society of Addiction Medicine.

(2) "Certified ADETS Instructor" means an individual who is certified by the Division in accordance with 10 NCAC 14V .3800 ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS (ADETS) contained in Division publication APSM 30-1 RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES and available at the current printing cost.

(3) "Clinical Interview" means the face to face interview with a substance abuse counselor intended to gather information on the client, including, but not limited to the following; demographics, medical history, past and present driving offense record, alcohol concentration of current offense, social and family history, substance abuse history, vocational background and mental status.

(4) "Continuing Care" means an outpatient service designed to maximize the recovery experience begun in more intensive inpatient or outpatient treatment. As a continuation of the treatment experience this service is expected to begin upon the client's discharge from intensive treatment.

(5) "Division" means the same as defined in G.S. 122C-3 (hereafter referred to as DMH/DD/SAS).

(6) "DMH Form 508-R (DWI Services Certificate of Completion)" means the form which is used in documenting the offenders completion of the DWI substance abuse assessment and treatment or ADETS.

(7) "Driving Record" means a person's North Carolina complete driving history as maintained by the North Carolina Driver's License Division's history file, as well as records in other states in which the client has resided,

(8) "DSM-IV" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, 1400 K Street, N.W., Washington, D.C. 20005 at a cost of thirty nine dollars and ninety-five cents ($39.95) for the soft cover edition and fifty four dollars and ninety-five cents ($54.95) for the hard cover edition. Where used in these definitions, incorporation by reference of DSM-IV includes subsequent amendments and editions of the referenced material.

(9) "DWI Facility Authorization Process" means the process specified in 10 NCAC 14V .3806, by which facilities are granted the privilege to serve this sanctioned population.

(10) "DWI Offenses" means impaired driving as described in G.S. 20-1138.1, impaired driving in a commercial vehicle as described in G.S. 20-138.2 and/or driving by person less than 21 years old after consuming alcohol or drugs as described in G.S. 20-138.3.

(11) "DWI Categories of Service" means:

Level I Alcohol and Drug Education Traffic School (ADETS);
Level II Short Term Outpatient Treatment;
Level III Longer Term Outpatient Treatment;
Level IV Day or Intensive Outpatient Treatment;
Level V Inpatient and/or Residential Treatment.

(12) "DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of a DWI offense to determine the presence or absence of a substance abuse handicap. The assessment involves a clinical interview as well as the use of an approved standardized test.

(13) "Facility" means the term as defined in G.S. 122C-3(14).

(14) "Interpreter" means a person who can accurately provide spoken exchange between languages including idiomatic differences.

(15) "Language Barrier" means the situation in which a client's primary and native language is not English, and staff available to the facility do not speak a language in which the client is proficient.

(16) "Licensure Rules" means the rules contained in 10 NCAC 14V .0100 through .7200 of the North Carolina Administrative Code and published in Division publication APSM 30-1, RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES.

(17) "Minimal Program Content" means the required educational topics, learning experiences and counseling issues applicable to each level of treatment (See Rule .3817 of this Section - Minimal Program Content)

(18) "Notice of Intent" means the initial step in the process for a licensed substance abuse facility or exempt agency to be authorized to provide services to DWI offenders in accordance with Rule .3806 of this Section. This written notice shall declare the facility's intent to comply with applicable laws and rules and shall be copied to the designated area authority as provided in G.S.122C-142.1 (a).

(19) "Special Service Plan" means a plan for persons who exhibit unusual circumstances, such as severe hearing impairment; other physical disabilities, concurrent psychiatric illness, language and communication problems, intractable problems of distance, transportation and scheduling, and chronic offenders with multiple unsuccessful treatment experiences.

(20) "Standardized Test" means an instrument approved by the Department of Health and Human Services with documented reliability and validity, which serves to assist the assessment agency or individual in determining if the client has a substance abuse handicap. A current listing of the approved standardized tests may be obtained at no cost by writing the DWI/Criminal Justice Branch, Division of MH/DD/SAS, 3008 Mail Service Center, Raleigh, NC 27699-3008.

(21) "Substance Abuse Handicap" means a degree of dysfunction directly related to the recurring use, abuse or dependence upon an impairing substance as described in the current edition of the DSM.

Authority G.S. G.S. 122C-142.1; 122C-3.

.3806 AUTHORIZATION: FACILITIES PROVIDING SA SERVICES TO DWI OFFENDERS

(a) Application Process: Facilities licensed to provide substance abuse services by the Division of Facility Services, or determined by DFS to be exempt from license under the provisions of G.S. 122C-22 are eligible to apply for Authorization to provide services to DWI offenders.

(b) The DWI/Criminal Justice Branch of the Substance Abuse Section of the DMHDDSAS will provide application materials to facilities within 10 business days of the receipt of the request. Requests may be made in writing to DWI Services, 3008 Mail Service Center, Raleigh, NC 27699-3008.

(c) The applicant facility shall submit the application form and required supportive documentation to DWI Services for review.

(d) When the review of the facility documents confirms that the applicant is in compliance with applicable Rules, Statutes and the Code of Facility Conduct, the facility will be authorized to begin services to DWI offenders.

(e) A decision on the application for Authorization shall be communicated to the facility within 20 business days of the receipt of the application by the DMH/DD/SAS. Upon approval, a five-digit Facility Code shall be issued to identify the facility as authorized to provide services to DWI offenders.

(f) Term of Authorization: facility Authorization to provide DWI services shall be granted for a period not to exceed two years.

(g) A facility's Authorization shall expire at any time the facility license ceases to be in effect.

(h) Facility Monitoring of Authorized Facilities: facility compliance reviews shall be conducted according to a schedule determined by DMH/DD/SAS. The interval between reviews for any facility shall be no greater than two years.

(i) Compliance problems and program deficiencies will be addressed in the review and correction plans developed with the facility. Each correction plan will have a follow-up plan.

(j) Refusal to complete a correction plan or persistent non-compliance will be grounds for suspension until correction or revocation of the Authorization.

(k) The DMH/DD/SAS will conduct reviews of reports and DWI Certificates of Completion Forms generated by facilities. Compliance and procedural problems will be addressed through communication with facilities and correction plans.

(l) Written complaints of misconduct against facilities shall be forwarded to the DMH/DD/SAS. All written complaints will be reviewed and investigated. When non-compliance is confirmed, it will be addressed with the facility through communication, correction plans or the suspension/revocation process.

(m) Suspension and Revocation: DMHDDSAS may suspend or revoke a facility's authorization to provide services to DWI offenders at any time for failure to comply with applicable Statutes and Rules.

(n) Such suspension or revocation will apply to the Authorization to serve DWI offenders and will not directly affect the facility's license to serve the public at large The DMH/DD/SAS will inform licensing and certification bodies of any such action against a facility and its staff.

(o) In circumstances in which the direct care of a client is compromised or when there is failure to comply with a specific statute or rule concerning services to clients, the suspension shall be immediate. Serious and persistent non-compliance will result in revocation of the approval.

(p) When the non-compliance involves procedural or programmatic issues and presents no immediate threat to clients, the facility will be afforded an opportunity to propose and complete a plan of correction to be monitored by the DMH/DD/SAS.

(q) Failure to complete the correction plans, which were the subject of a suspension, will result in revocation of the Authorization.

(r) A facility whose Authorization has been revoked may apply for Authorization after one year upon demonstration that all relevant problems have been corrected.

(s) Revocation Process: The Branch Head will initiate action affecting the Authorization of a facility. Such action shall be limited to the following:

(1) Revocation of the Authorization;

(2) Suspension of the authorization until such time as the problem is corrected and the correction verified; or
(3) a Written Correction Plan shall be completed by the facility while continuing to operate under close monitoring.

(t) Appeal Process: A facility whose Authorization is revoked may appeal to the DWI Quality Improvement panel for a review of the revocation within 30 working days from the date of notification.

(u) An appeal hearing shall be scheduled and conducted by the DWI Quality Improvement Panel within 60 working days after the request.

(v) The facility owner shall be notified, in writing of the decision of the DWI Quality Improvement Panel within 30 working days after the hearing.

Authority G.S. 122C-3; 122C-142.1.

.3807 DWI SUBSTANCE ABUSE ASSESSMENT ELEMENTS

(a) DWI substance abuse assessments shall only be provided by a facility licensed by the State as a substance abuse treatment facility as specified in 10 NCAC 14V.0400 LICENSING PROCEDURES or a facility which provides substance abuse services and is exempt from licensure under G.S. 122C-22.

(b) A face to face clinical interview shall be conducted, in a licensed facility, with the individual, by a substance abuse counselor in accordance with the minimum qualifications specified in Rule .3808 of this Section. The purpose of this interview is to formulate a DSM diagnosis and arrive at a service level recommendation consistent with the placement criteria accepted by ASAM.

(c) In addition to the clinical interview, the clinician performing the assessment shall administer to the individual, an approved standardized test and must review the complete driving record as defined in Rule .3805 in this Section, as well as verify the alcohol concentration reading at the time of arrest.

(d) The agency or individual performing the assessment shall have the individual execute the appropriate release of information form per 42 CFR, Part 2. This form provides permission for the assessing agency to communicate with and report its findings to the DMH/DD/SAS, the area authority, the Division of Motor Vehicles, the Court, the Department of Correction, the agency providing the recommended treatment or education and any agency or individual the client requests to be so informed.

Authority G.S. 20-17.6 (c) G.S. 122C-22;and G.S. 122C-142.1.

.3808 QUALIFICATIONS OF INDIVIDUALS PERFORMING ASSESSMENTS

Individuals performing DWI substance abuse assessments shall have at least one of the following qualifications:

(1) certification/licensure or other credential issued by the North Carolina Substance Abuse Professional Certification Board that acknowledges an individual to be qualified to provide counseling for persons with substance abuse disorders; or
(2) graduation from a masters degree level program and one year of supervised experience in the profession of alcohol and drug abuse counseling; and be registered with the North Carolina Substance Abuse Professional Certification Board; or
(3) graduation from a four-year college or university and two years of supervised experience in the profession of alcohol and drug abuse counseling, and be registered with the North Carolina Substance Abuse Professional Certification Board; or
(4) graduation from high school or equivalent and three years of supervised experience in the profession of alcohol and drug abuse counseling; or
(5) be licensed by the Board of Medical Examiners of the State of North Carolina or the North Carolina Psychology Board; or
(6) be a diplomat of the American Society of Addiction Medicine.

Authority G.S. 20-17.6(c) and G.S. 122C-142.1.

.3809 RESPONSIBILITIES OF ASSESSING AGENCY

(a) Following the completion of the assessment process, which may include a staffing conference and review of the assessment by the supervisor, the agency or clinician performing the assessment shall inform the individual of the service level required.

(b) If treatment is required the individual shall be informed, in writing, of any other available treatment facilities within the county, both private and public, which provide the level of required treatment.

(c) Facilities shall refer any individual who is required to attend ADETS to the area authority, or its designated agency. A DMH 508-R Form and documentation of the driving record, alcohol concentration and the DSM diagnosis shall accompany all referrals regardless of the level of service. There shall be no charge for providing these documents within the state.

(d) The agency or clinician performing the assessment shall inform the client of the possible consequences of failing to comply with required treatment or ADETS.

(e) All persons assessed shall be provided written documentation that explains the requirements for reinstatement of the drivers license, including the minimum hours and duration of service. If a level of treatment is required, this written documentation shall be in the form of a client contract that minimally addresses program requirements and fees

(f) When a language barrier is identified the assessing agency shall arrange for the services of an interpreter to assist in the services provided as defined in Rule .3805(14) of this Section.

Authority G.S. 20-17.6(c) and G.S. 122C-142.1.

.3810 RESPONSIBILITIES OF TREATMENT OR ADETS

PROVIDERS

(a) All providers shall conduct an orientation/intake interview with every client being admitted to a level of treatment, in which the assessment, diagnosis and placement shall be reviewed in the light of the client's current situation and an individual treatment plan shall be developed in compliance with 10 NCAC 14V .0203 located in the Licensure Rules as defined in Rule .3805(16) of this Section.

(b) Any facility accepting a transferred case shall provide the level of intervention required by the assessor, unless there is a subsequent negotiated agreement between the assessor and the service provider at which time a corrected DMH-508R shall be completed by assessor.

(c) The facility providing the recommended treatment or ADETS shall have the individual execute the appropriate release of information giving that facility permission to report the client's progress to the DMHDDSAS, Division of Motor Vehicles, Court, Department of Correction; and, assessing and treatment agencies, as appropriate.

(d) Identification of a substance abuse handicap shall be considered indicative of the need for treatment, when diagnostic criteria apply. In such instances, educationally-oriented and support group services shall only be provided as a supplement to a more extensive treatment plan.

(e) If the court determines that an individual shall receive treatment, such treatment shall be provided by a facility licensed by the State to provide services.

Authority G.S 20-17.6(c) and 122C-142.1.

.3811 REPORTING REQUIREMENTS

(a) The assessment portion of the DMH Form 508-R shall be completed for each client who received a DWI Substance Abuse Assessment. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the DMH/DD/SAS, 325 N. Salisbury Street, Raleigh, NC 27603 reviewed and signed by a substance abuse counselor who is credentialed by the North Carolina Professional Substance Abuse Certification Board or by an ASAM certified physician. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the DMH/DD/SAS, 3008 Mail Service Center Raleigh, NC 27699-3008 at no cost.

(b) The assessment portion of DMH Form 508-R shall be reviewed and signed, at the time of the review, by a certified alcoholism, drug abuse, substance abuse counselor . The date of expiration of that professional's certification and credentials shall be indicated on the client's Certificate of Completion and no assessment shall be signed after the expiration date.

(c) The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and provide periodic progress reports. That report shall be filed at intervals not to exceed six months, with the court and with the Department of Correction per their request.

(d) The purpose of the rules of this Section is to establish specific procedures for conducting and reporting DWI substance abuse assessments, Alcohol and Drug Education Traffic Schools (ADETS), and treatment of DWI offenders.

(e) Upon completion of the recommended treatment or ADETS service, the agency shall forward the top page of the completed DMH 508-R to the DWI/Criminal Justice Branch, DMH/DD/SAS; and distribute any remaining copies to the offender and the court. The agency shall retain a copy of the form for a minimum period of at least 5 years.

(f) In the event that an assessment or treatment agency ceases to provide DWI-related services, the agency shall notify, in writing, the DWI Criminal Justice Branch to assure that all DMH Form 508-R's and other related documents as specified in these Rules are properly processed, or transferred to another provider authorized by DMH/DD/SAS to conduct DWI Assessments. The licensing and certifying bodies shall be notified of violations of this Rule.

(g) By February 15 of each year, all assessing agencies shall forward, in writing, to the DWI Criminal Justice Branch of the Division the following information on the previous year's activities, which shall include but need not be limited to the number of:

(1) pre-trial assessments conducted;
(2) post trial assessments conducted;
(3) individuals referred to ADETS; and
(4) substance abuse handicaps identified and the recommended levels of treatment.

Authority G.S. 20-17.6 (c) and G.S. 122C-142.1.

.3812 PRE-TRIAL ASSESSMENTS

(a) A DMH Form 508-R shall be completed for each individual who voluntarily refers himself or herself for a DWI assessment, under the provisions of G.S. 20-179(e)(6).

(b) The DMH Form 508-R shall not be used to report the results of the pre-trial assessment to the court or attorney. The results shall be summarized in a concise, easy to interpret fashion on agency letterhead and signed by the individual who performed the assessment or the assessor's supervisor.

Authority G.S. 20-179(e)(6) and (m).

.3813 PLACEMENT CRITERIA FOR ASSESSED DWI CLIENTS

(a) Clients who have completed a DWI substance abuse assessment shall be placed in the appropriate service level.

(b) Placement of clients in a specific category shall be based on the assessment outcome, diagnosis, and level of care determined to be necessary for treatment.

(c) In addition to the terms defined in Rule .3805(10) of this Section for each of the following progressive categories, determination for placement shall be based on the criteria specified in this Paragraph.

(1) Alcohol and Drug Education Traffic School (ADETS):
  (A) the assessment did not identify a substance abuse handicap;
  (B) the person has no previous DWI offense conviction;
  (C) the person had an alcohol concentration of 0.14% or less at the time of arrest;
  (D) the person did not refuse to submit to a chemical test;

(E) the person meets the admission criteria for Level 0.5 (Early Intervention) of ASAM PPC-2; and

(F) ADETS shall be conducted in accordance with the rules established in this Section.

(2) Short-term Outpatient Treatment:

(A) the assessment outcome suggests diagnosis of psychoactive substance abuse only;

(B) the client does not fit all aspects of the diagnosis, but, under certain circumstances, the clinical impression provides reason to conclude that a treatment setting would be more appropriate than ADETS. Some of these circumstances include, but are not limited to:

(i) alcohol concentration is .15 or higher

(ii) refusal of chemical test at time of arrest;

(iii) problems relating to family history of substance abuse;

(iv) other problems which seem to be a contributing factor to DWI behavior, such as grief, loss; and

(v) the client meets the criteria for Level I of the ASAM Placement Criteria.

(C) this category of service requires a minimum of 20 contact hours over a minimum of 30 days. Each client must have services scheduled weekly.

(3) Longer –term Outpatient Treatment:

(A) when a client meets minimal conditions for the diagnosis of "substance dependence";

(B) the criteria for Level I of the ASAM placement criteria are met; and

(C) this category of service requires a minimum of 40 contact hours over a minimum of 60 days. Each client must have services scheduled weekly.

(4) Day Treatment/Intensive Outpatient Treatment:

(A) the assessment confirms a diagnosis of substance dependence, with or without physiological dependence;

(B) the ASAM placement criteria for Level II Outpatient Treatment is met;

(C) the program:

(i) offers additional continuing care, urging voluntary participation of the client and significant others; and

(ii) requires a minimum of 90 contact hours and participation of the client over a period of at least 90 days, for any client referred under G.S. 20-179(g - k), or G.S. 20-17.6; and

(D) the program may be preceded by a brief inpatient admission for detoxification or stabilization of a medical or psychiatric condition.

(5) Inpatient and Residential Treatment Services:

(A) the level of care requires that the client meets the same diagnostic criteria as Day Treatment, as defined in this Rule;

(B) outpatient treatment of other associated problems has not been successful;

(C) the client meets the placement criteria for Levels III.5 or IV.7 (inpatient) of the ASAM Placement Criteria with regard to the "Criteria Dimensions" as set forth in ASAM Patient Placement Criteria, Adult Crosswalk:

(i) withdrawal risk;

(ii) need for medical monitoring;

(iii) emotional and behavioral problems requiring a structured setting;

(iv) high resistance to treatment;

(v) inability to abstain; and

(vi) lives in a negative and destructive environment; and

(D) in order for the client to meet the required minimum 90-day time frame for treatment, the client, upon discharge, shall enroll in an approved continuing care or other outpatient program:

(i) these services shall be provided according to a written continuing care plan which shall address the needs of the client;

(ii) these services shall utilize individual, family and group counseling as required to meet the needs of the client; and

(iii) the plan shall include client participation.

(6) Special Service Plan:

(A) Documentation of the need for a special program to correspond with the recommendations of the DWI assessment;

(B) Conditions under which a Special Service Plan is implemented may include, but need not be limited to, the following:

(i) severe hearing impairment;

(ii) other physical disabilities;

(iii) concurrent psychiatric illness and; or

(iv) language differences and communication problems.

Authority G.S. 20-17.6(c); 122C-142.1.

.3814 DOCUMENTATION REQUIREMENTS

(a) When conducting the assessment for an individual charged with, or convicted of, offenses related to Driving While Impaired (DWI), a DMH Form 508-R shall be completed.

(b) If treatment is recommended, client record documentation shall include, but not be limited to the following minimum requirements for each DWI Category of Service listed in Rule .3805 of this Section, except for the ADETS category:

(1) all items specified in the "clinical interview", as defined in Rule .3805 of this Section;

(2) results of the administration of an approved "standardized test", as defined in Rule .3805 of this section;

(3) release of information as set forth in Rules .3807 and .3810 of this Section; and

(4) release of information covering any collateral contacts, and documentation of the collateral information.

(c) Substance abuse facility policies and operational procedures shall be in writing and address and comply with each of the requirements in 10 NCAC 14V .0201.

(d) Substance abuse treatment records shall comply with the elements contained in 10 NCAC 14V .0203, .0204, .0206 of this Subchapter and 10 NCAC 18F .0315 and .0317.

Authority G.S. 20-179 (e)(6) and (m); 122C-142.1.

.3815 AUTHORIZATION TO PROVIDE DWI SUBSTANCE ABUSE ASSESSMENTS

Any facility that provides DWI assessments shall comply with 10 NCAC 14V DWI Substance Abuse Assessments, contained in Division publication, Licensure Rules, as defined in Rule .3805 of this Section.

Authority G.S. 20-17.6 (c) and G.S. 122C-142.1.

.3816 SERVICES FOR NON-ENGLISH SPEAKING OFFENDERS/CLIENTS

(a) Providers offering services to special populations/language groups shall inform MH/DD/SAS in writing and include these services in facility monitoring activities.

(b) When a facility represents to the DMH/DD/SAS and the public that it provides assessment and treatment services to DWI offenders of a certain language group, those services must be provided in compliance with applicable rules by staff who not only are qualified to provide the service, but are also fluent in the language of the target group. When such services are available in the county, facilities not able to provide them are expected to refer persons needing such services to facilities prepared to serve them.

(c) When services described in (b) of this Rule are not available in the County:

(1) a facility may provide DWI assessments with the help of a competent interpreter. The facility must first attempt to locate a Certified Interpreter. If that is not possible, the facility may use an individual whose competence as an interpreter is recognized in the community and who can provide references from persons who are in a position to know, such as a leader in the language/cultural group represented. In no case should a person of the offender's family or immediate social group be used to interpret. It is not acceptable to conduct group and individual treatment services via interpreter;

(2) When an offender presents for services who only speaks a language in which no Substance Abuse Services are available in the area, the facility must either assist the offender in locating acceptable services, or, if the services of an competent interpreter are available, a Special Plan may be developed by which the offender may be provided basic information and have an opportunity to confront the problem of his/her DWI offense. Such special plans must be documented in detail.

(3) Clients who meet this criteria are clients whose primary/native language is not English and who can not fluently communicate English adequately to complete an assessment and or treatment; and

Authority G.S. 20-17.6(c); 122C-142.1.

.3817 MINIMAL PROGRAM CONTENT

(a) All levels of Substance Abuse Services for DWI offenders shall include education for all clients on:

(1) all items specified in the "clinical interview", as defined in Rule .3805 of this Section;

(2) North Carolina DWI laws, penalties and requirements for driver license reinstatement;

(3) The effects of alcohol and other psychoactive substances on the body, brain, judgment and emotions of individuals, with special attention to the systems and abilities used in the operation of a motor vehicle;

(4) The measurement of alcohol in the system, Alcohol Concentration; and

(5) The effects of fatigue, hunger, anger, depression and prolonged inattention on driving behavior, by themselves and in conjunction with mood altering drugs in the body.

(b) Short Term Outpatient Treatment shall include all of Paragraph (a) of this Rule and the following items:

(1) responsible decision making concerning the use of alcoholic beverages;

(2) indicators that a person is at increased risk for more serious alcohol/drug problems:

(i) Family history of alcohol/drug problems;

(ii) Attachment to a peer group in which primary social activities center on alcohol or other drug use;

(iii) Strong need for approval and acceptance and a desire to alter feelings; and

(iv) Early signs of tolerance.

(3) Introduce coping skills appropriate to the problem level: to include skills for refusing to drink/use, planning and limit setting strategies and an abstinence contract as a learning experience.

(c) Longer Term Outpatient Treatment shall include all of Paragraph (a) of this Rule and the following items:

(1) An explanation of alcohol/drug dependence, as a bio-psycho-social illness characterized by:

(i) General progression of dysfunction in body, emotions and social/family functioning;

(ii) Strong emotional defense patterns including denial, rationalization and deflecting blame;

(iii) Pronounced ambivalence, i.e. the individual wants to be different yet wants to continue in the present behavior; and

(iv) Difficulties in social and family systems of the individual.

(2) The introduction of concepts, skills and resources for recovery:

(i) Relapse Prevention concepts and skill building;

(ii) Assistance in learning to address spiritual needs; and
(iii) Resources for self-help, support and ongoing recovery.

(d) Day Treatment/Intensive Outpatient Treatment Provide (a) and (c), but in the context of the client's more advanced problems and greater need for intensive treatment (see ASAM Level II):

(1) The program shall take a thorough history of the client and address all relevant problems through further assessment and/or services provided by the program or referral. Problem areas shall include the following:
(i) Family relationships;
(ii) Manifestations of emotional problems or psychiatric illness;
(iii) Legal issues; and
(iv) Employment related issues.

(2) Training and Continued Education: Individuals who conduct and/or supervise DWI substance abuse services shall complete at least 12 hours of DWI-specific education within each two-year period, which must be documented in the personnel record of the employee and reported to DWI Services with the application for renewal of the approval process.

Authority G.S. G.S. 20-17.6(c); 122C-142.1.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Social Services Commission intends to amend rules cited as 10 NCAC 46A .0105; 46C .0102, .0106-.0107; 46E .0108, .0112; 46F .0107, .0111; 46G .0109-.0112, .0114-.0116, .0213-.0215; 46H .0101-.0110, .0201, .0203-.0204, .0206-.0209, .0301-.0302, .0304 and repeal rules cited as 10 NCAC 46E .0109; 46F .0108; 46H .0305-.0306. Notice of Rule-making Proceedings was published in the Register on April 3, 2000.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 10:00 a.m. on September 13, 2000 at the Albemarle Building, Room 832, 325 N. Salisbury St., Raleigh, NC 27603.*

Reason for Proposed Action: *S.L. 99-0237 made changes to the payment policies of the state's subsidized child care program. The rules pertaining to the subsidized child care program have been reviewed and revised to reflect this change, along with other areas that needed to be updated.*

Comment Procedures: *Anyone wishing to comment on these proposed rules should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, 325 N. Salisbury St., Raleigh, NC 27699-2401, phone 919-733-3055. Verbal comments will be heard during the public hearing. Written comments must be received by Ms. Ransome no later than September 6, 2000.*

Fiscal Impact				
State	Local	Sub.	None	
			√	*10 NCAC 46A .0105, 46C .0102, .0106, 46E .0109, .0112, 46F .0107-.0108, .0111, 46G, .0109-.0112, .0114-.0116, .0213-.0215, 46H .0101-.0110, .0201, .0203-.0204, .0206-.0209, .0301-.0302, .0304-.0306*
	√			*10 NCAC 46E .0108*
√				*10 NCAC 46C .0107*

CHAPTER 46 – DAY CARE RULES

SUBCHAPTER 46A – IDENTIFYING INFORMATION

SECTION .0100 – GENERAL INFORMATION

.0105 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 Health and Human ~~Resources.~~ Services.
(2) "Secretary" means the Secretary of the Department of Health and Human ~~Resources.~~ Services.
(3) "Division" means the Division of Child ~~Development.~~ Development, Department of Health and Human Services, located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
(4) "Director" means the Director of the Division of Child Development.
(5) "Local Purchasing Agency" means the local agency responsible for administering the state's subsidized child care program.
(6) "Provider" means the operator of a child care center, family child care home, or nonlicensed child care home.
(7) "Recipient" means the parent or responsible adult approved for subsidized child care services.
~~(5)~~(8) ~~"Purchase of~~ Subsidized Child 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.

Authority 143B-10.

SUBCHAPTER 46C – PURCHASE OF CHILD DAY CARE

SECTION .0100 – BASIC REQUIREMENTS

.0102 APPLICABILITY

All ~~day~~ child care providers from which ~~day~~ child care is purchased for eligible children with ~~day~~ child care services funds shall adhere to the rules of this Subchapter that apply to that type of provider.

Authority G.S. 143B-153(2a).

.0106 PAYMENT RATES

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

(b) The payment rate for child care purchased from a child ~~day~~ care home as defined in G.S. 110-86(3) ~~(4)~~ shall be limited to the county market rate for home-based child care established by the Department in accordance with the annual appropriations act.

(c) The payment rate for child care purchased from a home-based child care arrangement which meets the requirements established by the Social Services Commission for a ~~nonregistered day~~ nonlicensed child care home, as codified in 10 NCAC 46G, shall be limited to the county market rate for home-based nonlicensed child care established by the Department in accordance with the annual appropriations act.

(d) The payment rates for daily transportation purchased from any approved ~~provider, except as provided in Paragraph (a) of Rule .0107, shall be:~~ provider shall be established by the Department in accordance with the annual appropriations act.

~~(1) forty-two dollars ($42.00) per month for any child younger than three years and any other child whose transportation needs require special accommodations or additional supervision.~~

~~(2) thirty-eight dollars ($38.00) per month for any child who does not meet the requirements of Subparagraph (d)(1).~~

(e) Payment rates for part-time care shall be prorated according to the number of hours per day or ~~days per month~~ the number of hours per week the child is scheduled to attend. Payment rates for care provided by shift or during the weekend shall be limited to the market rate or the provider's private rate, whichever is lower.

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

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

.0107 RATES FOR SUBSIDIZED CARE

(a) The payment rate for ~~centers~~ child care centers, family child care homes, and nonlicensed child care homes shall be established by the Department in accordance with the annual appropriations act. ~~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 shall be 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 be paid the rate established by the local purchasing agency not to exceed the county market rate~~.

~~(c)~~(b) ~~Facilities,~~ Centers, as defined in G.S. 110-86(3), which 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 shall be exempt from the provisions of ~~Paragraphs~~ Paragraph (a) ~~and (b)~~ of this Rule. These ~~facilities~~ centers ~~may~~ shall be paid ~~up to~~ the ~~maximum~~ net cost study rates established by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services for developmental day centers for children with special needs. For typically developing children enrolled in developmental day centers, the ~~maximum rate~~ net cost study rates shall be established by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services. ~~This rate~~ These rates shall exclude those costs associated exclusively with serving children with special needs.

~~(d)~~(c) Any approved ~~day~~ child care provider not included in paragraph (b) of this Rule who provides care to children who meet the definition of special needs set forth in 10 NCAC 46H .0110 ~~.0110, but who does not primarily serve special needs children,~~ may be paid a supplemental rate above the provider's approved daily care rate for a particular age group. ~~group 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 shall 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 education agency's exceptional children program specialist, the local purchasing agency, and the provider based on the plan developed to meet the child's individual needs.

~~(e)~~(d) The reimbursement of additional fees as charged by ~~facilities~~ centers 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~~ The payment rate for registration fees shall be ~~limited to twenty-five dollars ($25.00) per year per child.~~ determined by the Department in accordance with the annual appropriations act. Registration fees may not be paid more than twice per year per child regardless of the type of ~~facility.~~ center.

~~(f)~~(e) Purchasing agencies may negotiate with ~~day~~ child care center providers for purchase of child ~~day~~ care services at payment rates lower than those prescribed by this ~~Rule.~~ Rule, only with approval from the Division.

~~(g)~~(f) Child ~~day~~ care services funds shall not be used to pay for services provided by the Department of Health and Human ~~Resources,~~ Services, 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.

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

SUBCHAPTER 46E CHILD CARE CENTER REQUIREMENTS

SECTION .0100 – GENERAL

.0108 STANDARDS FOR CENTERS IN THE SUBSIDIZED CHILD CARE PROGRAM

(a) Any center which wishes to participate in the state ~~Purchase of~~ Subsidized Child Care Program as defined in 10 NCAC 46A .0105 shall satisfy applicable state ~~day~~ child care requirements as codified in ~~10 NCAC 3U.~~ 10 NCAC 3U, and must be approved by the local purchasing agency for participation and payment.

(b) Any center not required by G.S. 110 to be ~~licensed shall 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.~~ licensed, except for religious-sponsored centers operating in accordance with G.S. 110 –106, shall be licensed in order to participate in the state's Subsidized Child Care Program.

~~(c) Any center exempt from licensure shall 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 shall be on file in the Division and the center.~~

~~(d)~~(c) The operator of any center in the ~~Purchase of~~ Subsidized Child Care Program shall assure that the center complies with all applicable provisions of the Civil Rights Act of 1964 and all requirements imposed thereunder.

Authority G.S. 143B-153(2a).

.0109 APPLICATION

~~Application for approval to participate may be made to the Division.~~

Authority G.S. 143B-153(2a).

.0112 APPEALS

Any appeal for denial or termination of approval ~~must~~ shall be made according to the appeals procedures used by the ~~division~~ Division ~~as codified in 10 NCAC 3B .0700.~~ pursuant to G.S. 150B-23.

Authority G.S. 143B-153(2a); 150B-23.

SUBCHAPTER 46F – FAMILY CHILD CARE HOME REQUIREMENTS

SECTION .0100 – FAMILY CHILD CARE HOME APPROVAL PROCEDURES

.0107 APPROVAL FOR PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM

(a) Any family child care home which wishes to participate in the state subsidized child care program as defined in 10 NCAC 46A .0005 shall comply with the standards for family child care homes as codified in 10 NCAC 3U .1700 and all other applicable state family child care home requirements in 10 NCAC 3U and G.S. 110 Article 7.

~~(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) The operator of any family child care home participating in the subsidized child care program shall assure that the home complies with all applicable provisions of the Civil Rights Act of 1964 and all requirements imposed therein.

(c) Any family child care home that wishes to participate in the subsidized child care program must be approved by the local purchasing agency for participation and payment.

~~(c) Each child day care home shall be evaluated annually by the Division for compliance with the requirements for participation in the purchase of care program.~~

(d) Each family child care home shall submit appropriate information to enable the local purchasing agency to establish a payment rate for the home in accordance with the rate setting policies in the annual appropriations act and codified in Subchapter 46C.

~~(b)~~(e) Approval indicates that all requirements have been met.

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 G.S. 110, Article 7.~~

~~(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.~~

~~(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 Division.~~

Authority G.S. 143B-153(2a); S.L. 1989, c. 500, s. 101.

.0111 APPEALS

Any appeal for denial or termination of approval shall be made according to the appeals procedures used by the ~~division~~ Division ~~as codified in 10 NCAC 3B .0700.~~ pursuant to G.S. 150B-23.

Authority G.S. 143B-153(2a); 150B-23.

SUBHCAPTER 46G – NONLICENSED CHILD CARE HOME REQUIREMENTS

SECTION .0100 – GENERAL REQUIREMENTS

.0109 DEFINITION

(a) ~~"Nonregistered" day~~ "Nonlicensed" child care home means an arrangement whereby ~~day~~ child care is provided in a home that is not subject to ~~registration or~~ licensure pursuant to G.S. 110-86(2) – ~~(3)~~(4) or the requirements of G.S. 110-106 ~~or G.S. 110-106.1~~. Payment for care in the child's home by a member of the household shall be restricted to household members other than the child's ~~parents~~ parents, responsible adult, or other members of the

child's income unit as defined in 10 NCAC 46H .0203. Grandparents, aunts, and uncles, including step and great relationships, are exempt from meeting the requirements in Rules .0213 - .0214 of this ~~Subchapter.~~ Subchapter, except that criminal history records check requirements in G.S. 110-90.2 shall apply.
(b) The rules in this Subchapter shall apply only to those ~~nonregistered~~ nonlicensed homes as defined in this Rule which voluntarily choose to participate in the state subsidized ~~day~~ child care program.

Authority G.S. 143B-153(2a); G.S. 110-90.2.

.0110 DIVISION RESPONSIBILITY
(a) The Division, as defined in 10 NCAC 46A .0105, is responsible for the administration of the requirements and procedures for approving ~~nonregistered day~~ nonlicensed child care homes in which ~~day~~ child care funds administered by the ~~Department~~ local purchasing agency are used to subsidize the ~~day~~ child care cost for children of families eligible for assistance.
(b) The number of ~~nonregistered day~~ nonlicensed child care home arrangements that shall be visited by the Division for the purpose of evaluating compliance with the requirements for participation in the ~~purchase of~~ subsidized child care program shall be included in the monitoring plan developed annually by the Division.
(c) All complaints registered against ~~nonregistered day~~ nonlicensed child care homes shall be investigated by the 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.

Authority G.S. 143B-153(2a).

.0111 LOCAL PURCHASING AGENCY RESPONSIBILITY
(a) The local purchasing agency shall be responsible for reviewing the application and ~~parent provider~~ parent/responsible adult-provider self-check list and for determining compliance with the requirements established by the Social Services Commission for all ~~nonregistered~~ nonlicensed ~~day~~ child care homes from which care is purchased with funds administered by the ~~Department.~~ local purchasing agency.
(b) The county director of social services is authorized to deny or revoke approval of an arrangement where the caregiver or an individual who resides in the home where care is provided was found by the county director to be the perpetrator of abuse or neglect in accordance with G.S. ~~7A-544~~ 7B-302 or G.S. 108A-6, and where approval of the arrangement poses a threat to the child's health or safety. Approval may also be denied or revoked as described under the standard set forth in this Rule when an investigation of abuse or neglect is currently in process. Information regarding the fact that the prospective provider or individual in the home has been reported or investigated for alleged abuse or neglect shall not be given to the parent or any other individual unless such information is a matter of public record.

Authority G.S. 143B-153(2a); 45 C.F.R. 98.41; 45 C.F.R. 255.4(c); 45 C.F.R. 257.41.

.0112 INITIAL APPROVAL
(a) Approval indicates that all applicable requirements have been met.
(b) Temporary approval may be issued when an arrangement does not comply with all requirements but is expected to meet them within a specified period. Temporary approval for enrollment may be issued for a limited period of time not to exceed 30 days. For extenuating circumstances, the purchasing agency shall have the discretion to extend the 30 day period.
(c) When a provider fails to achieve compliance before the end of the specified time period described in Paragraph (b) of this Rule, approval may be denied.
(d) Initial approval shall not be issued pending results from criminal records checks of the provider and other household members unless there is no other care arrangement available for the child and local criminal records checks have been submitted to the local purchasing agency.

Authority G.S. 143B-153(2a).

.0114 PAYMENT REQUIREMENTS
(a) Any ~~nonregistered day~~ nonlicensed child care home that wishes to participate in the state ~~purchase of care~~ subsidized child care program, as defined in 10 NCAC 46A .0105, ~~must~~ shall comply with the requirements for ~~nonregistered~~ nonlicensed child care homes codified in Section .0200 of this Subchapter, except as specified in Rule .0109 of this Section.
(b) In order to receive payment for subsidized child care, any ~~nonregistered~~ nonlicensed child ~~day~~ care home arrangement must be enrolled in the subsidized child care program and be in compliance with all applicable requirements of this Subchapter.
(c) Each nonlicensed child care home shall submit appropriate information to enable the local purchasing agency to establish a payment rate for the home in accordance with the rate setting policies in the annual appropriations act and codified in Subchapter 46C.

Authority G.S. 143B-153(2a).

.0115 APPEALS
Any ~~nonregistered day~~ nonlicensed child care home desiring to appeal a decision by the local purchasing agency shall follow the appeals procedures for ~~grant-in-aid~~ public assistance programs pursuant to G.S. 108A-79 and any subsequent amendments. The local purchasing agency shall provide the ~~nonregistered day~~ nonlicensed child care home provider or applicant with appropriate information about the procedures for such an appeal.

Authority G.S. 143B-153(2a).

.0116 APPLICABILITY OF RULES
The rules of this Subchapter, including any subsequent amendments, shall also apply to ~~nonregistered~~ nonlicensed home recipients of Child Care and Development ~~Block~~

~~Grant~~ Fund child ~~day~~ care services funds administered by the Department of Health and Human ~~Resources.~~ Services.

Authority G.S. 150B-21.6; 45 C.F.R. 98.11(b); 45 C.F.R. 98.40.

SECTION .0200 – REQUIREMENTS FOR NONLICENSED CHILD CARE HOMES

.0213 PARENT-PROVIDER CHECKLIST

Prior to approval, each provider ~~must~~ shall submit a checklist that indicates satisfactory compliance with all applicable requirements. The checklist ~~must~~ shall be completed and signed by the provider and the ~~parent.~~ parent or responsible adult.

Authority G.S. 143B-153(2a).

.0214 HEALTH AND SAFETY STANDARDS

Each ~~nonregistered day~~ nonlicensed child 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~~ parent or guardian shall be on file for each child who attends. The completed form ~~must~~ shall 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 Division. However, the provider may use another ~~form~~ 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; and
   (i) a record of the child's immunizations as required pursuant to G.S. 130A-152.

(2) The parent and provider ~~must~~ shall 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.~~
   (a) The use of corporal punishment by the nonlicensed home operator, substitute caregiver, or any other person in the home, is prohibited except as allowed in G.S. 110-101.1.
   (b) No child shall ever be placed in a locked or closed room, closet, or box.

(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:
   (a) Hazardous materials such as combustibles, medications, and cleaning supplies shall be kept in locked storage or stored out of the reach of children.
   (b) Firearms and ammunition shall be kept separate and both shall be kept in locked storage.
   (c) Any in-ground pools on the premises shall be enclosed by a fence four feet high to prevent chance access by children. Access to above-ground pools on the premises shall be prevented by locking and securing the ladder in a place or storing the ladder in a place inaccessible to the children.

(4) First-aid supplies shall be kept in a place easily accessible to the provider but out of the reach of children.

(5) The nonlicensed home provider shall have access to ~~A~~ a working telephone ~~shall be proximate to the day care home arrangement~~. in case of emergency. 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~~ children, regardless of age or location in the ~~vehicle~~ vehicle, shall be restrained by individual seat belts or child restraint devices. Children shall never be left in a vehicle unattended by an adult.

(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.~~ daily.

(10) The provider shall wash her hands after toileting and after diapering each ~~child.~~ child, and before and after feeding children or handling food.

(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.~~ approval. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for participation in the subsidized child care program.

(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~~ nonlicensed home arrangement is located has clean drinking water, an approved sanitary disposal system, weather-tight construction, and is otherwise safe for human habitation:

(a) Indoor areas used by children shall be heated in cool weather and ventilated in warm weather.

(b) The nonlicensed home arrangement shall be free of rodents.

(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~~ nonlicensed child care home.

(18) The nonlicensed home provider shall refrigerate all perishable food and beverages in a working refrigerator in good repair.

~~(18)~~(19) The provider shall successfully complete a basic first aid course within three months of beginning participation in this program. The provider shall renew the basic first aid course every three years.

(20) The nonlicensed home provider shall submit to the local purchasing agency criminal record check information required in 10 NCAC 3U .2704, for herself and for any member of the household who is over 15 years of age and present when children are in care, within five working days of applying to participate in the subsidized child care program.

Authority G.S. 143B-153(2a); G.S. 110-90.2(a)(2).

.0215 PROVIDER REQUIREMENTS

(a) Each provider shall ensure that the parent or adult legally responsible for the child has unlimited access to their child and to the provider during the hours care is provided.

(b) No person shall be permitted to participate as a child care provider in the ~~purchase of~~ subsidized child care program:

(1) who has been convicted of a crime involving child abuse, child neglect, or moral turpitude; or

(2) who is an habitually excessive user of alcohol; or

(3) who illegally uses narcotics or other impairing drugs; or

(4) who is mentally or emotionally impaired to an extent that may be injurious to ~~children.~~ children; or

(5) who the Division has disqualified based on the provider's criminal history; or

(6) when the Division has disqualified an individual residing in the provider's home based on the household member's criminal history.

(c) The provider shall be at least 18 years of age.

Authority G.S. 143B-153(2a).

SUBCHAPTER 46H – POLICIES FOR PROVISION OF SUBSIDIZED CHILD CARE SERVICES

SECTION .0100 – GENERAL POLICIES

.0101 SCOPE

The rules of this Subchapter set forth general policies governing conditions for the provision of subsidized child ~~day~~ care services under the funding sources administered by the Division. General policies include methods of service provision, definition of the service, and eligibility criteria.

Authority G.S. 143B-153.

.0102 METHODS OF SERVICE PROVISION

(a) Child ~~day~~ care services may be provided directly by a Department of Health and Human ~~Resources~~ Services agency or the county departments of social services or may be ~~purchased~~ provided through contractual arrangement.

(b) The service must be provided, as appropriate, in ~~day~~ child care facilities or arrangements that meet standards established by the Social Services Commission.

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~~ child care ~~facility.~~ center. Each type of care arrangement shall 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~~ child care experience ~~for a child~~ and assisting eligible families as needed ~~in~~ with the cost of ~~purchase of the day care~~ purchasing the child 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.~~ included in child care services. For each type of care arrangement, the equipment and materials necessary to carry out the daily program of activities shall be ~~included.~~ included in the services provided.

(b) Component. Transportation, when needed and not otherwise available, shall be provided to access ~~day~~ child care ~~service~~ programs for persons receiving services in conjunction with protective services. Transportation, when needed and not otherwise available, may be provided to access ~~day~~ child care services for other persons who are eligible for child ~~day~~ care services.

Authority G.S. 143B-153.

.0104 OPTIONAL PROVISION OF SERVICES

~~(a) 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 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. This material is hereby incorporated by reference and includes subsequent amendments and editions. A copy of this material may obtained free of charge by writing or calling the Division of Social Services, 325 North Salisbury Street, Raleigh, NC 27603, (919) 733-3055.~~

~~(b)~~(a) Notwithstanding other rules in this Chapter, child ~~day~~ care services may be provided to children in counties receiving Smart Start funds ~~participating in the Early Childhood Education and Development Initiatives Program~~ authorized by G.S. 143B-3-10(B), provided that the child care services are included in the ~~county's Early Childhood Education and Development Plan~~ local partnership's approved Smart Start plan. ~~as approved by the Department of Human Resources.~~

~~(c)~~(b) 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 for serving families. The order of priority shall be stated in writing and made available to applicants for child care assistance.

Authority G.S. 143B-153.

.0105 SUPPORT TO EMPLOYMENT: TRAINING FOR EMPLOYMENT

(a) Child ~~day~~ care services shall be provided to support employment of the child's ~~parents.~~ parents or responsible adult.

(b) Child day care services shall be provided to support training leading to employment of the child's ~~parents.~~ parents or responsible adult.

(c) Where a parent or responsible adult remains in the home and is capable of providing care for the child, child ~~day~~ care services shall 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 shall be documented in the client record.

(d) ~~Day~~ Child 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~~ child care ~~should~~ shall 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 shall be provided for ~~a minimum of~~ at least 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) For purposes of this Rule, training ~~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) post secondary education or skills training, up to a maximum of two years enrollment.

Authority G.S. 143B-153.

.0106 SUPPORT FOR PROTECTIVE AND CHILD WELFARE SERVICES

(a) Child ~~day~~ care services ~~must~~ shall be provided when needed to enable a child to remain in his own home when receiving protective services for children. The child must be a recipient of protective services for children as defined in the state's social services program.

(b) Child care services shall be provided 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 I, Chapter II, and who need child care assistance as a support to the prevention of foster care placement and family preservation services described in the manual. This material is hereby incorporated by reference and includes subsequent amendments and editions. A copy of this material may be obtained free of charge by writing or calling the Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, (919) 733-3055.

Authority G.S. 143B-153.

.0107 PROMOTE CHILD'S DEVELOPMENT

(a) Child ~~day~~ care services ~~may~~ shall be provided ~~under the conditions described in Rule .0104(b)~~ to a child whose emotional, cognitive, social or physical development is delayed or is at risk of being delayed.

(b) This service may be provided by any approved ~~facility~~ center or home which meets the child's need for developmental care.

Authority G.S. 143B-153.

.0108 LIMITATIONS

(a) Child ~~day~~ care services as a support for protective services shall 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 shall not be provided when the parent is participating in graduate or post-graduate studies.

(c) Child day care services are limited to a total of two years when the parent or responsible adult 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 following ~~exception of children receiving child protective or foster care services~~ exceptions:

(1) children receiving child protective or foster care services; or

(2) to support the developmental needs of the child; or

(3) if the children in non-citizen families who need subsidized child care services are themselves legal citizens.

Authority G.S. 143B-153.

.0109 PARENTAL FREEDOM OF CHOICE

(a) Parents receiving assistance for their children ~~under the purchase of~~ through the subsidized child care program shall have the right to choose any ~~day~~ child care provider, approved for participation in the ~~purchase of~~ subsidized child care program under Subchapters 46E, 46F, or 46G of these Rules, to provide ~~day~~ child care services for their eligible children. The parent's choice of provider shall be accepted when there is space available in the facility and the child's enrollment will not violate the provider's ~~subsidized~~ licensed capacity.

(b) Purchasing agencies administering funds ~~under the purchase of~~ through the subsidized child care program shall notify parents applying for participation in the program of their right to choose the approved ~~day~~ child care provider which will provide ~~day~~ child care services to their eligible children.

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);~~ 14V .0802 (1), (2), and (5); 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",~~ Disabilities," 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~~ 14V .0800 may be obtained from the Office of Administrative Hearings, ~~P.O. Drawer 27447,~~ 6714 Mail Service Center, Raleigh, North Carolina, ~~27611-7447,~~ 27699-6714, (919) 733-2678. A copy of "Procedures Governing Programs and Services for Children With ~~Special Needs",~~ Disabilities" can be obtained from the North Carolina Department of Public Instruction, Attention: Cash Management, 301 North Wilmington Street, Raleigh, North Carolina 27601-2825, (919) 715-1018.

(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.

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 subsidized child ~~day~~ care ~~services funded with Child Day Care Services Funding,~~ services, it must be established that he or she is eligible on the basis of income eligible status, unless the service is available without regard to income as referenced in Rule .0206 of this Section.

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~~ child 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~~ child 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(c)~~ 46 H .0106 and ~~in Rules .0202 and~~ in Rule .0206 of this Section 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 Section) 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 Child ~~Day~~ Care Services Manual issued by the Division of Child Development.

Authority G.S. 143B-153.

.0204 INCOME ELIGIBILITY LEVELS

~~(a)~~ The maximum gross annual incomes for eligibility for subsidized child ~~day~~ care services, adjusted for family size, shall be ~~no lower than as follows:~~ established by the annual appropriations act.

~~Family Size~~	~~Gross Annual Income~~
~~1~~	~~$ 9,336~~
~~2~~	~~$12,996~~
~~3~~	~~$14,184~~
~~4~~	~~$18,000~~
~~5~~	~~$19,380~~
~~6~~	~~$22,284~~
~~7~~	~~$24,000~~
~~8 or more~~	~~$26,004~~

~~(b) The maximum gross annual incomes for eligibility for subsidized child day care services shall not be higher than 75 percent of the state median income, adjusted for family size.~~

~~(c) Income limits shall be increased only when state or federal funds are available subject to the approval of the Office of State Budget and Management~~.

Authority G.S. 143B-153.

.0206 WITHOUT REGARD TO INCOME

Child ~~day~~ care services shall be provided without regard to income for: ~~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~~ .0106 who need child care services and meet eligibility criteria for Child Welfare ~~Services; and~~ Services, for up to a maximum of 12 months of receiving child care services from the time the Child Welfare Services are initiated. After 12 months from the time the Child Welfare Services are initiated, child care services shall be provided with regard to income.
(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.
(3) children described in 10 NCAC 4H .0106 who need child care in conjunction with protective services, for a maximum of 12 months from the time protective services are initiated, provided that all conditions set forth in 10 NCAC 35E .0106 (6) are met.

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 subsidized child ~~day~~ care services funding shall rest with those agencies authorized by the Secretary of the Department of Health and Human ~~Resources.~~ Services.

Authority G.S. 143B-153.

.0208 DETERMINATION OF INCOME ELIGIBILITY

~~The methods used to determine eligibility~~ An individual that applies for child ~~day~~ care services shall ~~be~~ provide to the local purchasing agency verification of the amount and sources of his or her countable income in accordance with the requirements for eligibility determination for services ~~funded by the SSBG~~ as set forth in ~~10 NCAC 43L .0302.~~ the Child Care Subsidy Services Manual. The manual is incorporated by reference and includes subsequent amendments and editions. An electronic copy of the manual may be accessed at the following website: http://info.dhhs.state.nc.us/olm/manuals/dcd/ccs/man/index.htm. A paper copy of the manual may be purchased at a cost of Ten Dollars ($10.00) by calling the Division at (919) 662-4561. A copy of the manual is on file at the Division at the address given in 46A .0005, and will be available for public review during regular business hours.

~~(1) Local departments of social services will be subject to the requirements set forth in 10 NCAC 35E .0200.~~

~~(2) The eligibility method used by other agencies assigned eligibility responsibilities shall be authorized by the Secretary of the Department of Human Resources.~~

Authority G.S. 143B-153.

.0209 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION

The Division shall establish the requirements for application and ~~Eligibility~~ eligibility determination and redetermination for child ~~day~~ care ~~services~~ services. Eligibility shall be determined in accordance with the policies governing application for and provision of services as set forth in ~~10 NCAC 35D.~~ the Child Care Subsidy Services Manual. The manual is incorporated by reference and includes subsequent amendments and editions. An electronic copy of the manual may be accessed at the following website: http://info.dhhs.state.nc.us/olm/manuals/dcd/ccs/man/index.htm. A paper copy of the manual may be purchased at a cost of Ten Dollars ($10.00) by calling the Division at (919) 662-4561. A copy of the manual is on file at the Division at the address given in 10 NCAC 46A .0105, and will be available for public review during regular business hours.

Authority G.S. 143B-153.

SECTION .0300 – CLIENT FEES FOR CHILD CARE SERVICES

.0301 GENERAL FEE POLICY

(a) No fees ~~will~~ shall be charged to the client when child ~~day~~ care services are provided to individuals in the following circumstances:

~~(1) recipients of aid to families for dependent children payments;~~

~~(2) recipients of supplemental security income benefits;~~

~~(3)~~(1) ~~children~~ receiving ~~day~~ child care services in conjunction with protective services as described in 10 NCAC 35E .0106, up to a maximum of 12 months from the time protective services ~~is~~ are initiated.

~~(4)~~(2) ~~when day~~ child care services are provided as a support to a child receiving Child Welfare Services as described in the North Carolina Division of Social Services Family Services Manual, Volume I, Chapter ~~II,~~ II, up to a maximum of 12 months of receiving child care services from the time Child Welfare Services are initiated. After 12 months from the time the Child Welfare Services are initiated, the client shall be assessed a fee for child care services.

~~(5)~~(3) ~~when~~ a child with no income is living with someone other than his or her biological or adoptive parent or is living with someone who does not have court-ordered financial responsibility.

(b) Except as provided for in Paragraph (a), the client shall be assessed a fee for child ~~day~~ care services.

Authority G.S. 143B-153(2a).

.0302 AMOUNT AND COLLECTION OF CLIENT FEES

(a) The amount of the fees charged to the client shall be in accordance with ~~the fee schedules adopted by the Social Services Commission and published by the Section.~~ annual appropriations act.

(b) Fee charges to the client may be disregarded when the total amount due is less than five dollars ($5.00) per month.

(c) Collection of fees assessed to the client shall be the responsibility of the child care provider.

Authority G.S. 143B-153.

.0304 ADJUSTMENTS IN FEES

~~(a) When child day care services are provided to more than one member of the same family, the parent shall be charged the full fee for the youngest child enrolled full time. The fee charged for each additional child shall be fifty percent of the fee for the first child.~~

~~(b)~~(a) If family medical expenses exceed ten percent of the family's gross income in any eligibility period, the amount of the expenses which exceed the gross income shall be deducted from the gross income. The reduced income shall be used to determine the amount of the fees to be assessed the family for child day care services.

~~(c)~~(b) When the approved care plan is for less than full-day care, the assessed fee for the service ~~is~~ shall be adjusted by the appropriate percentage relative to the approved care plan.

Authority G.S. 143B-153.

.0305 MINIMUM FEE CHARGES

~~Fee charges to the client may be disregarded when the total amount due is less than five dollars ($5.00) per month.~~

Authority G.S. 143B-153.

.0306 COLLECTION OF FEES

~~Collection of fees assessed to the client shall be the responsibility of the child day care provider.~~

Authority G.S. 143B-153.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Health and Human Services intends to adopt rules cited as 10 NCAC 46D .0108-.0110 and to amend rules cited as 10 NCAC 46A .0101; 46D .0101-.0107, .0201-.0202, .0301-.0306; 46E .0111; 46F .0110; 46G .0113. Notice of Rule-making Proceedings was published in the Register on May 1, 2000.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 10:00 a.m. on September 13, 2000 at the Albemarle Building, Room 832, 325 N. Salisbury St., Raleigh, NC 27603.*

Reason for Proposed Action: *S.L. 99-0237 made changes to the payment policies of the state's subsidized child care program. S.L. 99-0279 provides for criminal penalties for fraudulent misrepresentation involving child care subsidies. The rules pertaining to the subsidized child care program have been reviewed and changes are proposed to reflect and support the legislation, along with other areas that needed to be updated.*

Comment Procedures: *Written comments for consideration by the Department may be submitted to Janice Fain, APA Coordinator for the Division of Child Development at 2201 Mail Service Center, Raleigh, NC 27699-2201. Oral comments may be made during the public hearing. Written comments will be accepted until September 6, 2000.*

Fiscal Impact			
State	**Local**	**Sub.**	**None**
			√

CHAPTER 46 – DAY CARE RULES

SUBCHAPTER 46A – IDENTIFYING INFORMATION

SECTION .0100 – GENERAL INFORMATION

.0101 SCOPE
The rules in this Chapter govern the purchase of child ~~day~~ care services with state and federal ~~day~~ child care funds administered by the Division.

Authority G.S. 143B-10; 143B-153; S.L. 1985, c. 757, s. 155(q).

SUBCHAPTER 46D – STATE DARY CARE SERVICES FUND

SECTION .0100 – GENERAL

.0101 DEFINITION OF FUND
"Child ~~Day~~ Care Services Funding" means all state and federal funds appropriated and otherwise made available to the Department of Health and Human ~~Resources~~ Services which are administered by the Division of Child Development, to purchase or provide child ~~day~~ care services for needy families in programs which have been approved for participation by the ~~section.~~ Division.

Authority G.S. 143B-153(2a); S.L. 1985, c. 479, s. 95-97.

.0102 DEFINITION OF SERVICES
The definition for child ~~day~~ care services which may be purchased with this fund is codified in 10 NCAC 46H .0103.

Authority G.S. 143B-153(2a).

.0103 ELIGIBILITY
(a) Child ~~day~~ care services may be provided to 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 shall be 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 shall be made to the agency responsible for determining eligibility as described in Paragraph (c) of this Rule.

Authority G.S. 143B-153(2a).

.0104 FEES
Fees for child ~~day~~ care services are charged in accordance with the annual appropriations act and fee policies adopted by the Social Services Commission as codified in 10 NCAC 46H .0300.

Authority G.S. 143B-153.

.0105 PROGRAM POLICIES AND STANDARDS
All ~~programs~~ providers and local purchasing agencies receiving child ~~day~~ care services funding ~~must~~ shall meet all ~~day~~ child care services policies and procedures as found in 10 NCAC 46.

Authority G.S. 143B-153; 143-153 (2a).

.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.

Authority G.S. 143B-153(2a).

.0107 REIMBURSEMENT
Reimbursement ~~will~~ shall be made in accordance with policies and procedures established by the Secretary of the Department of Health and Human ~~Resources.~~ Services. These policies and procedures are specified in ~~Part 6 of the Day Care Policy Manual~~ the Child Care Subsidy Services Manual. The manual is incorporated by reference and includes subsequent amendments and editions. An electronic copy of the manual may be accessed at the following website:
http://info.dhhs.state.nc.us/olm/manuals/dcd/ccs/man/index.htm. A paper copy of the manual ~~and~~ may be ~~obtained~~ purchased at a cost of Ten Dollars ($10.00) by calling ~~from~~ the ~~section.~~ Division at (919) 662-4561. A copy of the manual is on file at the Division at the address given in 10 NCAC 46A .0105, and will be available for public review during regular business hours.

Authority G.S. 143B-153(2a).

.0108 SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION

(a) The Division may impose sanctions for fraudulent misrepresentation when a person, whether a provider or recipient of child care subsidies, or someone claiming to be a provider or recipient of child care subsidies, does the following:

(1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact; and

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) The Division may impose the following sanctions for fraudulent misrepresentation in addition to requiring the provider or recipient to repay the amount of child care subsidy for which they were ineligible to receive:

(1) After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to receive subsidized child care services for 12 months;

(2) After the first incidence of fraudulent misrepresentation by a provider, the provider shall not be reimbursed with subsidized child care funds for any new children that enroll in the provider's program for twelve months; and

(3) After the second incidence of fraudulent misrepresentation by a recipient or by a provider, the recipient or provider shall be permanently ineligible to participate in the subsidized child care program.

(c) A recipient may appeal any sanction imposed in part (b) of this Rule by following the appeals procedures used by the Division as codified in 10 NCAC 3B .0700.

(d) A child care provider may appeal any sanction imposed in part (b) of this Rule by following the appeals procedures used by the Division pursuant to G.S. 150B-23.

Authority G.S. 143B-153.

.0109 CORRECTION OF OVERPAYMENTS

(a) A local purchasing agency that makes an overpayment as a result of fraudulent misrepresentation by the recipient or provider as described in Rule .0108 (a) of this Subchapter may recoup the amount of the overpayment as follows:

(1) The local purchasing agency may recoup the overpayment from the recipient if the recipient at the time the overpayment occurred was at least 18 years of age or older; and

(2) Overpayments due to fraudulent misrepresentation shall be collected by voluntary repayment by the recipient or provider or by involuntary repayment by pursuing court action.

(b) A local purchasing agency that makes an overpayment due to agency error in complying with program regulations shall correct the overpayment by adjustment through the state's subsidized child care reimbursement system.

Authority G.S. 143B-153.

.0110 REQUIREMENTS FOR THE ADMINISTRATION OF THE SUBSIDIZED CHILD CARE PROGRAM

(a) Any agency that administers child care services funding through the state's subsidized child care program shall maintain records of administration of the program for a period of three years, or until all audits begun within the three-year period are complete.

(b) Any agency that administers the state's subsidized child care program shall provide records of administration of the program upon request for review by local, state, or federal agency representatives.

(c) Upon review of agency records of administration of the state's subsidized child care program, if it is found that child care services funding was not spent in accordance with applicable state or federal regulations, the Division may require the agency to pay back funds improperly spent.

(d) Any agency that both administers the state's subsidized child care program and is a provider of subsidized child care services shall develop and implement a conflict of interest policy that shall include provision for:

(1) parental choice for recipients of subsidized child care; and

(2) separate management of the subsidized child care program and the child care facility owned or operated by the agency.

Authority G.S. 143B-153(2a).

SECTION .0200 – START-UP FUNDS

.0201 DEFINITION OF START-UP FUNDS

The purpose of the state ~~day~~ child care start-up funds is to provide ~~funds~~ funds, when available, to existing and potential child ~~day~~ care providers and service agencies for the upgrading or developing of programs from which services may be purchased or provided through state or federal funds.

Authority G.S. 143B-10; 143B-153 (2a).

.0202 REVIEW CRITERIA FOR START-UP FUNDS

(a) All proposals for start-up funds ~~must~~ shall 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~~ shall be subject to the availability of state and federal funds.

Authority G.S. 143B-153(2a).

SECTION .0300 – REQUIREMENTS FOR CONTRACTS WITH PRIVATE AGENCIES

.0301 SCOPE

The rules of this Section shall apply to all private agencies administering the state subsidized ~~day~~ child care program, in accordance with the rules in this Chapter, within any geographical area of North Carolina under contractual arrangement with the Department of Health and Human ~~Resources~~ Services or a local department of social services. ~~They shall not, however, apply to provision of Head Start Wrap Around services in which a Head Start agency provides extended day services for children enrolled in a Head Start program.~~

Authority G.S. 143B-153(2a).

.0302 APPROVAL

(a) All contracts with private agencies administering the state subsidized ~~day~~ child care program shall be approved by the Department prior to their execution.

(b) Each private agency administering the subsidized ~~day~~ child care program shall provide to the Department, prior to execution of a contract to administer the program, a complete and detailed copy of its budget, including both income and expenditures. ~~The~~ If requested by the Department, the private agency shall demonstrate to the satisfaction of the Department sufficient dependable sources of income to insure its continued operation during the contract period.

Authority G.S. 143B-153(2a).

.0303 LENGTH OF CONTRACT

Contracts with private agencies to administer the state ~~day~~ child care program shall be for a term not to exceed one year and shall expire on or before the end of the state fiscal year.

Authority G.S. 143B-153(2).

.0304 ADMINISTRATION OF FUNDS

~~(a)~~ State and federal funds for child ~~day~~ care services shall be disbursed only as reimbursement to ~~the private~~ an agency for funds previously paid by the agency to ~~day~~ child care providers for ~~day~~ child care services.

~~(b) The private agency shall pay providers for authorized services within no more than 10 working days after the end of the calendar month in which services were provided.~~

Authority G.S. 143B-153(2a).

.0305 ADMINISTRATION OF PROGRAM

(a) Each ~~private~~ agency administering the subsidized ~~day~~ child care program shall exercise any powers and duties delegated to it under this Chapter or under contract in a fair and impartial manner. It shall not discriminate with respect to any ~~day~~ child care parent or ~~day~~ child care provider in reaction to any complaint lodged with or against the agency by that parent or ~~day~~ child care provider or in reaction to any opposition or support expressed by that parent or ~~day~~ child care provider to a position taken by the agency on any ~~day~~ child care issue. It shall comply fully with the parental freedom of choice provisions of 10 NCAC 46H .0109.

(b) ~~A private~~ An agency determined by the Secretary or his designee to have violated the provisions of this Rule shall be ineligible to contract for administration of the subsidized ~~day~~ child care program funds for a period determined by the Secretary of up to three years from the date of the Secretary's determination that a violation has occurred. Determinations by the Secretary or his designee may be appealed pursuant to G.S. 150B-23 by the agency or by the complainant if that person or entity is the person or entity aggrieved as defined in G.S. 150B-2.

Authority G.S. 143B-153(2a).

.0306 RECORDS

(a) If the private agency is organized as a corporation or unincorporated association, it shall upon request of the Department or other contractor, open its minute books of meetings of directors, shareholders, or members for inspection.

(b) Each private agency administering state ~~day~~ child care funds shall maintain records of all receipts and disbursements for a period of three years following final payment for the contract period, or until all audits begun within the three-year period are complete.

(c) If a private agency ceases operation, it shall provide the Department with copies of the records specified in this Rule.

(d) Each private agency administering state or federal ~~day~~ child care services funds shall have a written policy for the inspection, examination, and copying of records maintained by the agency. The written policy shall comply with the provisions of Chapter 132 of the General Statutes.

Authority G.S. 143B-153(2a).

SUBCHAPTER 46E – DAY CARE CENTER REQUIREMENTS

SECTION .0100 – GENERAL

.0111 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM

(a) Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local purchasing agency.

~~(a)~~(b) Any center approved for participation in the ~~Purchase of~~ Subsidized Child Care Program ~~will~~ shall continue to be eligible for as long as the center maintains compliance with all of the requirements set forth in this Subchapter.

~~(b)~~(c) When a center is found to be out of compliance with any requirement for participation, the Division ~~may~~ shall set a time limit for compliance. If the center fails to comply within the set time limit, approval ~~will~~ may be terminated.

(d) Upon request for review by a local, state, or federal agency representative, the operator of a center shall provide records pertaining to his or her participation in the state's subsidized child care program.

Authority G.S. 143B-153(2a).

SUBCHAPTER 46F – CHILD DAY CARE HOME

REQUIREMENTS

SECTION .0100 – DAY CARE HOME APPROVAL PROCEDURES

.0110 CONTINUED PARTICIPATION

(a) Any family child care home approved for participation in the ~~purchase of~~ subsidized child care program ~~will~~ shall 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 Division ~~may~~ shall set a time limit for compliance. If the home fails to comply within the set time limit, approval ~~will~~ shall be terminated.

(c) Upon request for review by a local, state or federal agency representative, the operator of a family child care home shall provide records pertaining to his or her participation in the state's subsidized child care program.

Authority G.S. 143B-153(2a).

SUBCHAPTER 46G – NONREGISTERED DAY CARE HOME REQUIREMENTS

SECTION .0113 – GENERAL REQUIREMENTS

.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 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~~ nonlicensed child care home shall be evaluated for compliance with the requirements for participation in the subsidized child care program annually as described in Rule .0111 in this Section.

(c) Upon request for review by a local, state, or federal agency representative, the operator of a nonlicensed child care home shall provide records pertaining to his or her participation in the state's subsidized child care program.

Authority G.S. 143B-153(2a).

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Environmental Management Commission intends to adopt the rules cited as 15A NCAC 2E .0501- .0507, amend the rules cited as 15A NCAC 2E .0106- .0107, and repeal the rules cited as 15A NCAC 2E .0102- .0103, .0201- .0202, .0205. Notice of Rule-making Proceedings was published in the Register on April 15, 1999.

Proposed Effective Date: *April 1, 2001.*

A Public Hearing *will be conducted at 3:00-5:00PM and 7:00-8:00PM on August 8, 2000 at the NC Global TransPark Authority, Education and Training Center 3800 Hwy 58 North, Kinston, NC. (For directions, visit the Division of Water Resource's web page: http://www.dwr.ehnr.state.nc.us/hms/gwbranch/gwb.htm).*

Reason for Proposed Action: *There is increasing evidence of present and future ground water supply shortages within the area encompassed by the following 15 North Carolina counties: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson. Within these counties, ground water from the Cretaceous aquifer system (Black Creek, Upper Cape Fear, and Peedee aquifers) is being withdrawn at a rate that exceeds the available recharge. To address threatened ground water supplies in the region the North Carolina Division of Water Resources requests the Environmental Management Commission to create a capacity use area. The Central Coastal Plain Capacity Use Area would regulate water use through permitting to avoid damage to the ground water resources and to maintain those sources of water indefinitely. The proposed regulation is a major rule and would affect both state funds and local government expenditures.*

Water levels in the Cretaceous aquifers have been declining since the late 1960s as documented by Division of Water Resources databases. The Division has anecdotal information from the 1920s that water flowed from artesian wells at the time they were constructed. This continued decline, from free-flowing wells to water levels as much as 195 feet below land surface, indicates that current withdrawals of water from these aquifers exceed the available supply that can be used on a sustainable basis. Regulating the use of water in this area fulfills the intent of the Water Use Act of 1967 to protect the resource and to allow water uses that can be sustained into the future. Water users in this area have overused the resource since it has provided the highest quality water at the lowest cost. Growth in demand and the physical limits of the hydrogeologic system have resulted in the present situation. Demands for water exceed the safe yields of the Cretaceous aquifer system such that other sources of water must be brought on line by water supply systems. Surface water and other aquifers will be used to meet this deficit. The high yielding Castle Hayne aquifer is available in the eastern portion of the affected area. This capacity use area is proposed to include those eastern counties to control the exchange of water and promote controlled development of alternative supplies. Because the proposed capacity use area encompasses all areas within the existing Capacity Use Area No. 1 that require continued regulation, the existing Capacity Use Area No. 1 declaration and rule (15A NCAC 2E .0201, .0202, and .0205) should be repealed when this proposed rule becomes effective.

The Water Use Act of 1967 allows for the Environmental Management Commission to "declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest." The Act further states that a capacity use area "is one where the Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said

area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them."

The most threatened portions of the Cretaceous aquifers lie beneath the following 15 North Carolina counties: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson. The Division recommends water use regulation take place in these counties.

The Division's recommendation is based on the following concerns:

a. Water level drawdowns. Monitoring wells specifically designed to track water levels in the Cretaceous aquifers show water level drawdown trends ranging from declines of one to eight feet per year. Those monitoring wells are distributed throughout an 8000 square mile portion of the central coastal plain.

b. Dewatering. Water levels from water supply systems in several of these counties show drawdowns below the top of the aquifer by as much as 150 feet. Dewatering is known to cause irreparable harm to the aquifer's ability to yield water.

c. Current and projected water use. Current and projected water use reported through the Local Water Supply Planning process {G.S. 143-355(l) & (m)} plus water use by other users have been compared to the estimated safe yield from the Cretaceous aquifers. Projections through the year 2020 indicate a growing deficit in water supply. It is clear that other sources of water must be developed to make up this deficit.

d. Alternate water sources. The location and nature of alternate water supply sources for this region of North Carolina, including surface water and the Castle Hayne aquifer, make solutions to this problem more complex and extend the area affected by the problem. These other sources of water are limited due to water quality concerns in the lower Neuse and Pamlico River basins and inadequate access to the Castle Hayne aquifer for many of the affected water systems.

Comment Procedures: *The purpose of this announcement is to encourage those interested in this proposal to provide written comments. It is very important that all interested and potential affected parties make their views known to the Environmental Management Commission whether in favor or opposed to any and all provisions of the proposal being noticed. The public comment period ends September 15, 2000. Written comments, data, or other information relevant to this proposal may be submitted to: Nat Wilson, DENR/Division of Water Resources, 1611 Mail Service Center, Raleigh, NC 27699-1611, Telephone (919) 715 5445.*

Fiscal Impact

State	Local	Sub.	None	
			√	*15 NCAC 2E .0102-.0103, .0106-.0107, .0201-.0202, .0205, .0501, .0503, .0504, .0507*
		√		*15 NCAC 2E .0502*
		√		*15 NCAC 2E .0505*
		√		*15 NCAC 2E .0506*

CHAPTER 2 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2E – WATER USE REGISTRATION AND ALLOCATION

SECTION .0100 – GENERAL PROVISIONS

.0102 PURPOSE

~~These regulations are intended to provide for the management of water withdrawal and uses in the designated capacity use areas as needed to conserve water resources in the areas, and to maintain conditions that are conductive to the orderly development and beneficial use of these resources.~~

Authority G.S. 143-215.12; 143-215.14.

.0103 SCOPE

~~These regulations establish general and specific requirements that are applicable to all persons who withdraw, obtain or utilize water within the designated capacity use areas. Special requirements applicable to individual users will normally be included in appropriate water use permits.~~

Authority G.S. 143-215.14.

.0106 DEFINITIONS

As used herein, unless the context otherwise requires:

(1) "Director" means the Director of the Division of ~~Environmental Management.~~ Water Resources.

(2) "Division" means the Division of ~~Environmental Management.~~ Water Resources.

Authority G.S. 87-87; 143-215.14; 143-215.21.

.0107 DELEGATION

(a) The Director is delegated the authority to grant, modify, revoke or deny permits under G.S. 143-215.15 and G.S. 143-215.16.

(b) The Director may delegate any permitting function given by the rules of this Subchapter.

(c) The Director is delegated the authority to assess civil penalties and request the Attorney General to institute civil actions under G.S. 143-215.17.

(d) The Director ~~of the Division of Water Resources~~ is delegated the authority to process applications and collect fees for registration of water withdrawals and transfers under G.S. 143-215.22H and G.S. 143- 215.3(a)(1b).

(e) The Director ~~of the Division of Water Resources~~ may delegate any water withdrawal or transfer registration processing functions given by the rules of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).

SECTION .0200 – CAPACITY USE AREA NO. 1

.0201 DECLARATION AND

DELINEATION OF CAPACITY USE AREA NO. 1

The Environmental Management Commission on the 18th day of December, 1968, declared and delineated the following described geographical area a capacity use area: "That area bounded by a line beginning at the intersection of Highway US 17 and Roanoke River, at Williamston, and running south along Highway US 17 to the Martin Beaufort Counties line; thence northwest along the Martin Beaufort Counties line to the Pitt County line; thence generally south along the Pitt Beaufort Counties line to the Craven County line; thence southwest along the Pitt Craven Counties line to the Neuse River; thence southeast along the Neuse River to New Bern; thence south along Highway US 70 to Morehead City and on to Atlantic; thence north along the eastern edge of Cedar Island, across Pamlico Sound, along the eastern edge of Great Island, to the intersection of Highways US 264 and NC 94 near the south shore of Lake Mattamuskeet; thence north along Highway NC 94 to Columbia; thence west along the south shore of Albemarle Sound to the mouth of Roanoke River; thence generally southwest along Roanoke River to Highway US 17 at Williamston, the beginning."

Authority G.S. 143-215.13.

.0202 PERSONS WITHDRAWING GROUNDWATER IN CAPACITY USE AREAS

(a) Permits Required

(1) Water Use Permit

(A) No person shall, after June 18, 1969 (as designated the Commission), withdraw, obtain or utilize surface waters or ground waters, or both, in excess of 100,000 gallons per day for any purpose unless such person shall first apply for a water use permit therefor from the Director.

(B) Application for such water use permit shall be submitted on a form approved by the Director. An approved form, may be obtained from the Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, N.C. 27611. The application shall describe the specific purpose or purposes for which the water will be withdrawn or used, and shall justify the quantity needed for each purpose. Each application submitted to the Division will be considered and acted upon as soon as practicable. Pending the Director's issuance or denial of a permit, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area.

(C) Water use permits shall be issued for a period to be determined by the Director but not to exceed the longest of the following:

(i) 10 years, or

(ii) the duration of the existence of the capacity use area, or

(iii) the period found by the Director to be necessary for reasonable amortization of the applicant's water withdrawal and water using facilities.

(D) Each water use permit shall be subject to review, modification or renewal by the Director as set forth in Section 143-215.15(c) of the General Statutes of North Carolina (Water Use Act of 1967). Holders of water use permits will be expected to notify the Director of any major changes in usage. Review of water use permits may require the justification of continuing needs and the documentation of all water conservation measures.

(E) Water use permits shall not be transferred except with the approval of the Director.

(F) Water withdrawn under any water use permit shall be used only for the purpose(s) set forth in the permit.

(2) Well Construction Permit

(A) A well construction permit shall be obtained prior to construction of all wells except those constructed for individual domestic water supplies.

(B) Application for a well construction permit shall be made of Form GW22, "Application for Permit to Construct a Well," which can be obtained from the Division. The application shall state the purpose of the well, and shall include the proposed location, construction specifications, the estimated withdrawal rate, the location and ownership of all water supply wells within a radius of either:

(i) 1,000 feet for wells withdrawing less than 100,000 gallons per day;

(ii) 1,500 feet for wells withdrawing 100,000 to 1,000,000 gallons per day;

(iii) 2,500 feet for wells withdrawing more than 1,000,000 gallons per day; and such other information as the Director may reasonably deem necessary.

(b) Withdrawal and Water Level Controls Required

(1) Total Quantity. The water use permit issued by the Director shall establish the maximum total quantity that may be withdrawn daily, and may specify the timing of withdrawals.

(2) Maximum Withdrawal Rates. Maximum rates of withdrawal of water from individual wells or surface water intakes may be set forth in the water use permit issued by the Director, when the Director determines that such control is required to conserve water or protect the water quality.

(3) Maximum Drawdown Levels. The water use permit may specify the lowest water level that may be produced in any well or wells.

(4) Additional Provisions. The water use permit shall be issued subject to such other provisions as the Director deems necessary to conserve or protect the water resources of the capacity use area. The permit may:

(A) require that the applicant cooperate with the Division, and with other users of water in the

affected area, in determining and implementing reasonable and practical methods and processes to conserve and protect the water resources while avoiding or minimizing adverse effects on the quantity and quality of water available to persons whose water supply has been materially reduced or impaired as a result of withdrawals made pursuant to water use permits;

(B) require that any portion of the water withdrawn be returned to the source or to any other stream or aquifer as approved by the Director;

(C) require the holder of a water use permit to obtain the Director's approval of the locations and distribution of individual surface water intakes and wells, and of the depths, zones, aquifers or parts of aquifers from which withdrawals may be made;

(D) require that each well or surface water intake be equipped with an approved monitoring device that will provide a continuous record of withdrawals within an accuracy of plus or minus five percent;

(E) require that observation stations or wells be installed and maintained for monitoring water levels and water quality;

(F) require that holders of water use permits unite in joint efforts to conserve water quantity and quality by any and all of the requirements in this Rule when applicable.

(c) Reports Required

(1) Well Record or Well Completion or Abandonment Report. Any person completing or abandoning any well shall furnish the Director, on Form GW-1, a certified record of the construction or abandonment of such well within a period of 30 days from completion of construction or abandonment, as required in the provisions of Article 7, Chapter 87 and Article 38, Chapter 143, General Statutes of North Carolina. The required completion report shall include the location, size, depth, casing record, method of finishing, formation log, static water level, yield data and records of any surveys, geophysical logs, test or water analyses. Samples of formation cuttings from all wells shall be furnished to the Director except when the Director specifies that such samples are not required. For wells withdrawing more than 1,000,000 gallons a day, a description of the proposed device for metering withdrawals is required. The required abandonment report shall include the location and method of sealing and plugging.

(2) Reports and Records of Withdrawal from each Source. For withdrawals of more than 100,000 gallons per day, monthly reports of daily withdrawals from each well or surface water intake shall be furnished to the Director not later than 15 days after the end of each calendar month. Withdrawals shall be measured by a method acceptable to the Director. Withdrawals of 1,000,000 gallons per day or more shall be measured by an approved metering device, equipped with an automatic chart recorder, and having any accuracy of plus or minus five percent. The required reports shall include copies of chart recordings.

(3) Reports of Water Levels. For withdrawals of less than 1,000,000 gallons per day, water level reporting, if required, may be specified in the permit. For withdrawals of 1,000,000 gallons per day or more monthly reports of water levels shall be furnished to the Director not later than 15 days after the end of each calendar month as follows:

(A) the pumping water level for each supply well as measured with a steel or electric tape from a fixed reference point each day at approximately the same hour, or at such other time intervals as may be satisfactory to the Director. The measurements shall be within accuracy limits of plus or minus 0.25 of a foot or three inches.

(B) The level of each surface water used as a source of supply, as measured by a method and at such frequency as specified in the permit.

(C) The Water levels in observation wells other than supply wells as measured from a fixed reference point at intervals specified by the permit.

(4) Other Reports. The Director may require reports of other data pertinent and necessary to the evaluation of the effects of withdrawals.

Authority G.S. 143-215.14; 143-215.15.

.0205 ACTIVITIES

Activities Requiring Prior Approval by the Commission. No construction or installation of works of improvement which may significantly affect the quantity or quality of the water resources shall be undertaken without prior approval from the Commission. These include, but are not necessarily limited to, the following:

(1) Surface Drainage Projects

(a) Any project involving the drainage or diversion of ponded or standing water, except water temporarily impounded as the result of flooding, from an area in excess of five acres;

(b) Application for approval of any such project shall include:

(i) a description of the area,

(ii) purpose of the project and method of drainage, and

(iii) a general evaluation of the probable effects of the project on the water resources.

(2) Subsurface Drainage Projects

(a) Any project involving the withdrawal or diversion of ground water, except for the purpose of water supply or agricultural use, that will probably result in lowering existing ground water levels or artesian head more than three feet for a period of one year in any area of more than five acres;

(b) Application for approval of any such project shall include a description of the area, purpose of the project and method of drainage, and a general evaluation of the probable effects of the project on the water resources.

(3) Well Mining Projects

(a) Any projects involving the removal or extraction of minerals through wells;

(b) Application for approval of any such project shall include:

(i) a description of the location and extent of the area;

(ii) methods, procedures and processes of removal or extraction;

(iii) well plugging and abandonment procedures, and

(iv) an evaluation of the effects of the water resources.

(4) Excavation Projects

(a) Any project involving the excavation of any land that lies under water;

(b) Any project involving the excavation of any single area in excess of five acres to any depth below the highest natural level of groundwater;

(c) Application for approval of any such projects shall include a description of the location and the extent of the area, purpose, depth, and excavation methods.

Authority G.S. 143-215.14; 143-215.20.

SECTION .0500 - CENTRAL COASTAL PLAIN CAPACITY USE AREA

.0501 DECLARATION AND DELINEATION OF CENTRAL COASTAL PLAIN CAPACITY USE AREA

The area encompassed by the following 15 North Carolina counties and adjoining creeks, streams, and rivers is hereby declared and delineated as the Central Coastal Plain Capacity Use Area: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson. The Environmental Management Commission finds that the use of ground water requires coordination and limited regulation in this delineated area for protection of the public interest.

Authority G.S. 143-215.13.

.0502 WITHDRAWAL PERMITS

(a) Existing ground water withdrawal permits issued in Capacity Use Area No. 1 (15A NCAC 2E .0200) within the Central Coastal Plain Capacity Use Area are reissued under Section .0500 of this Subchapter and are valid until the expiration date specified in each permit. Water use permits are no longer required for withdrawals in Hyde and Tyrrell Counties as of the effective date of this Rule. Permits are not required for surface water use under Section .0500 of this Subchapter in the Central Coastal Plain Capacity Use Area as delineated in Rule .0501 of this Section.

(b) No person shall withdraw ground water after the effective date of this Rule in excess of 100,000 gallons per day by a well or group of wells operated as a system for any purpose unless such person shall first obtain a water use permit from the Director. Existing withdrawals of ground water as of the effective date of this Rule and proposed withdrawals previously approved for funding appropriated pursuant to the "Clean Water and Natural Gas Critical Needs Bond Act of 1998" or other local, state or federally funded projects as of the effective date of this Rule shall be allowed to proceed with construction or to continue to operate under interim status until a permit has been issued or denied by the Director, provided that persons withdrawing in excess of 100,000 gallons per day by a well or group of wells operated as a system comply with the following requirements:

(1) Persons conducting withdrawals in the Capacity Use Area that require a permit shall submit a permit application to the Division of Water Resources within 60 days of the effective date of this Rule;

(2) Persons who have submitted applications shall provide any additional information requested by the Division of Water Resources for processing of the permit application within 30 days of the receipt of that request; and

(3) Persons conducting withdrawals in the Capacity Use Area that require a permit shall submit water level and water use data on a form supplied by the Division four times a year, within 30 days of the end of March, June, September, and December until a permit has been issued or denied by the Division of Water Resources.

(c) Ground water withdrawals will be governed by the following standards:

(1) Adverse impacts of ground water withdrawals shall be avoided or minimized. Adverse impacts include, but are not limited to:

(A) dewatering of aquifers;

(B) encroachment of salt water;

(C) land subsidence or sinkhole development; and

(D) long-term declines in aquifer water levels.

(2) Adverse impacts on other water users from ground water withdrawals shall be corrected or minimized through efficient use of water and development of sustainable water sources.

(3) In determining the importance and necessity of a proposed withdrawal the efficiency of water use and implementation of conservation measures shall be considered.

(d) An application for a water use permit must be submitted on a form approved by the Director to the North Carolina Division of Water Resources. The application shall describe the purpose or purposes for which water will be used, shall set forth the method and location of withdrawals, shall justify the quantities needed, and shall document water conservation measures to be used by the applicant to ensure efficient use of water and avoidance of waste. Withdrawal permit applications shall include the following information:

(1) Location by latitude and longitude of all wells to be used for withdrawal of water;

(2) Specifications for design and construction of existing and proposed production and monitoring wells. Exceptions may be made where specific items of information are not critical, as determined by the Director, to manage the ground water resource:
  (A) Well diameter;
  (B) Total depth of the well;
  (C) Depths of all open hole or screened intervals that will yield water to the well;
  (D) Depth of pump intake(s);
  (E) Size, capacity and type of pump;
  (F) Depth to top of gravel pack; and
  (G) Depth measurements shall be within accuracy limits of plus or minus 0.10 feet and referenced to a known land surface elevation.

(3) Withdrawal permit applications for use of ground water from the Cretaceous aquifer system shall include plans to reduce water use from these aquifers as specified in Rule .0503 of this Section. Withdrawal rates from the Cretaceous aquifer system that exceed the approved base rate may be permitted during Phase I of Rule .0503 of this Section if the applicant can demonstrate to the Director's satisfaction a need for the greater amount. Cretaceous aquifer system wells will be identified using the specifications in Rule .0502(d)(1) and .0502(d)(2) of this Section and the hydrogeological framework.

(4) Withdrawal permit applications for dewatering of mines, pits or quarries shall include a dewatering or depressurization plan that includes:
  (A) a hydrogeological analysis of the dewatering or depressurization activity;
  (B) the location, design and specifications of any sumps, drains or other withdrawal sources including wells and trenches;
  (C) the lateral extent and depth of the zone(s) to be dewatered or depressurized;
  (D) a monitoring plan that provides data to delineate the nature and extent of dewatering or depressurization; and
  (E) certification by an appropriate North Carolina Licensed Engineer or Geologist of all plans and hydrogeological analyses prepared to meet these requirements.

(5) Conservation Measures. The applicant shall provide information on existing conservation measures and conservation measures to be implemented during the permit period as follows:
  (A) Public water supply systems shall develop and implement a feasible water conservation plan incorporating, at a minimum, the following components. Each component shall be described, including a timetable for implementing each component that does not already exist:
    (i) Adoption of a water conservation-based rate structure, such as: flat rates, increasing block rates, seasonal rates, or quantity-based surcharges:
    (ii) Implementation of a water loss reduction program if unaccounted for water is greater than 15 percent of the total amount produced, as documented annually using a detailed water audit. Water loss reduction programs shall consist of annual water audits, in-field leak detection, and leak repair:
    (iii) Adoption of a water conservation ordinance for irrigation, including such measures as: time-of-day and day-of-week restrictions on lawn and ornamental irrigation, automatic irrigation system shut-off devices or other appropriate measures:
    (iv) Implementation of a retrofit program that makes available indoor water conservation devices to customers (such as showerheads, toilet flappers, and faucet aerators):
    (v) Implementation of a public education program (such as water bill inserts, school and civic presentations, water treatment plant tours, public services announcements, or other appropriate measures); and
    (vi) Evaluation of the feasibility of water reuse as a means of conservation, where applicable.
  (B) Users of water for commercial purposes, other than irrigation of crops and forestry stock, shall develop and implement a water conservation plan as follows:
    (i) an audit of water use by type of activity (for example, process make-up water, non-contact cooling water) including existing and potential conservation and reuse measures for each type of water use; and
    (ii) an implementation schedule for feasible measures identified in the above item for conservation and reuse of water at the facility.
  (C) Users of water for irrigation of crops and forestry stock shall provide the following information:
    (i) total acreage with irrigation available;
    (ii) types of crops that may be irrigated;
    (iii) method of irrigation (for example, wells that supply water to canals, ditches or central pivot systems or any other irrigation method using ground water); and
    (iv) a statement that the applicant uses conservation practice standards for irrigation as defined by the Natural Resources Conservation Service.

(6) If an applicant intends to operate an aquifer storage and recovery program (ASR), the applicant shall provide information on the storage zone, including the depth interval of the storage zone, lateral extent

of the projected storage area, construction details of wells used for injection and withdrawal of water, and performance of the ASR program.

(e) The Director shall issue, modify, revoke, or deny each permit as set forth in G.S. 143-215.15. Permittees may apply for permit modifications. Any application submitted by a permittee shall be subject to the public notice and comment requirements of G.S. 143-215.15(d).

(f) Permit duration shall be set by the Director as described in G.S. 143-215.16(a). Permit transferability is established in G.S. 143-215.16(b).

(g) Persons holding a permit shall submit signed water usage and water level reports to the Director not later than 30 days after the end of each permit reporting period as specified in the permit. Monitoring report requirements may include:

(1) Amounts of daily withdrawal from each well;

(2) Pumping and static water levels for each supply well as measured with a steel or electric tape, or an alternative method as specified in the permit, at time intervals specified in the permit;

(3) Static water levels in observation wells at time intervals specified in the permit;

(4) Annual sampling by applicants located in the salt water encroachment zone and chloride concentration analysis by a State certified laboratory; and

(5) Any other information the Director determines to be pertinent and necessary to the evaluation of the effects of withdrawals.

(h) Water use permit holders shall not add new wells without prior approval from the Director.

(i) The Director may require permit holders to construct observation wells to observe water level and water quality conditions before and after water withdrawals begin if there is a demonstrated need for aquifer monitoring to assess the impact of the withdrawal on the aquifer.

(j) For all water uses other than dewatering of mines, pits or quarries, withdrawals shall be permitted only from wells that are constructed such that the pump intake or intakes are at a shallower depth than the top of the uppermost confined aquifer that yields water to the well. Confined aquifer tops are established in the hydrogeological framework. Where wells in existence as of the effective date of this Rule are not in compliance with the requirements of this provision, the permit shall include a compliance schedule for retrofitting or replacement of non-compliant wells. Withdrawals from unconfined aquifers shall not lower the water table by an amount large enough to decrease the effective thickness of the unconfined aquifer by more than 50 percent.

(k) For withdrawals to dewater mines, pits or quarries, the permit shall delimit the extent of the area and depths of the aquifer(s) to be dewatered or depressurized. Maximum well withdrawal rates, total use limits, and the permissible extent of dewatering or depressurization will be determined by the Director using available methods of hydrogeologic analysis.

(l) Withdrawals of water that cause changes in water quality such that the available uses of the resource are adversely affected will not be permitted. For example, withdrawals shall not be permitted that result in migration of ground water that contains more than 250 milligrams per liter chloride into pumping wells that contain chloride at concentrations below 250 milligrams per liter.

(m) General permits may be developed by the Division and issued by the Director for categories of withdrawal that involve the same or substantially similar operations, have similar withdrawal characteristics, require the same limitations or operating conditions, and require similar monitoring.

(n) Permitted water users may withdraw and sell or transfer water to other users provided that their permitted withdrawal limits are not exceeded.

(o) A permitted water user may sell or transfer to other users a portion of his permitted withdrawal. To carry out such a transfer, the original permittee must request a permit modification to reduce his permitted withdrawal and the proposed recipient of the transfer must apply for a new or amended withdrawal permit under Section .0500 of this Subchapter.

(p) Where an applicant or a permit holder can demonstrate that compliance with water withdrawal limits established under Section .0500 of this Subchapter is not possible because of construction schedules, requirements of other laws, or other reasons beyond the control of the applicant or permit holder, and where the applicant or permit holder has made appropriate efforts to conserve water and to plan the development of adequate water sources, the Director may issue a temporary permit with an alternative schedule to attain compliance with provisions of Section .0500 of this Subchapter, as authorized in G.S. 143-215.15(c)(ii).

Authority G.S. 143-215.14; 143-215.15; 143-215.16.

.0503 PRESCRIBED WATER USE REDUCTIONS IN CRETACEOUS AQUIFER ZONES

Cretaceous aquifer water use shall be reduced in prescribed areas over a 16 year period, starting from approved base rates on the effective date of this Rule. The Cretaceous aquifer system zones and the three phases of water use reductions are listed as follows:

(1) Cretaceous aquifer system zones are regions established in the fresh water portion of the Cretaceous aquifer system that delimit zones of salt water encroachment, dewatering and declining water levels. These zones are designated on the paper and digital map entitled "Central Coastal Plain Capacity Use Area Cretaceous Aquifer Zones" (CCPCUA) on file in the Office of the Secretary of State one week prior to the effective date of these Rules.

(2) The reductions specified in Rule .0503 of this Section do not apply to intermittent users.

(3) If a permittee implements an aquifer storage and recovery program (ASR), reduction requirements will be based on the total net withdrawals. The reductions specified in Rule .0503 of this Section do not apply if the volume of water injected into the aquifer is greater than the withdrawal volume. If the withdrawal volume is greater than the injected volume, reductions specified in Rule .0503 of this Section apply to the difference between the withdrawal volume and the injected volume.

(4) The reductions specified in Rule .0503 of this Section shall not reduce permitted water use rates below 100,001 gallons per day.

(5) Phase definitions:

(a) Phase I: The six year period extending into the future from the effective date of this Rule.

(b) Phase II: The five year period extending into the future from six years after the effective date of this Rule to 11 years after the effective date of this Rule.

(c) Phase III: The five year period extending into the future from 11 years after the effective date of this Rule to 16 years after the effective date of this Rule.

(6) Phase reductions:

(a) Phase I:

(i) At the end of the Phase I, permittees who are located in the dewatering zone will be required to reduce annual water use from Cretaceous aquifers by 25% from their approved base rate.

(ii) At the end of the Phase I, permittees who are located in the salt water encroachment zone will be required to reduce annual water use from Cretaceous aquifers by 25% from their approved base rate.

(iii) At the end of the Phase I, permittees who are located in the declining water level zone will be required to reduce annual water use from Cretaceous aquifers by 10% from their approved base rate.

(iv) At the end of the Phase I, permittees who are located in the Cretaceous zone, but outside of the salt water encroachment, dewatering, or declining water level zones will be required not to exceed annual water use from Cretaceous aquifers as established by their approved base rate.

(b) Phase II:

(i) At the end of the Phase II, permittees who are located in the dewatering zone will be required to reduce annual water use from Cretaceous aquifers by 50% from their approved base rate.

(ii) At the end of the Phase II, permittees who are located in the salt water encroachment zone will be required to reduce annual water use from Cretaceous aquifers by 50% from their approved base rate.

(iii) At the end of the Phase II, permittees who are located in the declining water level zone will be required to reduce annual water use from Cretaceous aquifers by 20% from their approved base rate.

(iv) At the end of the Phase II, permittees who are located in the Cretaceous zone, but outside of the salt water encroachment, dewatering, or declining water level zones will be required not to exceed annual water use from Cretaceous aquifers as established by their approved base rate.

(c) Phase III:

(i) At the end of the Phase III, permittees who are located in the dewatering zone will be required to reduce annual water use from Cretaceous aquifers by 75% from their approved base rate.

(ii) At the end of the Phase III, permittees who are located in the salt water encroachment zone will be required to reduce annual water use from Cretaceous aquifers by 75% from their approved base rate.

(iii) At the end of the Phase III, permittees who are located in the declining water level zone will be required to reduce annual water use from Cretaceous aquifers by 30% from their approved base rate.

(iv) At the end of the Phase III, permittees who are located in the Cretaceous zone, but outside of the salt water encroachment, dewatering, or declining water level zones will be required not to exceed annual water use from Cretaceous aquifers as established by their approved base rate.

(7) The CCPCUA Cretaceous Aquifer Zones map will be updated, if necessary, in the sixth, eleventh, and sixteenth years following the effective date of this Rule to account for aquifer water level responses to phased withdrawal reductions. The map update will be based on the following conditions:

(a) Rate of decline in water levels in the aquifers;

(b) Rate of increase in water levels in the aquifers;

(c) Stabilization of water levels in the aquifers;

(d) Chloride concentrations in the aquifers.

This aquifer information will be analyzed on a regional scale and used to develop updated assessments of aquifer conditions in the Central Coastal Plain Capacity Use Area. The Environmental Management Commission (EMC) may adjust the aquifer zones and the water use reduction percentages for each zone based on the assessment of conditions. The EMC will adopt the updated map and reduction percentage changes after public hearing.

Authority G.S. 143-215.15.

.0504 REQUIREMENTS FOR ENTRY AND INSPECTION

(a) The Division may enter and inspect property in order to evaluate wells, pumps, metering equipment or other withdrawal or measurement devices and records of water withdrawals and water levels, if:

(1) Persons conduct an activity that the Division believes requires the use of water at quantities that subject the person to regulation under these Rules;

(2) A permittee or applicant has not provided data or information on use of water and wells and other water withdrawal facilities as required by these Rules; or

(3) Water levels and chloride concentrations at the person's facility, or at nearby facilities or monitoring stations, indicate that aquifers may be damaged by overpumping or salt water

encroachment, or other adverse affects that may be attributed to withdrawal by the person.

(b) All information submitted to fulfill the requirements of these Rules, or to obtain a permit under these Rules, or obtained by inspection under these Rules, shall be treated as Confidential Business Information, if requested by the applicant, and found to be such by the Division. Reports defined in Rule .0502(g) of this Section are not considered Confidential Business Information.

Authority G.S. 143-215.19.

.0505 ACCEPTABLE WITHDRAWAL METHODS THAT DO NOT REQUIRE A PERMIT

(a) As of the effective date of this Rule, any person who is not subject to Rule .0502 of this Section and withdraws more than 10,000 gallons per day from surface or ground water in the Central Coastal Plain Capacity Use Area, shall register such withdrawals on a form supplied by the Division and comply with the following provisions:

(1) Construct new wells such that the pump intake or intakes are above the top of the uppermost confined aquifer that yields water to the well. Confined aquifer tops are established in the hydrogeological framework;

(2) Report surface and ground water use to the Division of Water Resources on an annual basis on a form supplied by the Division; and

(3) Withdraw water in a manner that does not damage the aquifer or cause salt water encroachment or other adverse impacts.

(b) These requirements do not apply to withdrawals to supply an individual domestic dwelling.

(c) Agricultural water users may either register water use with the Division of Water Resources as provided in this Rule or may provide the information through confidential water use surveys conducted by the North Carolina Department of Agriculture or the United States Department of Agriculture.

Authority G.S. 143-215.14; 143-355(k).

.0506 CENTRAL COASTAL PLAIN CAPACITY USE AREA STATUS REPORT

Within two years of the effective date of this Rule, and at five year intervals thereafter, the Division of Water Resources shall publish a status report on the Central Coastal Plain Capacity Use Area. The report shall include the following:

(1) Compilations of water use data;

(2) Evaluations of surface and ground water resources;

(3) Updated information about the hydrogeologic framework in the Central Coastal Plain Capacity Use Area;

(4) A summary of alternative water sources and water management techniques that may be feasible by generalized geographic location; and

(5) A status report on actions by water users to develop new water sources and to increase water use efficiency.

Authority G.S. 143-215.14.

.0507 DEFINITIONS

The following is a list of definitions for terms found in Section .0500 of this Subchapter.

(1) Approved base rate: The larger of a person's January 1, 1997 through December 31, 1997 or August 1, 1999 through July 31, 2000 annual water use rate from the Cretaceous aquifer system, or an adjusted water use rate determined through negotiation with the Division using documentation provided by the applicant of :

(a) water use reductions made since January 1, 1992;

(b) use of wells for which funding has been approved or for which plans have been approved by the Division of Environmental Health by the effective date of this Rule; or

(c) other relevant information.

(2) Aquifer: Water-bearing earth materials that are capable of yielding water in usable quantities to a well or spring.

(3) Aquifer storage and recovery program (ASR): Controlled injection of water into an aquifer with the intent to store water in the aquifer for subsequent withdrawal and use.

(4) Confining unit: A geologic formation that does not yield economically practical quantities of water to wells or springs. Confining units separate aquifers and slow the movement of ground water.

(5) Cretaceous aquifer system: A system of aquifers in the North Carolina coastal plain that is comprised of water-bearing earth materials deposited during the Cretaceous period of geologic time. The extent of the Cretaceous Aquifer System is defined in the hydrogeological framework.

(6) Dewatering: Dewatering occurs when aquifer water levels are depressed below the top of a confined aquifer or water table declines adversely affect the resource.

(7) Flat rates: Unit price remains the same regardless of usage within customer class.

(8) Fresh water: Water containing chloride concentrations equal to or less than 250 milligrams per liter.

(9) Gravel pack: Sand or gravel sized material inside the well bore and outside the well screen and casing.

(10) Ground water: Water in pore spaces or void spaces of subsurface sediments or consolidated rock.

(11) Hydrogeological framework: A three-dimensional representation of aquifers and confining units that is stored in Division data bases and may be adjusted by applicant supplied information.

(12) Increasing block rates: Unit price increases with additional usage.

(13) Intermittent users: Persons who withdraw ground water less than 60 days per calendar year or who withdraw less than 15 million gallons of ground water in a calendar year.

(14) Observation well: A non-pumping well screened in a particular aquifer where water levels can be measured and water samples can be obtained.
(15) Pumping water level: The depth to ground water in a pumping well as measured from a known land surface elevation. Measurements shall be made four hours after pumping begins. Measurements shall be within accuracy limits of plus or minus 0.10 feet.
(16) Quantity based surcharges: Surcharges billed with usage over a certain determined quantity.
(17) Salt water: Water containing chloride concentrations in excess of 250 milligrams per liter.
(18) Salt water encroachment: The lateral or vertical migration of salt water toward areas occupied by fresh water. This may occur in aquifers due to natural or man-made causes.
(19) Seasonal rates: Unit prices change according to the season.
(20) Static water level: The depth to ground water in a non-pumping well as measured from a known land surface elevation. Measurements shall be made after pumping has ceased for 12 hours. Measurements shall be within accuracy limits of plus or minus 0.10 feet.
(21) Unaccounted for water: The difference between the total water entering the system (produced and purchased) and the total metered or otherwise accounted for water usage.
(22) Water table: The water level in an unconfined aquifer.

Authority G.S. 143-215.14.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 2N .0304. Notice of Rule-making Proceedings was published in the Register on April 17, 2000.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 7:00 p.m. on August 23, 2000 at Rowan Cabarrus Community College Salisbury, NC and at 7:00 p.m. on August 30, 2000 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604.*

Reason for Proposed Action: *The UST Section requested that a temporary rule modifying secondary containment requirements for certain UST systems be enacted with an effective date of May 1, 2000, to immediately mitigate a serious and unforeseen threat to the environment and public health, safety and welfare. Under the previous rules, secondary containment for USTs were required where public water supply wells are located in close proximity to USTs because of the greater potential risk. At the time the rules were enacted, the regulated community, as well as the regulators, did not clearly understand that water supply wells at most convenience stores and service stations are considered to be public water supplies. The tank rules do not specifically state what a public water supply well is, but refer the reader to the Public Water Supply (PWS) rules (15A NCAC 18C) and the definitions contained therein. PWS did not begin to focus their inspections on these transient, non-community water supplies until 1998 when they began to inventory those locations. Until then, our agency had not received adequate clarification that the wells at most convenience stores and service stations were considered to be public water supplies. After the upgrade deadline in 1998, and since the PWS inspections began, we have found a large number of tank owners are not in compliance with these rules. Tank owners spent in the range of $15,000 to $50,000 to upgrade their systems to the 1998 standards. Requiring them to now replace their tank systems with secondary containment tank systems would cause an additional expenditure of $125,000 (based on three tanks per facility) and has resulted in substantial non-compliance with the current rule due to extreme financial hardship. Therefore, enforcement of the original rule will not substantially increase the rate of compliance, nor will it quickly or significantly reduce the hazard associated with these substandard USTs. We now know that drinking water supplies at approximately 4800 facilities across North Carolina are at risk of becoming contaminated if leaks from UST systems occur at these locations. The proposed rule mandates that enhanced leak detection must be implemented immediately for early detection of releases in order to protect human health and the environment. This will involve utilizing some of the most rigorous leak detection monitoring techniques available and annual sampling of all affected water supply wells. Monitoring will help ensure that contamination will not reach public water supplies. Secondary containment will still be required, but it will be implemented on an alternate schedule. Enhanced leak detection with annual sampling of the affected water supply wells and the alternative schedule for secondary containment is not available to owners of UST systems located within 100 feet of a public water supply well or within 50 feet of any other well used for human consumption. Immediate compliance with secondary containment requirements in these areas is critical to protecting water supplies; no modifications to the current rule are provided. The proposed rule establishes that all applicable new UST systems and all replacements to applicable UST systems installed after the effective date of the proposed rule must have secondary containment at the time of installation or replacement. The proposed rule is intended to protect public welfare and the environment and implement an achievable corrective action schedule. The proposed rule was drafted with extensive input from the stakeholders, which included various environmentalists as well as the regulated community.*

Comment Procedures: *Comments submitted to: Ruth Strauss, DENR, Division of Waste Management, UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637, Telephone: 919-733-1330. Comments will be received through September 15, 2000.*

Fiscal Impact

State	Local	Sub.	None
√	√	√	

CHAPTER 2 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2N – UNDERGROUND STORAGE TANKS

SECTION .0300 – UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

.0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(D)

(a) The following implementation schedule shall only apply to UST owners and operators of UST systems located within areas defined in Rule .0301(d) of this Section and who are in compliance with Paragraph (b) of this Rule. This implementation schedule shall be used by the Department for tank owners and operators to comply with the secondary containment requirements contained in Rule .0301(d) of this Section for new UST systems and the secondary containment requirements contained in Rule .0302(a) of this Section for existing UST systems located within areas defined in Rule .0301(d) of this Section.

(1) All new UST systems and all replacements to a UST system shall be provided with secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4) as of the effective date of this Rule.

(2) All steel or metal connected piping and ancillary equipment of a UST system regardless of date of installation, shall be provided with secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4) as of January 1, 2005.

(3) All fiberglass or non-metal connected piping and ancillary equipment of a UST system regardless of date of installation, shall be provided with secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4) as of January 1, 2008.

(4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4) as of January 1, 2008.

(5) All UST systems installed after January 1, 1991 shall be provided with secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4) as of January 1, 2016.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring by October 1, 2000. The enhanced leak detection monitoring must consist of the following:

(1) Install a continuous monitoring automatic tank gauging system (ATG) for each UST;

(2) Install an electronic line leak detector (ELLD) for each pressurized piping system;

(3) Conduct at least one valid 0.1 gallon per hour (gph) test per month on each UST system;

(4) Conduct a line tightness test capable of detecting a leak rate of 0.1 gph, at least once per year for each suction piping system. No release detection is required for suction piping that is designed and constructed in accordance with 40 CFR 280.41 (b)(2)(i) through (iv);

(5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, sample the supply well at least once per year. The sample collected from the well must be analyzed for the constituents of petroleum using the following methods:

(A) EPA Methods 601 and 602, including methyl tertiary butyl ether, isopropyl ether and xylenes;

(B) EPA Method 625; and

(C) If a waste oil UST system is present which does not meet the requirements for secondary containment in accordance with 40 CFR 280.42 (b)(1) through (4), the sample should also be analyzed for lead and chromium using Standard Method 3030C preparation.

(6) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division on or before October 1, 2000 and yearly thereafter.

Authority G.S. 143-215(a)(15); 143B-282(2)(h); 150B-14(c).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 7H .0209. Notice of Rule-making Proceedings was published in the Register on May 14, 1999.

Proposed Effective Date: *August 1, 2001*

A Public Hearing *will be conducted at 4:30 p.m. on September 28, 2000 at the Sheraton Grand New Bern, 100 Middle Street, New Bern, NC 28563.*

Reason for Proposed Action: *In July 1997, the Coastal Resources Commission (CRC) adopted a temporary rule to establish guidelines for development along urban waterfronts. The General Assembly adopted House Bill 1059, which nullified the CRC's actions. Since House Bill 1059 (G.S. 113A-120.2 is set to expire in July 2000, the CRC adopted new rules in May 2000, and these rules would provide additional standards for development along cultural and historic urban waterfronts.*

Comment Procedures: *Please contact Mike Lopazanski, NC Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687.*

Fiscal Impact

State	Local	Sub.	None
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CHAPTER 7 – COASTAL MANAGEMENT

SUBCHAPTER 7H – STATE GUDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE SYSTEM

Note: Text shown in bold type will go before the RRC at their July 20, 2000 meeting.

.0209 ESTUARINE SHORELINES

(a) Rationale. As an AEC, estuarine shorelines, although characterized as dry land, are considered a component of the estuarine system because of the close association with the adjacent estuarine waters. This Section defines estuarine shorelines, describes the significance, and articulates standards for development.

(b) Description. Estuarine shorelines are those non-ocean shorelines which are especially vulnerable to erosion, flooding, or other adverse effects of wind and water and are intimately connected to the estuary. This area extends from the mean high water level or normal water level along the estuaries, sounds, bays, and brackish waters as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of ~~**Environment, Health,**~~ **Environment** and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the mean high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(c) Significance. Development within estuarine shorelines influences the quality of estuarine life and is subject to the damaging processes of shore front erosion and flooding.

(d) Management Objective. To ensure shoreline development is compatible with both the dynamic nature of estuarine shorelines and the values of the estuarine system.

(e) Use Standards.

(1) All development projects, proposals, and designs shall substantially preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation can be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent practical.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other adequate erosion-control devices or structures.

(C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine resources.

(5) Development shall not significantly interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No major public facility shall be permitted if such facility is likely to require extraordinary public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project which is paid for in any part by public funds.

(7) Development shall not cause major or irreversible damage to valuable, documented historic architectural or archaeological resources.

(8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(9) Within the AEC for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.

(f) Specific Use Standards for ORW Estuarine Shorelines.

(1) Within the AEC for estuarine shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area to no more than 25 percent of the AEC area of the land to be developed or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
(A) have no stormwater collection system;
(B) provide a buffer zone of at least 30 feet from the mean high water line;
(C) otherwise be consistent with the use standards set out in Paragraph (e) of this Rule.

(2) Development (other than single-family residential lots) more than 75 feet from the mean high water line but within the AEC which as of June 1, 1989:
(A) has a CAMA permit application in process, or
(B) has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which substantial financial resources have been invested in design or improvement; will be permitted in accordance with rules and standards in effect as of June 1, 1989.

(3) Single-family residential lots which would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

(4) For ORW's nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.

(g) Urban Waterfronts.

(1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines AEC that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
(A) The area lies wholly within the corporate limits of a municipality; and the area is in a central business district where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection or an industrial zoned area adjacent to a central business district.

(2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

(3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, thus minimizing the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.

(4) Use Standards:
(A) Within the Coastal Shorelines AEC for shorelines contiguous to all waters not classified as Outstanding Resource Waters, no buffer **pursuant to this Rule** is required for development **within designated Urban Waterfronts** that meets the following standards:
(i) The development must be consistent with the locally adopted land use plan;
(ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be certified by a licensed design professional who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation can be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent practical.
(iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission.

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within designated Urban Waterfronts as set out below.
(i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.

(ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.

~~(ii)~~ (iii) New structures built for non-water dependent purposes are limited to pile supported, single story, unroofed, unenclosed decks and boardwalks, and must meet the following criteria:

(I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;

(II) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas; Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story; ~~Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;~~

(III) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;

(IV) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;

(V) Structures shall have no more than six feet of any dimension extending over coastal wetlands;

(VI) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

(VII) Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

(VIII) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there is no reasonable alternative that would avoid wetlands;

(IX) Structures shall not degrade waters classified as SA or High Quality Waters Outstanding Resource Waters as defined by the NC Environmental Management Commission;

(X) Structures shall not degrade Critical Habit Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and

(XI) Structures shall not pose a threat to navigation.

Authority G.S 113A-107(b); 113A-108; 113A-113(b); 113A-124.

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Notice *is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10B .0403. Notice of Rule-making Proceedings was published in the Register on May 1, 2000.*

Proposed Effective Date: *April 1, 2001*

A Public Hearing *will be conducted at 10:00 a.m on August 2, 2000 at the 3rd Floor Conference Room, 512 North Salisbury, Raleigh, NC.*

Reason for Proposed Action: *To bring bag limit requirements into conformity with existing regulations (15A NCAC 10B .0212) The proposed amendment repeals the provision of 15A NCAC 10B .0403 that requires a permit for participation in certain open seasons with harvest limitation for taking foxes with traps or weapons of foxes using.*

Comment Procedures: *(Interested persons may present their views either orally or in writing at the hearing in addition, the record of hearing will be open for receipt of written comments from July 17, 2000 to August 16, 2000.*

Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, North Carolina 27604-1188.)

Fiscal Impact			
State	**Local**	**Sub.**	**None**
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CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0400 – TAGGING FURS

.0403 APPLICATION FOR TAGS

(a) Fur tags shall be distributed in response to applications made on forms supplied by the Commission. Such application must show the name and address of the applicant and such other information as may be required in the discretion of the Executive Director.

(b) The Executive Director may, in his discretion, provide for the issuance of fur tags directly from the Commission headquarters or through authorized agents, or both.

(c) When fur tags are issued by agents such agents shall be entitled to retain 10 percent of the fee charged not to exceed a maximum of twenty cents ($0.20) for each tag issued as compensation for their services. The fees to be charged for each fur tag are as follows:

Species	Fee
Bobcat	2.20
Otter	2.20

Fur tag agencies shall be instruments of public service, the function of which is to provide ready access to the required tags by any hunter, trapper or fur dealer having need of them. No fur tag agent having appropriate fur tags on hand shall refuse to sell them to any applicant during such agent's regular business hours. No such agent shall impose any additional condition or requirement for his services as such or charge, either directly or indirectly, any price for a fur tag in excess of that specified in this Paragraph.

(d) ~~When an open season with harvest limitation for taking foxes with traps or weapons is established in accordance with G.S. 113-291.4, application for permits to participate must be made to the Commission on forms available from the Commission. If the number of applicants for an area of open fox season exceeds the maximum number authorized for the area, the successful applicants will be picked by random computer selection. If there are two or more areas of open fox season, a trapper or hunter will be authorized to purchase fox tags for use in only those areas which may be selected by him on his application in order of alternate preferences, and such fox tags shall not be valid for use on foxes taken in any other area. A fixed number or quota of fox tags will be reserved for purchase by each successful applicant, at the statutory fee provided in G.S. 113-291.4(g), until a specified date after which any quotas not purchased will be made available as additional quotas to other permit holders for the same area on the basis of one additional quota each, first come first served.~~ The carcasses or pelts of foxes lawfully taken and lawfully tagged in an area of open fox season, and those taken under a depredation permit, and those taken under a local law that permits foxes to be sold may be sold; provided that this Paragraph shall not authorize the sale of carcasses or pelts of foxes taken under a depredation permit in any county in which the sale of foxes or parts thereof is prohibited by local law. Foxes must also be tagged in accordance with 113-291.4(g).

Authority G.S. 113-134; 113-273; 113-276.1; 113-291.4.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Department of Environment and Natural Resources*

Rule Citation: *15A NCAC 1P .0101, .0103-.0105*

Effective Date: *July 1, 2000*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rule-making: *G.S. 113A-4; 113A-6; 113A-11; 143B-10; S.L. Extra Session 1999-463, Part IV, c. 463, s. 4*

Reason for Proposed Action: *To amend the application procedures, eligibility requirements, and process for disbursement of hurricane relief funds for commercial fishermen for loss of income or for damages or loss of equipment, to permit the Division of Marine Fisheries greater flexibility in administering the program due to variations in the adequacy of historical landings data, seasonal variations in abundance of certain species, storm induced migration, and the characteristics of specific harvest methods.*

Comment Procedures: *Comments are welcomed and may be submitted to Juanita Gaskill, DENR, Division of Marine Fisheries, PO Box 769, Morehead City, NC 28557.*

CHAPTER 1 – DEPARTMENTAL RULES

SUBCHAPTER 1P – GRANTS TO COMMERCIAL FISHERMEN FOR HURRICANE DAMAGE

SECTION .0100 – GRANTS TO COMMERCIAL FISHERMEN FOR HURRICANE DAMAGE

.0101 GENERAL

(a) Only commercial fishermen who held a valid Standard Commercial Fishing License, Retired Standard Commercial Fishing License or a Shellfish License for North Carolina Resident without a Standard Commercial Fishing License during September or October, 1999, and are determined by the Division of Marine Fisheries to be an affected fishermen in an affected fishery are eligible to apply for compensation for reimbursement of documented losses of commercial fishing income. ~~income or for damage to or loss of commercial fishing equipment.~~

(b) Until funds are exhausted, the maximum amount that shall be reimbursed any individual fisherman shall be 60 percent of the total loss of income and equipment combined. Once the total funds are exhausted, applications shall no longer be processed or accepted.

(c) The Division of Marine Fisheries shall determine affected fisheries by identifying those fisheries which decreased 33 percent or more in landings for the months of September and October, 1999, as compared to September and October, 1998 and September and October, 1997, for the same gear type, species, and water body, utilizing historical landings data. The Division of Marine Fisheries may determine that additional fisheries that do not meet the criteria in this Subsection or in 15A NCAC 1P .0102(2) are affected fisheries based on considerations of the adequacy of historical landings data, seasonal variations in abundance, characteristics of harvest methods, and storm induced migration.

(d) The Division of Marine Fisheries shall determine commercial fishing income loss for each affected fishermen who applies for a grant utilizing historical landings data. For each affected fishery, the Division of Marine Fisheries shall calculate the loss of income for the months of September and October, 1999, based on a comparison with the average value of the applicant's landings for the months of September and October for the years 1997 and 1998. Sixty percent of this total shall be granted.

(e) Based on the information supplied in the grant application and information available to the Division through historical landings data and existing files, the Fisheries Director or his designee shall determine the amount of grant, if any, to be paid to an affected fisherman for losses in each affected fishery and any eligible compensation for loss or damage to commercial fishing equipment.

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Effective July 1, 2000; February 4, 2000 to expire on January 1, 2003.

.0103 APPLICATION AND ELIGIBILITY REVIEW PROCESS

(a) Applications for Grants to Commercial Fishermen shall be available at all offices of the Division of Marine Fisheries which are located in Elizabeth City, Wanchese, Columbia, Washington, Morehead City and Wilmington, and must be submitted to the Morehead City Office of the Division of Marine Fisheries, Attention: Hurricane Grants, Post Office Box 769, Morehead City, NC 28557 for processing.

(b) Applications must be received at the Morehead City Division of Marine Fisheries Office, Attention: Hurricane Grants, postmarked no later than ~~May 1,~~ September 16, 2000, on a form provided by the Division of Marine Fisheries. The applicant's signature on the application must be notarized.

(c) Incomplete applications shall be returned and shall not be reviewed until determined to be complete by the Division of Marine Fisheries.

(d) Applicants must complete all required information including but not limited to:

(1) For applications in the name of an individual: full name, physical address, mailing address, county of residence, social security number, date of birth, phone number and participant number of the applicant. For applications in the name of a business entity: full name, physical address, mailing address, county of residence, social security number, date of birth, and phone number of the responsible party and identifying information for the business entity as required on the application form including the participant number and, if applicable, the federal tax identification number;

(2) Standard Commercial Fishing License Number, Retired Standard Commercial Fishing License Number, or Shellfish License for North Carolina Resident without a Standard Commercial Fishing License Number;

(3) Endorsement to Sell Numbers for License Years 1997-1998 and 1998-1999, if applicable and available;

(4) Certification as to whether or not the applicant has received any other compensation for loss of fisheries income or commercial fishing equipment through insurance, unemployment, FEMA, Small Business Administration or any other disaster program and that the loss resulted from the effects of the hurricane. If such compensation has been received, the level of compensation must be reported and shall be deducted from the total eligible compensation under this grant program;

~~(5) For application for compensation for loss of commercial fishing income, the applicant must certify which affected fisheries commercial fishing income loss occurred in from the list of affected fisheries attached to the application.~~

~~(6)~~(5) For application for compensation for loss of a vessel(s) or equipment used in ~~an affected~~ a commercial fishery:

(A) The fishermen must have been determined to be ~~an affected~~ a commercial fisherman with ~~a~~ documented commercial fishing income ~~loss of five hundred dollars ($500) or more~~ in 1999 from the use of that type equipment or vessel to be eligible to apply for compensation for lost or damaged equipment or vessel(s). ~~Involvement in an affected fishery and the $500 loss of commercial~~ Commercial fishery income in 1999 shall be verified by the Division of Marine Fisheries through historical landings data;

(B) For compensation for loss or damage to a vessel, the applicant must furnish copies of the Commercial Fishing Vessel Registration, the State motorboat registration, or the U.S. Coast Guard vessel documentation papers, if available. Applicants must furnish documentation of the loss or damage to the vessel. Such documentation may include repair invoices, estimates of damages from a repair facility, photographs of the damages, Wildlife Resources Commission motorboat accident reports, notarized affidavits from individuals with knowledge of the loss, or other relevant verification of the loss;

(C) For application for equipment loss or damage, the applicant must furnish copies of receipts for equipment purchased prior to ~~September 16, 1999~~ November 15, 1999 and a notarized affidavit from the applicant that equipment has been lost or damaged and must furnish at least one notarized affidavit from an individual involved in commercial fishing or from a fish dealer that the applicant did own and have damages or loss of such equipment. Information required will include the type, description, amount, location, and the extent of damage of commercial equipment. Equipment loss claims may be verified by agents of the Division of Marine Fisheries by on-site inspections and other methods. Only equipment losses between September 16 and ~~October~~ November 15, 1999, shall be considered for compensation. Calculation of loss of equipment shall be as follows:

(i) For equipment losses that have been replaced, compensation shall be based on the actual replacement cost shown on receipts or invoices for replacement; and

(ii) For equipment losses that have not been replaced or for which receipts or invoices are not available, compensation shall be based on a standard amount set by the Division of Marine Fisheries to be the fair market replacement cost for each type of equipment.

(6) For compensation for loss of shellfish seed stock, the applicant must provide their lease location and number, proof of purchase of the seed stock during the period September 1, 1998 through September 15, 1999, and documentation of the loss. Only seed stock losses during the period September 16 to November 15, 1999 shall be considered for compensation. Calculation of the value of the loss of seed stock shall be as follows:

(A) For seed stock losses that have been replaced, compensation shall be based on the actual replacement cost shown on receipts or invoices for replacement; and

(B) For seed stock losses that have not been replaced or for which receipts or invoices are not available, compensation shall be based on a standard amount set by the Division of Marine Fisheries to be the fair market replacement cost for the type of seed stock.

(7) The applicant must certify that all information on the application and any supporting documentation is true, accurate, and complete.

(e) Grants shall be issued according to the order that complete applications are received, reviewed and approved.

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Eff. July 1, 2000; February 4, 2000 to expire on January 1, 2003.

.0104 ELIGIBILITY NOTIFICATION DISPUTE PROCESS

(a) If approved, in whole or in part, applicants shall be notified by letter from the Division of Marine Fisheries of the amount for compensation. Actual compensation shall be mailed directly to the applicant including the statement of income tax liability required by statute.

(b) If denied, applicants shall be notified by a copy of the eligibility decision by the Division of Marine Fisheries.

(c) Applicants may dispute the compensation amount for commercial fishing income loss by providing trip tickets verifying landings in an affected fishery to the Fisheries Director postmarked no later than 30 days from the date the compensation or eligibility decision is mailed by the Division of Marine Fisheries. Based on the trip tickets provided, the Fisheries Director or his designee may reconsider the compensation amount. Additional information may be required by the Fisheries Director or his designee.

(d) Applicants may dispute the compensation amount for commercial fishing equipment or the eligibility decision concerning equipment by providing additional information similar to that information described in 15A NCAC 1P .0103 if not submitted with the original application to the Fisheries Director postmarked no later than 30 days from the date the compensation or eligibility decision is mailed by the Division of Marine Fisheries. Based on the information provided, the Fisheries Director or his designee may reconsider the compensation amount or eligibility decision. Additional information may be required by the Fisheries Director or his designee.

(e) Applicants who receive notification of ineligibility may dispute the eligibility determination for commercial fishing income by providing trip tickets or other documentation verifying landings in an affected fishery to the Fisheries Director postmarked no later than 30 days from the date the eligibility decision is mailed by the Division of Marine Fisheries. Based on trip tickets or other documentation provided, the Fisheries Director or his designee may reconsider the eligibility decision. Additional information may be required by the Fisheries Director or his designee.

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Effective July 1, 2000; February 4, 2000 to expire on January 1, 2003.

.0105 APPEAL PROCESS

Written appeal of the final eligibility decision by the Fisheries Director or his designee may be made to the Secretary of the Department of Environment and Natural Resources. The decision will be considered final if the applicant does not submit additional information within 30 days of the mailing of the initial eligibility decision or compensation. Such appeal must include the basis for the appeal and supporting documentation. Individuals appealing notification of ineligibility or the amount of compensation may dispute the eligibility determination by providing trip tickets or other documentation verifying landings in an affected fishery or additional documentation concerning gear losses to the Secretary. Based on the information provided, the Secretary or his designee may reconsider the eligibility decision. Additional information may be required by the Secretary or his designee. Such appeal must be postmarked no later than 30 days from the date the eligibility decision was mailed by the Division of Marine Fisheries.

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Eff. July 1, 2000; February 4, 2000 to expire on January 1, 2003.

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Rule-making Agency: *NC Marine Fisheries Commission*

Rule Citation: *15A NCAC 3I .0101; 3J .0107, .0111; 3L .0207, .0301; 3M .0501, .0510; 3O .0503, .0505*

Effective Date: *August 1, 2000*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 113-134; 113-182; 113-221; 143B-289.52*

Reason for Proposed Action:
15A NCAC 3I .0101; 3J .0107, .0111; 3O .0503, .0505 – *The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) requires a complete review of the Marine Fisheries Laws. G.S. 113-169.1, as adopted, authorizes the Marine Fisheries Commission to adopt permits and establish fees.*
15A NCAC 3L .0207 – *G.S. 143B-52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. Addendum 1 to the fishery management plan for horseshoe crabs was approved in February of 2000. North Carolina requested and was granted de minimis status on April 4, 2000. The amendment to this Rule is necessary to maintain compliance with that plan and to retain de minimis status.*
15A NCAC 3L .0301 – *G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. Amendment 3 to the fishery management plan for American lobster was approved in August of 1999. North Carolina requested de minimis status on October 11, 1999, and such status was granted on January 18, 2000. The amendment to*

this Rule is necessary to maintain compliance with that plan and to retain de minimis status.

15A NCAC 3M .0501 – *The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of procedures for management of fisheries in North Carolina. Included were requirements for fishery management plans. In filing the temporary rules effective May 1, 2000 which implanted temporary management measures limiting fishermen to 100 pounds of red drum per day, a typing error was made and "per vessel" was not deleted by overstrike in converting the document from word perfect to word. This amendment will correct the typing error.*

15A NCAC 3M .0510 – *G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. The Atlantic States Marine Fisheries Commission adopted the Fishery Management Plan for American Eel on November 4, 1999. The amendment to this Rule is necessary to maintain compliance with that plan.*

Comment Procedures: *Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.*

CHAPTER 3 – MARINE FISHERIES

SUBCHAPTER 3I – GENERAL RULES

SECTION .0100 – GENERAL RULES

.0101 DEFINITIONS

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

(b) The following additional terms are hereby defined:

(1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
   (A) Seines less than 30 feet in length;
   (B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
   (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
   (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
   (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
   (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and
   (G) Cast Nets;
   (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
   (I) Up to two minnow traps.

(2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.

(4) Possess. Any actual or constructive holding whether under claim of ownership or not.

(5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

(6) Use. Employ, set, operate, or permit to be operated or employed.

(7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.

(8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.

(9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.

(10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.

(11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.

(12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

(13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

(14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.

(15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.

(16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.

(17) Length of finfish.

(A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.

(B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.

(C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.

(19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.

(20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important seafood species.

(A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (Zostera marina), shoalgrass (Halodule wrightii) and widgeongrass (Ruppia maritima). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

(B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

(C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

(D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

(21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.

(22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.

(23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.

(24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:

(A) Animals:

(i) Sponges (Phylum Porifera);

(ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):

(I) Fire corals (Class Hydrozoa);

(II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);

(iii) Bryozoans (Phylum Bryozoa);

(iv) Tube Worms (Phylum Annelida):

(I) Fan worms (Sabellidae);

(II) Feather duster and Christmas tree worms (Serpulidae);

(III) Sand castle worms (Sabellaridae).

(v) Mussel banks (Phylum Mollusca:Gastropoda);

(vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).

(B) Plants:

(i) Coralline algae (Division Rhodophyta);

(ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);

(iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).

(25) Coral:

(A) Fire corals and hydrocorals (Class Hydrozoa);

(B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
(C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
(i) Sea fans (Gorgonia sp.);
(ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
(iii) Sea pansies (Renilla sp.).

(26) Shellfish production on leases and franchises:
(A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
(B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

(27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

(29) Pound Net Set. ~~Net.~~ A fish trap consisting of a holding pen, one or more enclosures, ~~and a~~ lead or leaders, and stakes or anchors used to support such trap. ~~leaders.~~ The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.

(30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.

(31) Long Haul Operations. A seine towed between two boats.

(32) Swipe Net Operations. A seine towed by one boat.

(33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

(34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.

(35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.

(36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.

(37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.

(38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.

(39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.

(40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.

(41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.

(42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.

(43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.

(44) Land:
(A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
(B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
(C) For recreational fishing operations, when fish are retained in possession by the fisherman.

(45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.

(46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.

(47) Assignment. Temporary transferral to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.

(48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

(49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.

(50) Blue Crab Shedding. Shedding is defined as the process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting peeler crabs to a permitted shedding operation.

History Note: Authority G.S. 113-134; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993; Recodified from 15A NCAC 3I .0001 Eff. December 17, 1996; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 1, 2000; May 1, 2000; August 1, 1999; July 1, 1999.

SUBCHAPTER 3J – NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 – NET RULES, GENERAL

.0107 POUND NET SETS

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 3O .0500. The procedures, requirements, and fees for obtaining permits are also found in 15A NCAC 3O .0500.

(b) It is unlawful to use pound ~~or fyke~~ ~~nets~~ net sets in ~~internal~~ coastal fishing waters without the permittee's ~~owner's~~ identification being clearly printed on a sign no less than six inches square, securely attached to the outermost ~~on an outside corner~~ stake of each end of each set. ~~such net.~~ For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include ~~one of the following:~~

~~(1) For pound nets,~~ the pound net set permit number and the permittee's ~~owner's~~ last name and initials.

~~(2) For fyke nets, the owner's N.C. motorboat registration number or the owner's last name and initials.~~

~~Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed. and be disposed of in accordance with G.S. 113-137.~~

(c)~~(b)~~ It is unlawful to use ~~set~~ pound net sets, ~~nets,~~ or any part ~~thereof~~ thereof, except for one location identification stake ~~stakes~~ or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, ~~locations~~ without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set will be deemed a flounder pound net set when the catch consists of 50% or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

(1) Flounder pound net set;
(2) Herring/shad pound net set;
(3) Bait pound net set;
(4) Shrimp pound net set;
(5) Blue crab pound net set; and
(6) Other finfish pound net set.

(d)~~(1)~~ For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. ~~The Fisheries Director shall approve or deny the permit within 60 days of application.~~ If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. ~~The~~ For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director: ~~criteria:~~

(1)~~(A)~~ The application ~~is~~ must be in the name of an individual and cannot be granted to a corporation, partnership, organization or other entity;

(2)~~(B)~~ The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 3J.0101 and .0102;

~~(C) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with existing, traditional uses of the area other than navigation, as determined by the Fisheries Director.~~

(3)~~(D)~~ The proposed pound net set will not unduly interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;

(4)~~(E)~~ The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area;

(5)~~(F)~~ The applicant has in the past complied with fisheries rules and laws ~~related to pound nets~~ and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations

evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;

(6)(G) The proposed pound net set is in the public interest;

(7)(H) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets; and

(8)(I) The proposed pound net set is consistent with appropriate fishery management plans.

Approval may shall be conditional based upon the applicant's continuing compliance with specific conditions contained in on the Pound Net Set Permit and the conditions ~~that would ensure that the operation of the pound net is consistent with the criteria for permit denial~~ set out in Parts (1)(A) through (8) (G) of this Paragraph. ~~Subparagraph.~~ The ~~Fisheries Director's~~ final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such action final decision to the applicant, with the Office of Administrative Hearings.

(e)(2) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 10 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the prior permittee. ~~When a written objection to a renewal has been received during the term of the existing permit, the~~ The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) (3) A Pound Net Set Permit, whether a new or renewal permit, shall expire ~~365 days~~ one year from the date of issuance. The expiration date shall be stated on the permit.

~~(e) It is unlawful to abandon an existing pound net set without completely removing from the public bottom or coastal waters all stakes and associated structures, gear and equipment within 10 days, or to fail within 10 days to completely remove from the public bottom or coastal waters all stakes and other structures, gear and equipment associated with any pound net set for which a permit is revoked or denied. Pound nets shall be subject to inspection at all times. Pound nets shall be fully operational and subject to a fishing season inspection during the peak of their respective fishing seasons. Consideration shall be given for unusually severe weather conditions which prevent the nets from being fully operational during the fishing season inspection period. For the fishing season inspections, herring pounds may be inspected two weeks prior to or after April 1, sciaenid pounds two weeks prior to or after July 15, flounder pounds two weeks prior to or after October 15, bait pounds two weeks prior to or after April 15, and shrimp pounds two weeks prior to or after June 15. A violation under this Paragraph shall be grounds for the Fisheries Director to revoke any other Pound Net Permits held by the violator and for denial of any future pound net set proposed by the offender.~~

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h)(d) It is unlawful to transfer ~~ownership of~~ a pound net set permit without ~~notification~~ a completed application for transfer being submitted to the Division of Marine Fisheries ~~within~~ not less than 30 45 days ~~of~~ before the date of the transfer. Such ~~notification~~ application shall be made by the proposed new permittee ~~owner~~ in writing and shall be accompanied by a copy of the current ~~previous~~ permittee's ~~owner's~~ permit and an application for a pound net set permit in the new permittee's ~~owner's~~ name. ~~Failure to do so shall result in revocation of the pound net permit.~~ The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. No transfer is effective until approved and processed by the Division. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under Chapter 28A of the General Statutes. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee.

(i)(e) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every ~~Every~~ pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all

directions. ~~directions by a vessel approaching the pound net set. In addition, every pound net in internal coastal fishing waters shall have yellow light reflective tape or devices on each pound. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter on the offshore end of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set.~~ If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within ~~15~~ 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j)~~(f)~~ In Core Sound, it is unlawful to use pound net sets ~~nets~~ in the following areas except that only those ~~persons holding a valid~~ pound net set permits valid ~~permit~~ within the specified area as of March 1, 1994, may be renewed or transferred ~~renew their permits~~ subject to the requirements of this Rule:

(1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294°(M) to a point on shore north of Great Ditch 34° 58' 54" N - 76° 15' 06" W; thence following the shoreline to Hog Island Point 34° 58' 27" N - 76° 15' 49" W; thence 231° (M) back to Green Day Marker #3.

(2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57' 33" N - 76° 16' 34" W; thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.

(3) That area bounded by a line beginning on Long Point 34° 56' 52" N - 76° 16' 42" W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53' 45" N - 76° 18' 11" W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43' 42" N - 76° 29' 59" W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

~~(g) In Pamlico Sound and the Atlantic Ocean, it is unlawful to set a pound net set, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.~~

(k)~~(h)~~ Escape Panels:

(1) The Fisheries Director may, by proclamation, require escape panels in pound net sets ~~nets~~ and may impose any or all of the following requirements or restrictions on the use of escape panels:
(A) Specify size, number, and location;
(B) Specify mesh length, but not more than six inches;
(C) Specify time or season; and
(D) Specify areas.

(2) It is unlawful to use flounder pound net sets ~~nets~~ without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57' 23.7" N-76° 00' 49"W; thence running 116.5° (T) 2,764 yards to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56' 43.9" N-75° 59' 18"W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09' 18.2" N-75° 53' 29.5" W; thence running 299° (T) 2,160 yards to a point on Camden Point at 36° 09' 52.5" N - 75° 54' 39.9" W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

(l) Pound net sets are subject to inspection at all times.

(m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.

(n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.

(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23;
Eff. January 1, 1991;
Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994; September 1, 1991; January 1, 1991;
Temporary Amendment Eff. August 1, 2000.

.0111 FYKE OR HOOP NETS

It is unlawful to use fyke or hoop nets in coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include the gear owner's current motorboat registration number or the gear owner's last name and initials.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Temporary Adoption Eff. August 1, 2000.

SUBCHAPTER 3L – SHRIMP, CRABS, AND

LOBSTER

SECTION .0200 – CRABS

.0207 HORSESHOE CRABS

(a) It is unlawful to possess more than 50 horseshoe crabs per vessel per trip.

(b) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are exempt from this Rule.

(c) The annual (January through December) commercial quota for North Carolina for horseshoe crabs shall be established by the Atlantic States Marine Fisheries Commission Horseshoe Crab Management Plan. Once the quota is projected to be taken, the Fisheries Director shall, by proclamation, close the season for the landing of horseshoe crabs.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Temporary Adoption Eff. August 1, 2000.

SECTION .0300 – LOBSTER

.0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

(a) It is unlawful to ~~possess:~~ possess American lobster:

(1) with a carapace less than 3 1/4 inches;
(2) which has eggs or from which eggs have been artificially removed by any method;
(3) meats, detached meats, detached tails or claws or any other part of a lobster that has been separated from the lobster;
(4) which has an outer shell which has been speared;
(5) that is a V-notched female lobster as described in Amendment 3 to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster, copies of which are available through the Division of Marine Fisheries; or
(6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

(b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:

(1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
(2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
(3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this section; and
(4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

~~(1) American lobster with a carapace less than 3 1/4 inches; or~~
~~(2) egg bearing American lobster or American lobster from which eggs have been stripped, scrubbed or removed.~~

~~(b) American lobster traps must have escape vents and panels as described in 50 CFR 649.21(d) with the opening no smaller than the entrance funnel.~~

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. August 1, 2000.

SUBCHAPTER 3M – FINFISH

SECTION .0500 – OTHER FINFISH

.0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

(1) Specify areas.
(2) Specify seasons.
(3) Specify quantity for fish taken by commercial gear.
(4) Specify means/methods.
(5) Specify size for fish taken by commercial gear.

(b) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(c) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.

(d) It is unlawful to possess more than one red drum per person per day taken by hook-and-line or for recreational purposes.

(e) It is unlawful to possess more than 100 pounds of red drum ~~per vessel~~ per day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved.

(f) The annual commercial harvest limit (January through December) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. August 1, 2000; May 1, 2000; July 1, 1999; October 22, 1998.

.0510 AMERICAN EEL

It is unlawful to:

(1) Possess, sell or take eels less than six inches in length.
(2) Possess more than 50 eels per person per day for recreational purposes.

~~It is unlawful to possess, sell or take eels less than six (6) inches in length.~~

~~Tolerance of not more than 20 eels per person per day shall be allowed.~~

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. July 1, 1993;
Temporary Amendment Eff. August 1, 2000.

SUBCHAPTER 3O – LICENSES, LEASES, AND FRANCHISES

SECTION .0500 – PERMITS

.0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:
- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first securing a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division and will include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
  - (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
  - (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
  - (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
  - (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
  - (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
  - (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
    - (i) Atlantic Ocean;
    - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01" 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W;
    - (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; Pamlico and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48' 12" N- 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;

(iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.

(B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

(3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 34° 55' 09" N - 75° 39' 34" W; running 336° M to Rhodoms Point 36° 00' 10" N - 75° 43' 42" W and east of a line from Eagleton Point 36° 01" 18" N - 75° 43' 42" W; running 352° to Long Point 36° 02' 30" N - 75° 44' 18" W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W, running 122° (M) to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48' 12" N - 75° 43' 06" W; running 122° M across to the north point of Eagle Nest Bay 35° 44' 12" N - 75° 31' 09" W.

(4) Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first securing a Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit will be allowed.

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first securing an Atlantic Ocean Flounder Dealer Permit.

(5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

(1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 17.6" N latitude) to Rich's Inlet (34° 35.7" N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.

(2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.

(3) It is unlawful to fail to empty the contents of each net at the end of each tow.

(4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.

(5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;
Temporary Adoption Eff. August 1, 2000; May 1, 2000.

.0505 FEES

(a) The following fees will be charged for the initial issuance of permits listed below. These fees will not be prorated for a partial term of the permit:

(1) Horseshoe Crab Biomedical Use Permit - ten dollars ($10.00);

(2) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(A) Striped Bass Dealer Permits - fifty dollars ($50.00);
(B) Atlantic Ocean Flounder Dealer Permit - fifteen dollars ($15.00);
(C) Albemarle Sound Management Area for River Herring Dealer Permit - five dollars ($5.00);
(D) Atlantic Ocean American Shad Dealer Permit - five dollars ($5.00); ~~($5.00).~~

(3) Pound Net Set Permit:
(A) Initial Issuance – fifty dollars ($50.00);
(B) Transfer – five dollars ($5.00);

(4) Blue Crab Shedding Operation – ten dollars ($10.00);

(5) Atlantic Ocean TED Waiver Permit – fifteen dollars ($15.00).

(b) The following fees will be charged for renewal of permits as listed below:

(1) Horseshoe Crab Biomedical Use Permit - five dollars ($5.00);
(2) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
(A) Striped Bass Dealer Permits - fifty dollars ($50.00);
(B) Atlantic Ocean Flounder Dealer Permit - five dollars ($5.00);
(C) Albemarle Sound Management Area for River Herring Dealer Permit - five dollars ($5.00);
(D) Atlantic Ocean American Shad Dealer Permit - five dollars ($5.00); ~~($5.00).~~

(3) Pound Net Set Permit Renewal – five dollars ($5.00);

(4) Blue Crab Shedding Operation – five dollars ($5.00);

(5) Atlantic Ocean TED Waiver Permit – ten dollars ($10.00).

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;
Temporary Adoption Eff. August 1, 2000; May 1, 2000.-

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Rule-making Agency: *Coastal Resources Commission*

Rule Citation: *15A NCAC 7H .0308 & .1705*

Effective Date: *July 1, 2000*

Findings Reviewed and Approved by: *Julian Mann III*

Authority for the rule-making: *G.S. 113A-24; 113A-102(b); 113-107*

Reason for Proposed Action: *A petition for rulemaking was received from the Town of Surf City asking that the new temporary rules on sandbag erosion control structures of the CRC's administrative rules be amended so that a more reasonable standard is applied to determine when a community is actively pursuing a beach nourishment project. It has been determined that these temporary erosion control structures need to stay in place to encourage and allow adequate time for beach re-nourishment and for re-vegetation efforts to be carried out.*

Comment Procedures: *Contact: Charles Jones, 151-B, Highway 24, Hestron Plaza IIm, Morehead City, NC 28557*

CHAPTER 7 – COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

.0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:
(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 7M .0200.
(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.
(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
(D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
(E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(I) of this Section.
(F) Project construction shall be timed to minimize adverse effects on biological activity.
(G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
(H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and

(ii) dredging alone is not practicable to maintain safe access to the affected channel; and

(iii) the structure is limited in extent and scope to that necessary to maintain the channel; and

(iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and

(v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) Proposed erosion response measures using innovative technology or design will be considered as experimental and will be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used only to protect imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.

(F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property

owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project ~~as May 22, 2000.~~ October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

(i) been issued a CAMA permit, where necessary, approving such project; or

(ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or

(iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.

(G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, or beach nourishment, it must be removed by the property owner within 30 days.

(H) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.

(I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

(K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(L) An imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(i) a building and septic system shall be considered as separate structures; and

(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.

(M) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.

(N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);

(C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources; and

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

(1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes;

(2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction;

(3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed;

(4) Sand used to establish or strengthen dunes must be of the same general characteristics as the sand in the area in which it is to be placed;

(5) No new dunes shall be created in inlet hazard areas;

(6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune; and

(7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alterative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is less than six feet in width; and

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

(4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:

(1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume 1-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.

(4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

History Note: Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124; Eff. June 1, 1979;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19,

1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 1, 2000; May 22, 2000.

SECTION .1700 – GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND /OR A DREDGE AND FILL PERMIT

.1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

(1) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.

(2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used only to protect imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered to be imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is not obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

(3) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(5) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.

(6) The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.

(7) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later, regardless of the size of the structure it is protecting if the community in which it is located is actively pursuing a beach nourishment project as of ~~May 22, 2000.~~ October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

(A) been issued a CAMA permit, where necessary, approving such project, or

(B) an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary, or

(C) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (1) through (15) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they must be removed by May 1, 2000 pursuant to Part (15) of this Subparagraph.

(8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment, it must be removed by the permittee within 30 days.

(9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.

(10) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

(11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(13) An imminently threatened structure may only be protected once regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (7) of this Rule

shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(i) a building and septic system will be considered as separate structures.

(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (7) of this Rule.

(14) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (7) of this Rule.

(15) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Subparagraphs (7), (8) and (9) of this Paragraph with the pertinent time periods beginning on May 1, 1995.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

(1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(2) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;

(3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

(1) Work permitted by this general permit shall be subject to the following limitations:

(A) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(B) the erosion control structure shall be located no more than 20 feet waterward of the endangered structure;

(C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors will be considered in accordance with standards in 15A NCAC 7H .0208;

(D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

(2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.10;
Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;
Temporary Amendment Eff. July 1, 2000; May 22, 2000.

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Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 21D .0706*

Effective Date: *June 23, 2000*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rule-making: *G.S. 130A-361*

Reason for Proposed Action: *When the agency filed temporary rule 15A NCAC 21D .0706 that was effective May 17, 2000, the agency inadvertently filed this rule without amending Subparagraph (f)(2) A, B, C, D, E, and F. In order to correct this error, a temporary rule is needed. The changes are shown in bold. Currently, WIC vendors are signing the revised contracts that include the corrected number of occurrences. This revised vendor agreement will become effective July 1, 2000. Moreover, a second filing of 15A NCAC 21D .0706 as a temporary rule would mean: (1) The vendor contractual agreement would* ***not*** *be contradictory to the existing North Carolina Code; (2) Less Confusion in the enforcement of the vendor contractual agreement and the legal ramifications that may follow; and (3) Alleviation of possible complaints regarding the patterns of occurrences for violations by vendors that may derive from the North Carolina Retailers Association, other organizations/agencies, and the general public.*

Comment Procedures: *Comments, statements, data and other information may be submitted in writing within 30 days of publication of this issue in the NC Register. Copies of the proposed rules and information packages may be obtained by contacting the Nutrition Services Branch at 919-715-0647. Written comments may be sent to Cory Menees, Nutrition Services Branch, 1914 Mail Service Center, Raleigh, NC 27699-1914.*

CHAPTER 21 HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - WIC/NUTRITION

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

.0706 AUTHORIZED WIC VENDORS

(a) An applicant to become authorized as a WIC vendor shall comply with the following:

(1) Accurately complete a WIC Vendor Application, a WIC Vendor Price List, and a WIC Vendor Contract;

(2) Submit all completed forms to the local WIC program, except that a corporate WIC Vendor with 20 or more WIC stores shall submit one completed WIC Vendor Contract to the state agency and a separate WIC Vendor Application and WIC Vendor Price List for each store to the local WIC agency;

(3) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of WIC-approved foods as specified in Subparagraph (b)(16) of this Rule; an applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days; if the applicant fails both reviews, he shall wait 90 days from the date of his previous application before submitting a new application;

(4) Attend, or cause an employee to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that applicant's employees receive instruction in WIC program procedures and requirements;

(5) The applicant's vendor site shall be located at a permanent and fixed location within the State of North Carolina. The vendor site shall be the address indicated on the WIC vendor application and shall be the site at which WIC participants, proxies, or compliance investigators shall select WIC approved foods;

(6) The applicant's vendor site shall be open for business with the public at least four hours per day between 8:00 a.m. and 5:00 p.m. during weekdays;

(7) An applicant shall not submit false, erroneous, or misleading information in an application to become a WIC vendor or in subsequent documents submitted to the state or local agency;

(8) An applicant shall not have an owner with 25 percent or more financial interest who has committed a misdemeanor involving fraud, misuse or theft of state or federal funds or any felony;

(9) An applicant shall not be employed, have a spouse, child, or parent who is employed by the state or local WIC program, and shall not have an employee who is employed, or has a spouse, child, or parent who is employed by the state or local WIC program. For purposes of the preceding sentence, the term "applicant" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity; and

(10) An applicant shall not hold 25 percent or more financial interest in any of the following:

(A) any Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or

(B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1) and Subparagraph (k)(2) or Paragraph (j) and Subparagraph (k)(1) as the result of violation of ~~Paragraph~~ Paragraphs ~~(f)(1)(C)(i), (f)(1)(D), or (f)(1)(E)~~ (f), (g)(1)(A), or (g)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing. The requirement of this provision shall not be met by the transfer or conveyance of financial interest during the period of disqualification.

(b) By signing the WIC Vendor Agreement, the applicant agrees to:

(1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;

(2) Accept WIC program food instruments in consideration for the purchase of eligible food items. Eligible food items are those food items which satisfy the requirements of 15A NCAC 21D .0501. The food items, specifications and product identification are described in the WIC Vendor Manual;

(3) Provide all eligible food items as specified on the food instrument to WIC program participants, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the counter-signature by the participant, parent, guardian or proxy;

(4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current prices, or less than the current prices, for the eligible food items provided and shall not charge or collect sales taxes for the eligible items provided;

(5) Accept WIC program food instruments only on a date between the "Date of Issue" and the "Participant Must Use By" date;

(6) Enter in the "Date Redeemed" box the month, day and year the WIC food instrument is accepted in consideration for the purchase of eligible food items;

(7) Accept WIC program food instruments only if they have been validated with a "WIC Agency Authorizing Stamp";

(8) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;

(9) Not redeem food instruments in whole or in part for cash, credit, unauthorized foods, or ~~other items~~

~~of value to participants or a credit for past accounts~~ non-food items;

(10) Clearly imprint the Authorized WIC Vendor Stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;

(11) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;

(12) Promptly deposit WIC program food instruments in a state or national bank having an office in the State of North Carolina. All North Carolina WIC program food instruments must be received by the North Carolina State Treasurer within 60 days of the "Date of Issue" on the food instrument;

(13) Insure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the Authorized WIC Vendor Stamp;

(14) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;

(15) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);

(16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon and half gallon -and- Skim/lowfat fluid: gallon or half gallon	Total of 6 gallons fluid milk
	Nonfat dry: quart package -or- Evaporated: 12 oz. can	Total of 5 quarts when reconstituted
Cheese	2 types: 8 or 16 oz.	Total of 6 pounds
Cereals	4 types (minimum box size 12 oz.)	Total of 12 boxes
Eggs	Grade A, large or extra-large: white or brown	6 dozen
Juices	Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are: 12 oz. frozen, and 46 oz. canned	10-12 oz. frozen 10-46 oz. canned
Dried Peas and Beans or	2 types	3 one-pound bags
Peanut Butter	18 oz. jars	3 jars
Infant Cereal	2 cereal grains; 8-oz. boxes (one must be rice); brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 cans combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen	29 oz.

For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac Special Care 24, Similac 60/40, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, Enfamil Premature, PediaSure, Polycose and MCT Oil. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.

(17) Permit WIC program participant to purchase eligible food items without making other purchases;

(18) Attend, or cause an employee to attend, annual vendor training class upon notification of class by the local agency;

(19) Inform and train vendor's employees in WIC procedures and regulations;

(20) Be accountable for actions of vendor's employees in utilization of WIC food instruments and provision of WIC authorized food items;

(21) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and policies~~;~~. This includes, but shall not be limited to, allowance of access to WIC food instruments negotiated the day of the monitoring and vendor records pertinent to the purchase of WIC food items; vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC food items purchased, including invoices and copies of purchase orders;

(22) Submit a current accurately completed copy of the WIC Program Approved Food Items Price List to the local agency when signing this agreement, six months thereafter, or on January 1, whichever is earlier, and within one week of any written request by the state or local agency;

(23) Reimburse the state agency within 30 days of written notification for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth in the Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the Authorized WIC Vendor Stamp;

(24) Not seek restitution from the participant for reimbursements paid to the state agency or for WIC food instruments not paid by the state agency;

(25) Notify the local agency when the vendor ceases operations or the ownership changes;

(26) Return the Authorized WIC Vendor Stamp to the local agency upon termination of this agreement or suspension or termination from the WIC Program;

(27) Offer WIC participants the same courtesies as offered to other customers; and

(28) Comply with all the requirements for applicants of Subparagraphs (a)(5) through (9) of this Rule throughout the term of authorization.

(c) By signing the WIC Vendor Agreement, the local agency agrees to the following:

(1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;

(2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of 50% of all authorized vendors shall be monitored at least once a year. Any vendor shall be monitored within one week of written request by the state agency;

(3) Provide vendors with the North Carolina WIC Vendor's Manual, all Vendor's Manual amendments, blank WIC Program Approved Food Items Price Lists, and the Authorized WIC Vendor Stamp indicated on the signature page of this agreement;

(4) Assist the vendor with problems or questions which may arise under this agreement or the vendor's participation in the WIC Program; and

(5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

(d) The WIC Vendor Agreement shall outline the responsibilities of the vendor to the WIC Program, and the local WIC agency's and state agency's responsibilities towards the authorized WIC vendor. In order for a food retailer or pharmacy to participate in the WIC Program and be entitled to the rights and responsibilities of an authorized WIC vendor, a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

(e) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

~~(f.) An authorized WIC vendor may be disqualified from the WIC program for violation of 15A NCAC 21D .0706 or violation of any other state and federal WIC program rules for a period not to exceed three years in accordance with the following:~~

~~(1) When a vendor commits a violation of the WIC program rules, he shall be assessed sanction points as set forth below:~~

~~(A) 2.5 points for stocking WIC approved foods outside of manufacturer's expiration date;~~

~~(B) 5 points for:~~

~~(i) failure to attend annual vendor training;~~

~~(ii) failure to submit price reports twice a year or within seven days of request by agency;~~

~~(iii) requiring participants to purchase specific brands when more than one WIC-approved brand is available;~~

~~(iv) providing unauthorized foods (as listed in the vendor agreement);~~

~~(v) allowing substitutions for foods listed on WIC food instrument(s);~~

~~(vi) failure to stock minimum inventory.~~

~~(C) 7.5 points for:~~

(i) failure to properly redeem (e.g., not completing date and purchase price on WIC food instrument(s) before obtaining participant's signature);
(ii) discrimination (separate WIC lines, denying trading stamps, etc.);
(iii) issuing rainchecks;
(iv) requiring cash purchases to redeem WIC food instrument(s);
(v) contacting WIC participants in an attempt to recoup funds for food instrument(s).

(D) 15 points for:
(i) charging more than current shelf price for WIC approved foods on two different days; for example, a vendor would be assessed 15 points for overcharging on two different days; 15 points for overcharging on three different days, and 30 points for overcharging on four different days;
(ii) charging for foods in excess of those listed on WIC food instrument(s);
(iii) failure to allow monitoring of a store by WIC staff when required;
(iv) failure to provide WIC food instrument(s) for review when requested;
(v) failure to provide store inventory records when requested by WIC staff;
(vi) nonpayment of a claim made by the state agency;
(vii) tendering for payment any food instrument(s) accepted by any other store;
(viii) intentionally providing false information on vendor records (application, price list, WIC food instrument(s), monitoring forms);

(E) 20 points for:
(i) providing cash or credit for WIC food instrument(s);
(ii) providing non-food items or alcoholic beverages for WIC food instrument(s);
(iii) charging for food not received by the WIC participant.

(2) All earned points are retained on the vendor file for a period of one year or until the vendor is disqualified as a result of those points. If a vendor commits a violation within six months of reauthorization after a disqualification period, 10 points in addition to those earned from the violation shall be assigned; if a vendor commits a violation after six months, but within one year of the reauthorization date after a disqualification period, five points in addition to those earned from the violation shall be assigned.

(3) If a vendor accumulates 15 or more points, he shall be disqualified. The nature of the violation(s), the number of violations and past disqualifications, as represented by the points assigned in Subparagraphs (e)(1) and (2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. Eighteen days shall be added to the disqualification period for each point over 15 points.

(4) Notwithstanding disqualification pursuant to accumulated points, an authorized WIC vendor shall also be disqualified from the WIC program upon disqualification or imposition of a civil money penalty from another USDA, FCS Program for the same period as the other disqualification, not to exceed three years, or for the same period as the original disqualification period determined by the USDA, FCS Program before imposition of the civil money penalty.

(5) An authorized WIC vendor shall be given 15 days written notice of any adverse action which affects his participation in the WIC Program. The vendor appeals procedure shall be in accordance with 15A NCAC 21D .0800.

(f) Title 7 C.F.R. 246.12(k)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.

(1) In accordance with 7 CFR 246.12(k)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.

(2) A pattern, as referenced in 7 C.F.R. 246.12(k)(1)(iii)(B) through (F) and (iv), shall be established as follows:
(A) **~~three~~ two** occurrences of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item within a 12-month period;
(B) **~~three~~ two** occurrences of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price within a 12-month period;
(C) two occurrences of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an authorized vendor and/or an unauthorized person within a 12-month period;
(D) **~~three~~ two** occurrences of charging for supplemental food not received by the participant within a 12-month period;
(E) **~~three~~ two** occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
(F) **~~four~~ three** occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those

listed on the food instrument within a 12-month period.

(g) Title 7 C.F.R.Section 246.12(k)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (k)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in paragraph (h) of this Rule:

(1) When a vendor commits any of the following violations, the state-established disqualification period shall be:

(A) 90 days for each occurrence of failure to properly redeem (e.g., not completing date and purchase price on WIC food instrument(s) before obtaining participant's signature);

(B) 60 days for each occurrence of requiring cash purchases to redeem WIC food instrument(s);

(C) 30 days for each occurrence of requiring participants to purchase specific brands when more than one WIC-approved brand is available.

(2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows:

(A) 2.5 points for stocking WIC-approved foods outside of manufacturer's expiration date;

(B) 5 points for:

(i) failure to attend annual vendor training;

(ii) failure to submit price reports twice a year or within seven days of request by agency;

(iii) failure to stock minimum inventory.

(B) 7.5 points for:

(i) discrimination (separate WIC lines, denying trading stamps, etc.);

(ii) contacting WIC participants in an attempt to recoup funds for food instrument(s).

(D) 15 points for:

(i) failure to allow monitoring of a store by WIC staff when required;

(ii) failure to provide WIC food instrument(s) for review when requested;

(iii) failure to provide store inventory records when requested by WIC staff;

(iv) nonpayment of a claim made by the State agency;

(v) intentionally providing false information on vendor records (application, price list, WIC food instrument(s), monitoring forms).

(3) For the violations listed in Subparagraph (g)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s), the number of violations and past disqualifications, as represented by the points assigned in Subparagraph (g) (2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points of the worst offense multiplied by 18 days. 18 days shall be added to the disqualification period for each point over 15 points.

(4) If a vendor commits a violation in Subparagraph(g)(2) of this Rule within six months of reauthorization after a disqualification period, 10 points in addition to those earned from the violation shall be assigned; if a vendor commits a violation in Subparagraph(g)(2) of this Rule after six months, but within one year of the reauthorization date after a disqualification period, five points in addition to those earned from the violation shall be assigned.

(h) For investigations pursuant to this Section, a single investigation is:

(1) Compliance buy(s) conducted by undercover investigators within a 12- month period to detect the following violations:

(A) buying or selling food instruments for cash (trafficking);

(B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;

(C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;

(D) charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price;

(E) receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(F) charging for supplemental food not received by the participant;

(G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;

(H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;

(I) failure to properly redeem a WIC food instrument;

(J) requiring cash purchases to redeem WIC food instrument(s);

(K) requiring participants to purchase specific brands when more than one WIC-approved brand is available; or

(2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
  (A) failure to stock minimum inventory;
  (B) stocking WIC-approved food outside of manufacturer's expiration date;
  (C) failure to allow monitoring of a store by WIC staff when required;
  (D) failure to provide WIC food instrument(s) for review when requested;
  (E) failure to provide store inventory records when requested by WIC staff;
  (F) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or

(3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
  (A) failure to attend annual vendor training;
  (B) failure to submit price reports twice a year or within seven days of requaest by agency;
  (C) discrimination (separate WIC lines, denying trading stamps, etc.);
  (D) contacting WIC participants in an attempt to recoup funds for food instrument(s);
  (E) nonpayment of a claim made by the State agency;
  (F) intentionally providing false information on vendor records (appplication, price list, WIC food instrument(s), monitoring forms).
    (i) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(k)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
    (ij) The participant access provisions of 7 C.F.R. 246.12(k)(1)(ix) and (k)(8) are incorporated by reference with all subsequent amendments and editions.

(k) The following provisions apply to civil money penalties assessed in lieu of disqualificaiton of a vendor:

(1) The civil money penalty formula in 7 C.F.R. 246.12(k)(l)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.

(2) The State agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (g) when the State agency determines that disqualification of a vendor would result in undue participant hardship in accordance with Subparagraph (k)(3) below.

(3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (g), the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:
  (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
  (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor;
  (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.

(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(k)(6) are incorporated by reference with all subsequent amendments and editions.

(l) The provisions of 7 C.F.R. 246.12(k)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(m) The provision in 7 C.F.R. 246.12(k)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

~~(g)~~ (n) The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (b)(23) of this Rule.

~~(h)~~ (o) In accordance with 7 C.F.R. 246.12(k)(7) and (k)(10), North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.

~~(i)~~ (p) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment for WIC food instruments accepted by a non-authorized WIC vendor, a current WIC vendor agreement need only be signed by the vendor and the state agency. The vendor may request such one-time payment directly from the state agency. The vendor shall sign a statement indicating that he has provided foods as prescribed on the food instrument, charged current shelf prices and verified the identity of the participant. For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any WIC vendor agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.

~~(j) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (g), the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:~~

~~(1) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and~~

~~another WIC vendor is located within seven miles of the noncomplying vendor;~~

~~(2) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor;~~

~~(3) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.~~

(q) An authorized WIC vendor shall be given 15 days written notice of any adverse action which affects his participation in the WIC Program. The vendor appeals procedure shall be in accordance with 15A NCAC 21D .0800.

History Note: *Authority G.S. 130A-361;* 42 USC 1786;
Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990;
Temporary Amendment Eff. May 17, 2000.
Temporary Amendment Eff. June 23, 2000;

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of January 20, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2000 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
4	NCAC	1I	.0101	14:08 NCR 585
4	NCAC	1I	.0201	14:08 NCR 585
4	NCAC	1I	.0302*	14:08 NCR 585
4	NCAC	1I	.0303-.0304	14:08 NCR 585
4	NCAC	1I	.0401	14:08 NCR 585
4	NCAC	1I	.0402*	14:08 NCR 585
4	NCAC	1I	.0403-.0405	14:08 NCR 585
4	NCAC	1I	.0501-.0503	14:08 NCR 585
4	NCAC	1I	.0601	14:08 NCR 585
4	NCAC	1I	.0801	14:08 NCR 585
4	NCAC	15	.0121*	14:07 NCR 522
10	NCAC	3U	.0102*	14:03 NCR 155
10	NCAC	3U	.2510*	14:03 NCR 157
11	NCAC	8	.1103*	14:12 NCR 959
11	NCAC	8	.1106*	14:12 NCR 960
11	NCAC	8	.1107	14:12 NCR 960
11	NCAC	8	.1116*	14:12 NCR 961
15A	NCAC	2B	.0110	14:06 NCR 434
15A	NCAC	2B	.0241-.0242*	14:09 NCR 660
15A	NCAC	2B	.0260-.0261*	14:03 NCR 182
15A	NCAC	2D	.1207*	14:03 NCR 211
15A	NCAC	2Q	.0103*	14:07 NCR 532
15A	NCAC	2Q	.0508*	14:07 NCR 532
15A	NCAC	2Q	.0702*	14:03 NCR 221
15A	NCAC	4B	.0126*	14:12 NCR 962
15A	NCAC	7J	.0406*	14:09 NCR 666
15A	NCAC	7M	.0307*	14:09 NCR 667
15A	NCAC	18D	.0201*	14:06 NCR 468
15A	NCAC	18D	.0205-.0206*	14:06 NCR 471
15A	NCAC	18D	.0304-.0305	14:06 NCR 472
15A	NCAC	18D	.0307	14:06 NCR 472
15A	NCAC	18D	.0308*	14:06 NCR 472
15A	NCAC	18D	.0309	14:06 NCR 473
15A	NCAC	18D	.0701	14:06 NCR 473
17	NCAC	4B	.0102	13:08 NCR 691
17	NCAC	4B	.0104-.0107	13:08 NCR 691
17	NCAC	4B	.0301	13:08 NCR 691
17	NCAC	4B	.0306*	13:08 NCR 692
17	NCAC	4B	.0308-.0312	13:08 NCR 692
17	NCAC	4B	.0403	13:08 NCR 692
17	NCAC	4B	.0405	13:08 NCR 692
17	NCAC	4B	.2902-.2903	13:08 NCR 693
17	NCAC	4B	.4301-.4302	13:08 NCR 693
17	NCAC	4E	.0102-.0103	13:08 NCR 693
17	NCAC	4E	.0201*	13:08 NCR 693
17	NCAC	4E	.0202-.0203	13:08 NCR 693
17	NCAC	4E	.0302*	13:08 NCR 693
17	NCAC	4F	.0101-.0105*	not required G.S. 150B-1(d)(4)

17	NCAC	6B	.0105	13:08 NCR 694
17	NCAC	7B	.0124-.0125	13:08 NCR 695
17	NCAC	7B	.2101	13:09 NCR 771
17	NCAC	9K	.0601	13:08 NCR 695
19A	NCAC	2E	.0202	14:09 NCR 674
19A	NCAC	2E	.0206*	14:09 NCR 677
19A	NCAC	2E	.0207	14:09 NCR 695
19A	NCAC	2E	.0208*	14:09 NCR 678
19A	NCAC	2E	.0209	14:09 NCR 678
19A	NCAC	2E	.0210-.0214*	14:09 NCR 678
19A	NCAC	2E	.0215	14:09 NCR 696
19A	NCAC	2E	.0224-.0226*	14:09 NCR 682
19A	NCAC	2E	.0603-.0604*	14:09 NCR 683
21	NCAC	1	.0101	13:05 NCR 501
21	NCAC	12	.0205*	14:06 NCR 477
21	NCAC	12	.0307	14:06 NCR 478
21	NCAC	12	.0901	14:06 NCR 479
21	NCAC	58A	.0101*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0104-.0106*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0107*	14:10 NCR 775
21	NCAC	58A	.0109	14:10 NCR 776
21	NCAC	58A	.0110*	14:10 NCR 776
21	NCAC	58A	.0111-.0112*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0113	14:10 NCR 777
21	NCAC	58A	.0114*	14:10 NCR 777
21	NCAC	58A	.0301*	14:10 NCR 781
21	NCAC	58A	.0302-.0304	14:10 NCR 781
21	NCAC	58A	.0401	14:10 NCR 782
21	NCAC	58A	.0402*	14:10 NCR 783
21	NCAC	58A	.0403-.0404	14:10 NCR 783
21	NCAC	58A	.0501-.0502*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0503	14:10 NCR 784
21	NCAC	58A	.0504*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0505*	14:10 NCR 784
21	NCAC	58A	.0506*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0510*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0601	14:10 NCR 785
21	NCAC	58A	.0610*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0612*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.0615	14:10 NCR 785
21	NCAC	58A	.0902*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.1402	14:10 NCR 786
21	NCAC	58A	.1701-.1702*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.1703*	14:10 NCR 786
21	NCAC	58A	.1708	14:10 NCR 786
21	NCAC	58A	.1709*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58A	.1711*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0101-.0102	14:10 NCR 787
21	NCAC	58B	.0104*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0201-.0203*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0301*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0401*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0501*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58B	.0602*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58C	.0105-.0108	14:10 NCR 788
21	NCAC	58C	.0207	14:10 NCR 788
21	NCAC	58C	.0213-.0214	14:10 NCR 789
21	NCAC	58C	.0217*	14:10 NCR 789
21	NCAC	58C	.0218	14:10 NCR 789
21	NCAC	58C	.0220	14:10 NCR 789
21	NCAC	58C	.0302	14:10 NCR 789
21	NCAC	58C	.0304-.0307	14:10 NCR 790

21	NCAC	58C	.0310	14:10 NCR 791
21	NCAC	58C	.0312	14:10 NCR 792
21	NCAC	58C	.0601-.0602	14:10 NCR 792
21	NCAC	58C	.0603*	14:10 NCR 792
21	NCAC	58C	.0604-.0605	14:10 NCR 792
21	NCAC	58C	.0606-.0607*	14:10 NCR 792
21	NCAC	58C	.0608	14:10 NCR 792
21	NCAC	58E	.0102	14:10 NCR 794
21	NCAC	58E	.0202	14:10 NCR 794
21	NCAC	58E	.0204-.0205	14:10 NCR 794
21	NCAC	58E	.0302*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58E	.0304	14:10 NCR 795
21	NCAC	58E	.0310*	14:10 NCR 796
21	NCAC	58E	.0406*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58E	.0412	14:10 NCR 797
21	NCAC	58E	.0511*	not required G.S. 150B-21.5(a)(2) Eff. October 1, 2000
21	NCAC	58E	.0515	14:10 NCR 797
26	NCAC	1	.0101	14:12 NCR 1029
26	NCAC	2C	.0103*	14:12 NCR 1030
26	NCAC	2C	.0105*	14:12 NCR 1030
26	NCAC	2C	.0303	14:12 NCR 1030
26	NCAC	2C	.0306	14:12 NCR 1030
26	NCAC	2C	.0403	14:12 NCR 1030
26	NCAC	3	.0101*	14:12 NCR 1033
26	NCAC	3	.0119	14:12 NCR 1033

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1I - INDUSTRIAL DEVELOPMENT FUND

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

(a) These definitions apply to all parts of the Industrial Development Fund including the Basic Emergency Economic Development Assistance, Utility Account and Clean Water Bonds for Economic Development:

(1) "Department" means the North Carolina Department of Commerce, or its Secretary.

(2) "Applicant" means a North Carolina unit of government that applies for IDF funds.

(3) "Industrial Development Fund" as referenced in G.S. 143B-437.01 means the fund within the Department's fiscal structure in which the appropriation of monies for industrial development projects is received and disbursed.

(4) "IDF" means the Industrial Development Fund.

(5) "Eligible tier areas" means the aggregation of North Carolina counties into groups in which certain economic benefits apply, as currently authorized by G.S. 105-129.3.

(6) "Unit of Government" means a town, city or county of the state.

(7) "Full-time Job" means a job that requires at least 1600 hours of work in a year.

(8) "Infrastructure" means utilities, typically referred to as "public utilities," or a rail spur where there is public ownership of the rail property.

(9) "Grant" means money given to a unit of government to pay for an economic development project and does not have to be repaid, if the terms of the grant are fulfilled, i.e. the jobs commitment is met.

(10) "Loan" means money loaned to a unit of government to pay for an economic development project, to be repaid by the borrower.

(11) "Project" means an activity proposed for IDF funding. It shall be described narratively in an application and accompanied by a preliminary set of drawings, or sketches, or other data that present the project in factual detail, together with a schedule or itemization of costs from an engineer or contractor. The schedule of costs shall constitute the ability to complete a project with no more than a 10 percent contingency.

(12) Project expenditures means:

(A) For basic IDF -

(i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur when either is publicly owned and operated, and or;

(ii) the renovation of buildings including structural repairs, repairs, addition of docks, erection of walls, structural supports for heavy equipment, electrical upgrades, or HVAC upgrades;

(iii) improvements that are necessary to make a building suitable for occupancy by the operator of the project. Such improvements may include mechanical equipment such as heating and air conditioning equipment, plumbing, pipes or trenching to handle effluents or process water, special electrical additions and lighting. If an improvement is critical to the operation of a or is critical to the decision making process pertinent to the creation of jobs, the actual improvement need not be located on the site of the main project building. If, however, a grant of funds is involved, the improvement must be constructed on public right-of-ways or on property which the unit of government has an easement to treat as it normally would do as if it owned the property. However, when extending infrastructure to a firm, IDF assistance ends at the private property line. In either situation, the application must document the exact relationship between the jobs and the project. An example of a fundable project would be where the unit of government must construct an elevated water tank and service lines to provide water to a building where such service is directly required to operate an industrial-business. An example of an unfundable project would be where a unit of government seeks to expand or to repair its water utility (or other infrastructure) system and where the relationship to the creation of jobs is fairly general or vague. The project shall be described from the perspective of employment to be created and its impact to the project.

(iv) the purchase and installation of equipment that is associated with the industrial classification of the project.

(B) For Emergency Economic Development Assistance - Loans to local units of government for economic development projects designed to create jobs, lead to the creation of jobs, or save jobs, and to assist in alleviating the economic dislocation created by the loss of jobs.

(C) For the Utility Account -

(i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur or rail line when either is publicly owned and operated, and/or

(ii) equipment for existing or proposed industrial buildings for operations in the industrial classifications that are currently eligible to receive Utility Account.

(D) For Clean Water Bonds -

(i) the construction of or improvements to new or existing water or sewer distribution lines or equipment,

(ii) the construction or improvements to new or existing wastewater treatment facilities, or

(iii) improvements that will expand the capacity of existing wastewater treatment facilities or water supply systems.

(13) "State" means the State of North Carolina.

(14) "Application" means the pages of documents in which an applicant for IDF funds identifies itself, describes a project, specifies the funds required, provides a breakdown of project costs, and submits the benefiting firm's commitment to create jobs and evidence of its credit worthiness.

(15) "Local Matching Funds" means funds of a unit of government contributed to an economic development project for the purpose of assisting in a total financing package and earning (or winning) other funds by doing so. Matching is usually expressed as a ratio, i.e. one local dollar for three state dollars, or one for three.

(16) "Participation Loan" means a loan among at least three parties, including: A bank or financial institution, the private firm, and the unit of government. The essence of a participation loan is that the bank, or financial institution, and the unit of government shall share at least equally in the lending arrangements, meaning the money loaned and the risk involved and collateral shared.

(17) "Borrower" means the private firm identified in a participation loan for building improvement or equipment in the basic IDF, or the unit of government when the money is spent for emergency economic dislocation assistance or when the money is reloaned in a utility account project. Additionally, the unit of government shall be the borrower when IDF is used to assist local matching, or in other cases when the Department believes the project can be more prudently structured as a loan rather than a grant.

(18) "Preapplication Conference" means a meeting held at the Department to discuss a proposed IDF application and includes: a representative of Commerce Finance Center; the applicant; an official of the benefiting firm; and a banker, if a participation loan is involved. A preapplication conference may be waived when the total IDF expenditures are expected to be fifty thousand dollars ($50,000) or less.

(19) "Clean Water Objectives of the State" include:

(A) Reducing the reliance on wells, septic tanks and similar facilities;

(B) Allowing residences, businesses, or local governments not otherwise served by water or sewer or wastewater infrastructure to connect into a distribution line or system (for water supply, sewer, or wastewater) being furnished in an economic development project for new or expanding industry.

(b) "Local Matching Requirement.' The Department requires local matching in grant projects except for Emergency Economic Development Assistance projects and those located in a tier area that has been exempted from matching by NC General Statutes. The required rate shall be one for three, or one local dollar for each three state dollars.

History Note: Filed as a Temporary Amendment Eff. January 11, 1990 for a Period of 180 Days to Expire on July 9, 1990;
Filed as a Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;
Authority G.S. 143B-437.01, 105-129.3;
Eff. May 1, 1988;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000.

SECTION .0300 - SELECTION PROCESS

.0302 ELIGIBILITY REQUIREMENTS

Applications shall show that:

(1) This funding is a vital part of the proposal to create the jobs set out and that the jobs shall not be created if the project goes unfunded;
(2) For Emergency Economic Development Assistance Projects, the project is completely funded or financed, except for the particular funds sought in application;
(3) The involvement of the local unit of government is authorized by its elected board under specific resolution and by specific State Statute;
(4) The participating private entity has provided a statement of commitment relating to the project. That commitment shall state that the project is to be carried out as described in the application, with specificity as to time schedules and to the parties involved;
(5) The expenditure of private money on the project has not begun;
(6) The project has not yet begun, i.e. money spent on the project, or public announcements made that the benefiting firm plans to do the project before the Department has been requested to participate with IDF;
(7) For Emergency Economic Development Assistance Projects, there exists an emergency in the economy large enough to be considered an economic dislocation as set out in G.S. 143B-437.01 (a)(1a); and
(8) The project for which funding is sought might help to alleviate the economic emergency described in Item (7) of this Rule.

History Note: Filed as a Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Authority G.S. 143B-437.01;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000.

SECTION .0400 - APPROVAL CRITERIA

.0402 REQUIRED FINDINGS

(a) Before the Department shall approve a project, a finding must be made that the project:

(1) shall assist a unit of Government in one of eligible tier areas of the State; and
(2) the funds shall be used for renovation of buildings or infrastructure or equipment by firms that have industry classifications currently eligible for tax incentives under G.S. 105-129.4.

(b) The Department shall document a finding based on data provided in the application or by staff research, that the jobs to be created by a project, over no more than a three year period, shall be large enough in number to have a measurable favorable impact on the area immediately surrounding the project and shall be commensurate with the size and cost of the grant to the project. The applicant has the burden of demonstrating that the jobs shall have a measurable impact on the county. The applicant must show by clear and convincing evidence the number and type of such jobs generated.

(c) The Department shall make a finding that the operator of the proposed project has demonstrated the capabilities to operate such a facility. The applicant shall show that capability exists in the operator to operate and maintain the facility efficiently and effectively. Financial strength and prior related experience by the operator shall be evaluated. Where little or no experience can be demonstrated, the qualifications of management, including production or engineering staff, as applicable, shall be of prime significance.

(d) The Department shall make a finding that IDF financing for a project shall not cause or result in the abandonment of an existing similar industrial facility of the proposed operator or an affiliate elsewhere in the State unless the facility is to be abandoned because of obsolescence, lack of available labor, or site limitations. The Department shall consider an abandonment statement as prima facie proof of lack of abandonment.

(e) For Emergency Economic Development projects, the Department shall make a finding that:

(1) the economic emergency exists, or is imminent and;
(2) the project shall, or shall tend to, alleviate the especially severe economic emergency caused by the described economic dislocation.

(f) For Utility Account projects, the Department shall make a finding that the proposed funding will create new jobs or reasonably be expected to lead to the creation of new jobs in the

industries currently eligible for Utility Account financing assistance as specified in G.S. 143B-437.01(b1).
(g) For Clean Water Bonds projects, the Department shall make a finding that the proposed project will have a favorable impact on the Clean Water Objectives of the State.
(h) The Department shall use the definitions of terms found in Rule .0102 of this Subchapter to make these findings.

History Note: Filed as a Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Authority G.S. 143B-437.01;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000.

CHAPTER 15 - NAVIGATION AND PILOTAGE

SECTION .0100 – NAVIATION AND PILOTAGE

.0121 APPRENTICESHIP

(a) In order to be considered for an appointment as an apprentice pilot, an applicant shall:
(1) provide evidence of graduation from a maritime college or regionally accredited four year college or university or hold a valid Third Mate's Unlimited Ocean license,
(2) not have been convicted of a felony;
(3) provide evidence of 20/20 visual acuity uncorrected or corrected by lens;
(4) provide evidence of being able to distinguish colors by means of the Stilling Test or other equivalent test accepted by the Coast Guard;
(5) provide three personal references;
(6) provide evidence of passing a complete physical examination in the form required by the Coast Guard for the issuance of an original federal pilot's license; and
(7) be a citizen and resident of North Carolina.
(b) If determined by a majority vote of the association that the applicant has demonstrated the knowledge and skill necessary to obtain a limited license and approved by a majority vote of the commission, the applicant shall be issued an Apprentice Pilot's Certificate. He shall be known as an apprentice pilot during apprenticeship.
(c) Under the direct supervision of a pilot, an apprentice pilot shall become proficient in all matters appertaining to the duties of a pilot including, but not limited to:
(1) rules of the road;
(2) use of compass and navigate aids;
(3) set of various currents;
(4) boarding of vessels in heavy weather;
(5) bearing of noted objects;
(6) number, shapes, and colors of buoys; and
(7) use of radar and ranges.
(d) An apprentice pilot shall make such boarding and trips and perform such duties as directed by a pilot in order to master the waters of the river and bar to master the handling of the various vessels traversing the same.
(e) A limited license may be issued to an apprentice pilot by the commission upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain a limited license. Prior to advancing from one limited license to the next, a majority of the association must sign the limited license, thus certifying progressive development of the knowledge and skill necessary for a limited license. The commission may issue the next limited license upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain that limited license.
(f) An apprenticeship may be terminated at any time there is a finding by the commission that progress is not being made or any of the requirements set forth in Paragraph (a) have been violated. A majority of the association may recommend termination of an apprenticeship.
(g) In order to be considered for an appointment as a pilot:
(1) an applicant must satisfy all statutory requirements for a Full License;
(2) an applicant must hold a Pilot's License issued by the Coast Guard;
(3) an applicant must not have been convicted of a felony;
(4) an applicant must be approved by majority of the commission;
(5) there must be a vacancy in the number of pilots established pursuant to Rule .0119 of this Chapter; and
(6) the applicant shall not be a child, sibling, or grandchild of a pilot.
(h) Upon the successful completion of the apprentice pilot training program and the requirements for a full licensed pilot, the apprentice pilot shall then be placed on the apprentice pilots waiting list in the order in which they complete all such requirements. When a vacancy occurs in the number of full licensed pilots, the apprentice next in line shall be appointed to that vacancy. If he declines, his name shall be stricken from the waiting list. During this interim, between the expiration of the limited license and waiting for a vacancy, the apprentice shall be required to make an average of two boardings per month under the supervision of a full licensed pilot.

History Note: Authority G.S. 76A-1; 76A-5; 76A-6; 76A-12; 76A-13;
Eff. December 1, 1985.\;
Amended Eff. August 1, 2000.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the rule clearly requires a

different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

(1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.

(2) "Appellant" means the person or persons who request a contested case hearing.

(3) "A" license means the license issued to child care operators who meet the minimum requirements for the legal operation of a child care facility pursuant to G.S. 110-91 and applicable rules in this Subchapter.

(4) "AA" license means the license issued to child care operators who meet the higher voluntary standards promulgated by the Child Care Commission as codified in Section .1600 of this Subchapter.

(5) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development and the Division of Child Development on the elements of quality school-age care.

(6) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.

(7) "Child care provider" as defined by G.S. 110-90.2 and used in Section .2700 of this Subchapter, includes but is not limited to the following employees: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.

(8) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.

(9) "Department" means the Department of Health and Human Services.

(10) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

(11) "Division" means the Division of Child Development within the Department of Health and Human Services.

(12) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.

(13) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for ten dollars and ninety-five cents ($10.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

(14) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents ($8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

(15) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Subchapter, using space which is identifiable for each group.

(16) "Infant/Toddler Environment Rating Scale" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents ($8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

(17) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.

(18) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual published jointly under the authority of the Department and the Department of Community Colleges. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

(19) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.

(20) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.

(21) "Passageway" means a hall or corridor.

(22) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.

(23) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents ($8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.

(24) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.

(25) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

(26) "Section" means Division of Child Development.

(27) "Substitute" means any person who temporarily assumes the duties of a regular staff person for a time period not to exceed two consecutive months.

(28) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.

(29) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

History Note: Authority G.S. 110-88; 143B-168.3; Eff. January 1, 1986;
Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989;
Temporary Amendment Eff. January 1, 1996;
Amended Eff. July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997.

SECTION .2500 - DAY CARE FOR SCHOOL-AGE CHILDREN

.2510 STAFF QUALIFICATIONS

(a) The individual who is responsible for ensuring the administration of the program, whether on-site or off-site, shall:

(1) Prior to employment, be at least 21 years old and have at least 400 hours of verifiable experience working with school-aged children in a licensed child care program or 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have an undergraduate, graduate, or associate degree, with at least 12 semester hours in school-age care related coursework; and

(2) Meet the requirements for a child care administrator in G.S. 110-91(8).

(b) At least one individual who is responsible for planning and ensuring the implementation of daily activities for a school-age program (who may be called a program coordinator) shall:

(1) Be at least 18 years old and have a high school diploma or its equivalent prior to employment; and

(2) Have completed two semester credit hours in child and youth development and two semester credit hours in school-age programming. Each individual who does not meet this requirement shall enroll in coursework within six months after becoming employed and shall complete this coursework within 18 months of enrollment. An individual who meets the staff requirements for administrator or lead teacher shall be considered as meeting the requirements for program coordinator, provided the individual completes Basic School-Age Care (BSAC) training; and

(3) In a part day program be on site when children are in care. For a full day program be on site for two thirds of the hours of operation. This may include times when the individual may be off site due to illness or vacation.

(c) Staff who are responsible for supervising groups of school-aged children (who may be called group leaders) shall be at least 18 years of age and have a high school diploma or its equivalent prior to employment, and shall complete the BSAC Training.

(d) Staff who assist group leaders (who may be called assistant group leaders) shall be at least 16 years of age and shall complete the BSAC training.

(e) The individual who is on-site and responsible for the administration of the program shall meet the requirements for child care administrator in G.S. 110-91(8) and Section .0700 of this Subchapter.

(f) When an individual has responsibility for both administering the program and planning and ensuring the implementation of the daily activities of a school-age program, the individual shall meet the staff requirements for an administrator and shall complete the BSAC Training.

(g) Completion of the BSAC Training may count toward meeting one year's annual on-going training requirement sin Section .0700 of this Subchapter.

(h) Individuals who have completed seven hours of school-age program training as approved by the Division prior to July 1, 2000 shall not be required to complete the BSAC Training.

(i) As used in this Rule, the term "experience working with school-aged children" shall mean experience working with school-aged children as an administrator, program coordinator,

group leader, assistant group leader, lead teacher, teacher, or aide.

(j) The special training requirements in Rule .0705 shall apply to all programs for school-age children.

(k) Whenever children participate in swimming or other aquatic activities, the following provisions shall apply:

(1) The children shall be supervised by persons having current life guard training, issued by the Red Cross or having other training determined by the Division to be equivalent to the Red Cross training, appropriate for the type of body of water and type of aquatic activities:
(A) One lifeguard is required for groups of 25 or fewer children.
(B) Two lifeguards are required for groups of 26 or more children.

(2) A person with lifeguard certification is not required when there are no more than 12 children present and the body of water has no portion deeper than 30 inches and the total surface area is not more than 400 square feet. The children shall be supervised by at least one adult who is certified to perform cardiopulmonary resuscitation appropriate for the ages of children in care.

(l) All staff shall participate in at least three hours of documented orientation related to the program's policies, activities and child safety within six weeks of assuming responsibility for supervising a group of children.

(m) The health requirements for staff and volunteers in Rule .0701-.0702 shall apply.

(n) All staff under age 18 counted toward meeting the required staff/child ratio shall work under the direction of another staff person at least 21 years of age.

(o) Staff in part-time or full day school-age care programs required to complete BSAC Training shall do so within three months of becoming employed or by December 31, 2000, whichever is later. Staff in seasonal school-age care programs required to complete BSAC Training shall do so within six weeks of becoming employed or by December 31, 2000, whichever is later.

History Note: Authority G.S. 110-91(8),(11); 143B-168.3;
Eff. July 1, 1988;
Amended Eff. July 1, 2000; July 1, 1998; January 1, 1992; September 1, 1990.

TITLE 11 - DEPARTMENT OF INSURANCE

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION .1100 - N.C. HOME INSPECTOR STANDARDS OF PRACTICE AND CODE OF ETHICS

.1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with a better understanding of the property conditions, as observed at the time of the home inspection.

(b) Home inspectors shall:

(1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
(A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
(B) Describe what services shall be provided and their cost; and
(C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;

(2) Observe readily visible and accessible installed systems and components listed in this Section; and

(3) Submit a written report to the client that shall:
(A) Describe those systems and components specified to be described in Rules .1106 through .1115 of this Section;
(B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
(C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling; and
(D) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

(1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or

(2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

(d) Written reports required by this rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:

(1) does not function as intended or adversely affects the habitability of the dwelling; or

(2) appears to warrant further investigation by a specialist or requires subsequent observation.

This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function, efficiency, or safety of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

History Note: Authority G.S. 143-151.49;
Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;
Temporary Adoption Eff. October 24, 1996;

Eff. July 1, 1998;
Amended Eff. July 1, 2000.

.1106 STRUCTURAL COMPONENTS

(a) The home inspector shall observe structural components including:
(1) Foundation;
(2) Floors;
(3) Walls;
(4) Columns or piers;
(5) Ceilings; and
(6) Roofs.

(b) The home inspector shall describe the type of:
(1) Foundation;
(2) Floor structure;
(3) Wall structure;
(4) Columns or piers;
(5) Ceiling structure; and
(6) Roof structure.

(c) The home inspector shall:
(1) Probe structural components where deterioration is suspected;
(2) Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;
(3) Report the methods used to observe underfloor crawl spaces and attics; and
(4) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

History Note: Authority G.S. 143-151.49;
Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;
Temporary Adoption Eff. October 24, 1996;
Eff. July 1, 1998;
Amended Eff. July 1, 2000.

.1116 CODE OF ETHICS

(a) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.

(b) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions.

(c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client;s designated representative.

(d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(e) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.

(f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.

(h) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

History Note: Authority G.S. 143-151.49;
Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;
Temporary Adoption Eff. October 24, 1996;
Eff. July 1, 1998;
Amended Eff. July 1, 2000.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 – CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

.0241 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Neuse Basin existing riparian buffer protection program, as described in Rule 15A NCAC 2B .0233, to local governments.

(b) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and rescind local government delegation of the Neuse River Basin Riparian Buffer Protection requirements according to the following procedures.

(1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the State's riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information that shows:
(A) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);
(B) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the State's riparian buffer protection requirements based on its size and projected amount of development;

(C) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the State's riparian buffer protection requirements; and

(D) The local government has provided a plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(2) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.

(4) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.

(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions. The Administrator shall ensure that local government staffs working directly with the program receive training to understand, implement and enforce the program.

(d) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE AND ALLOWABLE WITH MITIGATION. Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the State's riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.

(e) VARIANCES. After receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

(1) Activities conducted under the authority of the State;

(2) Activities conducted under the authority of the United States;

(3) Activities conducted under the authority of multiple jurisdictions; and

(4) Activities conducted under the authority of local units of government.

(g) RECORD-KEEPING REQUIREMENTS. Delegated local authorities shall maintain on-site records for a minimum of five years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (b)(2) of this Rule. Each delegated local authority's records shall include the following:

(1) A copy of variance requests;

(2) The variance request's finding of fact;

(3) The result of the variance proceedings;

(4) A record of complaints and action taken as a result of the complaint;

(5) Records for stream origin calls and stream ratings; and

(6) Copies of request for authorization, records approving authorization and Authorization Certificates.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998 c. 221;
Eff. August 1, 2000.

.0242 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following are the requirements for the Riparian Buffer Mitigation Program for the Neuse Basin.

(1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the Neuse Basin existing riparian buffer protection program, as described in Rule 15A NCAC 2B .0233.

(2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Neuse Basin when one of the following applies:

(a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0233 for a proposed use that is designated as "allowable with mitigation."

(b) A person has received a variance pursuant to 15A NCAC 2B .0233 and is required to perform mitigation as a condition of a variance approval.

(3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
   (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
      (i) The area of the footprint of the use causing the impact to the riparian buffer.
      (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
      (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
   (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule to each zone of the riparian buffer:
      (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
      (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
      (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

(4) THE LOCATION OF MITIGATION. The mitigation effort shall be the same distance from the Neuse River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.

(5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.

(6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
   (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
   (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
   (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.

(7) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
   (a) SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot or forty-one thousand, six hundred and twenty-five dollars per acre.
   (b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, MAIL SERVICE CENTER 1619, RALEIGH, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.
   (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.
   (d) The Division shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.

(8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
   (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.
   (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
   (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
      (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department

pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.

(ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.

(iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.

(iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.

(v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;

(vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;

(vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.

(ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.

(x) The property shall not contain any hazardous substance or solid waste.

(xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.

(xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.

(xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.

(d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:

(i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.

(ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.

(iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.

(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.

(v) A title certificate.

(9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

(i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.

(ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.

(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.

(c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured

horizontally on a line perpendicular to the surface water.

(d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0233. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.
  (i) A map of the proposed restoration or enhancement site.
  (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
  (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
  (iv) A fertilization plan.
  (v) A schedule for implementation.

(e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.

(f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.

(g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 1998 S. L., c.221;
Temporary Adoption Eff. June 22, 1999;
Eff. August 1, 2000.

.0260 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

The following are requirements for the Riparian Buffer Mitigation Program for the Tar-Pamlico Basin:

(1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the riparian buffer protection program in the Tar-Pamlico Basin, as described in Rule 15A NCAC 2B .0259, and whose surface waters are described in the Schedule of Classifications, 15A NCAC 2B .0316.

(2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Tar-Pamlico Basin when one of the following applies:
  (a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0259 for a proposed use that is designated as "allowable with mitigation."
  (b) A person has received a variance pursuant to 15A NCAC 2B .0259 and is required to perform mitigation as a condition of a variance approval.

(3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
  (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
    (i) The area of the footprint of the use causing the impact to the riparian buffer.
    (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
    (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
  (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Paragraph to each zone of the riparian buffer:
    (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
    (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
    (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

(4) THE LOCATION OF MITIGATION. The mitigation effort shall be located the same distance from the Pamlico River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.

(5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.

(6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
  (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
  (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.

(c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.

(7) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:

(a) SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot or forty-one thousand, six hundred and twenty-five dollars per acre.

(b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, 1619 Mail Service Center, Raleigh, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.

(c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.

(d) The Division of Water Quality shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and shall compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division of Water Quality shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.

(8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

(a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.

(b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.

(c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

(i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.

(ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.

(iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.

(iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.

(v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;

(vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;

(vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.

(ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.

(x) The property shall not contain any hazardous substance or solid waste.

(xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.

(xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.

(xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.

(d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:

(i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.

(ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.

(iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.

(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.

(v) A title certificate.

(9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

(i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.

(ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.

(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.

(c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.

(d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0259. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.

(i) A map of the proposed restoration or enhancement site.

(ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.

(iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.

(iv) A fertilization plan.

(v) A schedule for implementation.

(e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.

(f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.

(g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.

.0261 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

This Rule sets out the following requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico Basin riparian buffer protection program, as described in Rule 15A NCAC 2B .0259, to local governments:

(1) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and rescind local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule 15A NCAC 2B. 0259, according to the following procedures.

(a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information which shows:

(i) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);

(ii) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements based on its size and projected amount of development;

(iii) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the Tar-Pamlico Basin riparian buffer protection requirements; and

(iv) The local government has provided a plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.

(d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions. The Administrator shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE AND ALLOWABLE WITH MITIGATION. Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the Tar-Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar-Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar-Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.

(4) VARIANCES. After receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.

(5) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:

(a) Activities conducted under the authority of the State;

(b) Activities conducted under the authority of the United States;

(c) Activities conducted under the authority of multiple jurisdictions;
(d) Activities conducted under the authority of local units of government.

(6) RECORD-KEEPING REQUIREMENTS. Delegated local authorities shall maintain on-site records for a minimum of 5 years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (1)(b) of this Rule. Each delegated local authority's records shall include the following:
(a) A copy of variance requests;
(b) The variance request's finding of fact;
(c) The result of the variance proceedings;
(d) A record of complaints and action taken as a result of the complaint;
(e) Records for stream origin calls and stream ratings; and
(f) Copies of request for authorization, records approving authorization and Authorization Certificates.

History Note: Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.

SUBCHAPTER 2D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1200 – CONTROL OF EMISSIONS FROM INCINERATORS

.1207 CONICAL INCINERATORS EXCESS EMISSIONS AND START-UP AND SHUT-DOWN

(a) Purpose. The purpose of this Rule is to set forth the requirements of the Commission relating to the use of conical incinerators in the burning of wood and agricultural waste.
(b) Scope. This Rule shall apply to all conical incinerators which are designed to incinerate wood and agricultural waste.
(c) Each conical incinerator subject to this Rule shall be equipped and maintained with:
(1) an underfire and an overfire forced air system and variable damper which is automatically controlled to ensure the optimum temperature range for the complete combustion of the amount and type of material waste being charged into the incinerator;
(2) a temperature recorder for continuously recording the temperature of the exit gas;
(3) a feed system capable of delivering the waste to be burned at a sufficiently uniform rate to prevent temperature from dropping below 800°F during normal operation, with the exception of one startup and one shutdown per day.

(d) The owner of the conical incinerator shall monitor and report ambient particulate concentrations using the appropriate method specified in 40 CFR Part 50 with the frequency specified in 40 CFR Part 58. The Director may require more frequent monitoring if measured particulate concentrations exceed the 24-hour concentration allowed under 15A NCAC 2D .0400. The owner or operator shall report the monitoring data quarterly to the Division.
(e) In no case shall the ambient air quality standards as defined in Section .0400 of this Subchapter be exceeded.
(f) The conical incinerator shall not violate the opacity standards in Rule .0521 of this Subchapter.
(g) The distance a conical incinerator is located and operated from the nearest structure(s) in which people live or work shall be optimized to prevent air quality impact and shall be subject to approval by the Commission.
(h) New conical incinerators shall be in compliance with this Rule on startup.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5);
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1998.

SUBCHAPTER 2Q – AIR QUALITY PERMIT PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

.0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and G..S. 143-213 and the following definitions apply:
(1) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.
(2) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.
(3) "Alter or change" means to make a modification.
(4) "Applicable requirements" means:
(a) any requirement of Section .0500 of this Subchapter;
(b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
(c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;
(d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
(e) any standard or other requirement under Title IV;

(f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
(g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
(h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
(i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
(j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.

(5) "Applicant" means the person who is applying for an air quality permit from the Division.
(6) "Application package" means all elements or documents needed to make an application complete.
(7) "CFR" means Code of Federal Regulations.
(8) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status.
(9) "Director" means the Director of the Division of Air Quality.
(10) "Division" means the Division of Air Quality.
(11) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
(12) "EPA approves" means full approval, interim approval, or partial approval by EPA.
(13) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
(14) "Facility" means all of the pollutant emitting activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.
(15) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
(16) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
(17) "Green wood" means wood with a moisture content of 18% or more.
(18) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 2D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.
(19) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate under Rule .0503 of this Subchapter.
(20) "Lesser quantity cutoff" means:
(a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
(i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;
(ii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act; or
(iii) a MACT standard established under Section 112(j) of the federal Clean Air Act;
(b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or
(c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.

(21) "Major facility" means a major source as defined under 40 CFR 70.2.
(22) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
(23) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
(24) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
(25) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.
(26) "Permittee" means the person who has received an air quality permit from the Division.
(27) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such

physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.

(28) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

(29) "Regulated air pollutant" means:

(a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;

(b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50;

(c) any pollutant regulated under 15A NCAC 2D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63;

(d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or

(e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.

(30) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that are not considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.

(31) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(32) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 2D .1104.

(33) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 2D .0800.

(34) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 2D .1104.

History Note: Filed as a Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 143-215.3(a)(1); 143-212; 143-213;
Eff. July 1, 1994;
Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000.

SECTION .0500 – TITLE V PROCEDURES

.0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

(1) the permittee to retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application (Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring information, and copies of all reports required by the permit.);

(2) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:

(A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,

(B) in a manner as specified by a permit condition, or

(C) on other forms that contain the information required on official forms provided by the Division or as specified by a permit condition; and

(3) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D

.0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 2D .0524, .0535, .1110, or .1111. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records.

(g) The permit for facilities covered under 15A NCAC 2D .2100, Risk Management Program, shall contain:

(1) a statement listing 15A NCAC 2D .2100 as an applicable requirement;
(2) conditions that require the owner or operator of the facility to submit:
(A) a compliance schedule for meeting the requirements of 15A NCAC 2D .2100 by the dates provided in 15A NCAC 2D .2101(a); or
(B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 2D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section. The permit shall state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director. For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

(1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
(2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
(3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.

(q) The permit shall identify which terms and conditions are enforceable by:

(1) both EPA and the Division;
(2) the Division only;
(3) EPA only; and
(4) citizens under the federal Clean Air Act.

(r) The permit shall state that the permittee shall allow personnel of the Division to:

(1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
(2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
(3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
(4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

(1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and

dates when such activities, milestones, or compliance were achieved; and

(2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work practices. The permit shall specify:

(1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;

(2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) a requirement that the compliance certification include:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the compliance status as shown by monitoring data and other information reasonably available to the permittee;

(C) whether compliance was continuous or intermittent;

(D) the method(s) used for determining the compliance status of the source, currently and over the reporting period; and

(E) such other facts as the permit may specify to determine the compliance status of the source;

(4) that all compliance certifications be submitted to EPA as well as to the Division; and

(5) such additional requirements as may be specified under Sections 114(a)(3) or 504(b) of the federal Clean Air Act.

(u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section.

(v) The permit shall include all applicable requirements for all sources covered under the permit.

(w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.

(x) If regulated, fugitive emissions shall be included in the permit in the same manner as stack emissions.

(y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.

(z) The permit shall include all sources including insignificant activities.

(aa) The permit may contain such other provisions as the Director considers appropriate.

History Note: Filed as a Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;
Eff. July 1, 1994;
Amended Eff. July 1, 1996;
Temporary Amendment Eff. December 1, 199;
Amended Eff. July 1, 2000.

SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

.0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

(1) residential wood stoves, heaters, or fireplaces;

(2) hot water heaters that are used for domestic purposes only and are not used to heat process water;

(3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;

(4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;

(5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;

(6) paving parking lots;

(7) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant and that does not affect compliance status and, with replacement that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;

(8) comfort air conditioning or comfort ventilation systems that does not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(9) equipment used for the preparation of food for direct on-site human consumption;

(10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;

(11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;

(12) use of fire fighting equipment;

(13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 2D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;

(14) asbestos demolition and renovation projects that comply with 15A NCAC 2D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;

(15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 2D .1201(c)(4) or

incinerators used only to dispose of dead pets as identified in 15A NCAC 2D .1207(a)(2)(A);

(16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;

(17) laboratory activities:

(A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;

(C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and

(D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;

(18) combustion sources as defined in 15 NCAC 2Q .0703 until 18 months after promulgation of the MACT or GACT standards for combustion sources; (Within 18 months following promulgation of the MACT or GACT standards for combustion sources, the Commission shall decide whether to keep or remove the combustion source exemption. If the Commission decides to remove the exemption, it shall initiate rulemaking procedures to remove this exemption.)

(19) storage tanks used only to store:

(A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;

(B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;

(20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;

(21) portable solvent distillation systems that are exempted under 15A NCAC 2Q .0102(b)(1)(I);

(22) processes:

(A) electric motor burn-out ovens with secondary combustion chambers or afterburners;

(B) electric motor bake-on ovens;

(C) burn-off ovens for paint-line hangers with afterburners;

(D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;

(E) blade wood planers planing only green wood;

(F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;

(G) perchloroethylene drycleaning processes with 12-month rolling average consumption of:

(i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;

(ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or

(iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;

(23) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 2D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 2D .0932;

(24) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 2D .0538(d) are controlled at least to the degree described in 15A NCAC 2D .0538(d) and the facility complies with 15A NCAC 2D .0538(e) and (f);

(25) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 2D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under this Section for a particular bulk gasoline plant; or

(26) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 2D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:

(A) the Director finds that a permit to emit toxic air pollutants is required under this Section for a particular bulk gasoline terminal, or

(B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 2D .0927(i).

(b) Emissions from the activities identified Subparagraphs (a)(23) through (a)(26) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance.

(c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Amended Eff. July 1, 2000.

CHAPTER 4 – SEDIMENTATION CONTROL

SUBCHAPTER 4B – EROSION AND SEDIMENT CONTROL

SECTION .0100 EROSION AND SEDIMENT CONTROLS

.0126 PLAN APPROVAL FEE

(a) A nonrefundable plan review processing fee, in the amount stated in Paragraph (b) of this Rule, shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 4B .0118.
(b) Each plan shall be deemed incomplete until the plan review processing fee is paid.
(c) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.
(d) No plan review processing fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph (b) of this Rule for each additional acre (or any part thereof) disturbed.
(e) The nonrefundable plan review processing fee shall be forty dollars ($40.00) for each acre or part of any acre of disturbed land.
(f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.

History Note: Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;
Authority G.S. 113A-54; 113A-54.2;
ARRC Objection Lodged November 14, 1990;
ARRC Objection Removed December 20, 1990;
Eff. January 1, 1991;
Amended Eff. July 1, 2000.

CHAPTER 7 – COASTAL MANAGEMENT

SUBCHAPTER 7J – PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS: VARIANCE REQUESTS: APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS AND DECLARATORY RULINGS

SECTION .0400 – FINAL APPROVAL AND ENFORCEMENT

.0406 PERMIT ISSUANCE AND TRANSFER

(a) Upon approval of an application and issuance of the permit, the permit shall be delivered to the applicant, or to any person designated by the applicant to receive the permit, by first class mail or any appropriate means.
(b) Anyone holding a permit may not assign, transfer, sell, or otherwise dispose of a permit to a third party.
(c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management upon finding each of the following:

(1) a written request from the new owner or developer of the involved properties;
(2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having the sole legal right to develop the project;
(3) that the applicant transferee will use the permit for the purposes for which it was issued;
(4) no substantial change in conditions, circumstances, or facts affecting the project;
(5) no substantial change or modification of the project as proposed in the original application.

(d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by the Coastal Resources Commission as per 15A NCAC 7J .0600, et. seq.
(e) The applicant for a permit transfer must submit with the request a check or money order payable to the Department in the sum of one hundred dollars ($100.00).

History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1;
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981.

SUBCHAPTER 7M – GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

.0307 ELIGIBLE APPLICANTS/GRANT SELECTION CRITERIA

Any local government in the 20 coastal county region having ocean beaches, estuarine or public trust waters within its jurisdiction may apply for access funds:

(1) Eligible projects include:
  (a) Land acquisition, including acquisition of unbuildable lots;
  (b) Local Access Sites;
  (c) Neighborhood Access Sites;
  (d) Regional Access Sites;
  (e) Multi-regional Access Sites;
  (f) Urban waterfront development projects;

(g) Reconstruction or relocation of existing, damaged facilities; and
(h) Reconstruction or replacement of aging facilities.

(2) The following general criteria will be used to select projects that may receive financial assistance. These criteria assist the Division of Coastal Management in carrying out the goals of this program. Other factors may also be considered in the funding decision:
(a) Applicant demonstrates a need for the project due to a high demand for public access and limited opportunities;
(b) Project is identified in a local beach or waterfront access plan;
(c) Applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
(d) Applicant's commitment of matching funds exceeds the required local share of the total project cost provided in Item (3) of this Rule;
(e) Project proposal includes multiple funding sources;
(f) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
(g) Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.

(3) Local government contributions must be at least 25% of the project costs. At least one half of the local contribution must be cash match; the remainder may be in-kind match.

(4) Multi-phase projects and previous contingency projects will be considered on their own merits within the pool of applications being reviewed in that year.

History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. August 1, 2000.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following educational and experience requirements:

(1) GRADE A-SURFACE shall have one year acceptable experience at a surface water facility while holding a Grade B-Surface certificate and have satisfactorily completed an A-Surface school conducted by the Board.

(2) GRADE B-SURFACE shall:
(a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a surface water facility, or
(b) Have one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed a B-Surface school conducted by the Board.

(3) GRADE C-SURFACE shall:
(a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a surface water facility, or
(b) Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed a C-Surface school conducted by the Board.

(4) GRADE A-WELL shall have one year of acceptable experience at a well water facility while holding a Grade B-Well certificate and have satisfactorily completed an A-Well school conducted by the Board.

(5) GRADE B-WELL shall:
(a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
(b) Have one year of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed a B-Well school conducted by the Board.

(6) GRADE C-WELL shall:
(a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
(b) Be a high school graduate or equivalent, have six months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well school conducted by the Board, or
(c) Have one year of acceptable experience at a well water facility and have satisfactorily completed a C-Well school conducted by the Board, or
(d) Hold a Grade A-Surface certification and have satisfactorily completed a C-Well school conducted by the Board.

(7) GRADE D-WELL shall:
(a) Be a high school graduate or equivalent, and have six months of acceptable experience at a well water facility, or

(b) Be a high school graduate or equivalent, have three months of acceptable experience at a well water facility, and have satisfactorily completed a D-Well school conducted by the Board, or

(c) Have six months of acceptable experience at a well water facility and have satisfactorily completed a D-Well school conducted by the Board.

(8) GRADE A-DISTRIBUTION shall have one year of acceptable experience at Class B or higher distribution system while holding a Grade B-Distribution certificate and have satisfactorily completed an A-Distribution school conducted by the Board, and hold current cardiopulmonary resuscitation certificate.

(9) GRADE B-DISTRIBUTION shall:

(a) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a Class B or higher distribution system, or

(b) Have one year of acceptable experience at a Class C or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed a B-Distribution school conducted by the Board.

(10) GRADE C-DISTRIBUTION shall hold a certificate of completion of trench shoring training conducted by the Board and shall:

(a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a Class C or higher distribution system, or

(b) Be a high school graduate or equivalent, have six months of acceptable experience at a Class D or higher distribution system and have satisfactorily completed a C-Distribution school conducted by the Board, or

(c) Have one year of acceptable experience at a Class D or higher distribution system and have satisfactorily completed a C-Distribution school conducted by the Board.

(11) GRADE D-DISTRIBUTION shall:

(a) Be a high school graduate or equivalent, and have six months of acceptable experience at a distribution system, or

(b) Be a high school graduate or equivalent, have three months of acceptable experience at a distribution system, and have satisfactorily completed a D-Distribution school conducted by the Board, or

(c) Have six months of acceptable experience at a distribution system and have satisfactorily completed a D-Distribution school conducted by the Board.

(12) GRADE CROSS-CONNECTION-CONTROL shall:

(a) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two-year technical program with a degree in water and wastewater or civil engineering technology, and have satisfactorily completed a cross connection control school conducted by the Board, or

(b) Be a high school graduate or equivalent, have six months of acceptable experience at Class C-Distribution or higher system and have satisfactorily completed a cross connection control school conducted by the Board, or

(c) Have one year of acceptable experience at a Class C-Distribution or higher system while holding a Grade C-Distribution or higher certificate and have satisfactorily completed a cross connection school conducted by the Board, or

(d) Be a plumbing contractor licensed by the State of North Carolina and have satisfactorily completed a cross connection control school conducted by the Board.

History Note: Authority G.S. 90A-21(c); 90A-22; 90A-23; 90A-24;
Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. August 1, 2000; August 1, 1998; May 3, 1993; August 3, 1992; July 1, 1991; December 31, 1980.

.0205 CLASSIFICATION OF WATER TREATMENT FACILITIES

(a) Treatment plant classification shall be based on the source of water and the number of points assigned to each facility as taken from the table in Rule .0203(b) of this Section. Classifications are as follows:

Class D	0-24 points
Class C	25-40 points
Class B	41-110 points
Class A	over 110 points

(b) The classification of distribution systems shall apply to all community and non-transient non-community public water systems. The distribution system class level shall be the greater of the treatment plant class level from Paragraph (a) of this Rule or the following class level based on the number of service connections and fire protection:

(1) Class D-DISTRIBUTION shall be any system with 100 or fewer service connections with no fire protection system;

(2) Class C-DISTRIBUTION shall be any system with more than 100 service connections but not exceeding 1,000 service connections, with no fire protection system;

(3) Class B-DISTRIBUTION shall be shall be any system with more than 1,000 service connections but not exceeding 3,300 service connections or any system not

exceeding 1,000 service connections, with a fire protection system; and

(4) Class A-DISTRIBUTION shall be any system with more than 3,300 service connections.

(c) Class CROSS-CONNECTION-CONTROL shall be any distribution system with requirement for five or more backflow prevention devices to be installed within the water distribution system.

History Note: Authority G.S. 90A-21(c); 90A-22;
Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. August 1, 2000; August 3, 1992; September 1, 1990; December 31, 1980; January 1, 1980.

.0206 CERTIFIED OPERATOR REQUIRED

(a) All public water systems shall have a certified operator in responsible charge for each water treatment facility that alters the physical, chemical, or microbiological characteristics of the water; has approved plans for such alterations; or has equipment installed for such alterations.

(b) There shall be an operator holding at least a Grade C-Surface certification or above assigned to be on duty on the premises when a surface water treatment facility is treating water. Implementation of this requirement is subject to the following provisions:

(1) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;

(2) Upon such vacancy the facility shall have 90 days to fill the position with a certified Grade C or above operator or shall have pending approval for a temporary certification for the operator;

(3) Within 18 months of vacancy the facility shall have a certified Grade C or above operator assigned to fill the vacancy.

(c) There shall be an operator in responsible charge for the distribution portion of the community and non-transient non-community public water systems designated in Subparagraphs (c)(1) and (c)(2) of this Rule. This operator shall possess a valid certificate issued by the Board equivalent to or exceeding the distribution classification of the facility for which he or she is designated.

(1) No later than July 1, 1999 all community public water systems serving greater than 100 service connections shall have a certified distribution operator in responsible charge of the distribution portion of the system.

(2) No later than July 1, 2001 all community and non-transient non-community public water systems shall have a certified distribution operator in responsible charge of the distribution portion of the system. A system serving 100 or fewer service connections is exempt from this requirement if it has an operator in responsible charge as required in Paragraph (a) of this Rule.

(d) By July 1, 2003 there shall be an operator in responsible charge for the cross-connection-control facilities of the distribution system for all public water systems required by 15A NCAC 18C to have five or more backflow prevention devices. This operator shall possess a valid Grade Cross-Connection-Control certificate issued by the Board.

(e) All operators of community and non-transient non-community public water systems shall follow the standard operating procedures established by the operator in responsible charge. Any decisions about water quality or quantity that affect public health which have not been defined in the standard operating procedures shall be referred to the operator in responsible charge or to the certified operator on duty.

History Note: Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32;
Eff. July 1, 1991;
Amended Eff. August 1, 2000; May 1, 1994; May 3, 1993.

SECTION .0300 - APPLICATIONS AND FEES

.0308 PROFESSIONAL GROWTH HOURS

(a) All certified operators who have held a certificate for the full year shall complete six contact hours of instruction during the year immediately preceding annual certification renewal for each certification renewed. The same contact hours may be credited to all certifications for which the training is relevant. The instruction shall be related to system operation or professional development as needed and determined by the individual operator. With the annual certification renewal application, the operator shall report on the Board=s form the contact hours completed during the year.

(b) The organization providing the instruction shall give each participant a certificate or other proof of successful completion which includes the name of the provider, the provider's address, and contact person with telephone number. The proof of completion shall identify the name of the participant, the number of contact hours completed, the course name, the instructor's name, and the date of the instruction received. For in-house training, an instructor from outside of the organization shall provide the instruction. If an operator fails to provide proof of the required six contact hours of instruction at the time of annual certification renewal, the certification shall be revoked.

History Note: Authority G.S. 90A-25.1; 90A-26;
Eff. August 1, 1998;
Amended Eff. August 1, 2000.

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 4 - GROSS RECEIPTS AND PRIVILEGE LICENSE TAXES

SUBCHAPTER 4B - LICENSE TAXES

SECTION .0300 - AMUSEMENTS NOT OTHERWISE TAXED

.0306 CIVIC ORGANIZATION AMUSEMENTS

The exemption in G.S. 105-40 for the first one thousand dollars ($1,000) of receipts derived by a civic organization from a dance or another amusement promoted and managed by the organization applies separately to each dance or other amusement.

History Note: Authority G.S. 105-37.1; 105-40; 105-262;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; October 30, 1981; June 1, 1979.

SUBCHAPTER 4E - ALCOHOLIC BEVERAGES TAX

SECTION .0200 - MONTHLY REPORTS: PAYMENT OF TAX

.0201 FILING OF MONTHLY REPORTS

History Note: Authority G.S. 105-113.76; 105-113.83; 105-113.84; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1986; July 1, 1984;
Repealed Eff. July 1, 2000.

SECTION .0300 - SPOILAGE: BREAKAGE AND DESTRUCTION

.0302 SPOILAGE OF TAXPAID BEER OR WINE

Spoilage, breakage, or other losses of any tax paid beer or wine may not be claimed as a deduction from the excise tax due.

History Note: Authority G.S. 105-113.81; 105-262;
Eff. February 1, 1976;
Amended Eff. March 14, 1980;
Amended Eff. July 1, 2000.

SUBCHAPTER 4F - EXCISE STAMP TAX ON CONVEYANCES

SECTION .0100 – EXCISE STAMP TAX ON CONVEYANCES

.0101 ISSUANCE OF STAMPS

History Note: Authority G.S. 105-228.31; 105-228.32; 105-262;
Repealed Eff. July 1, 2000.

.0102 DENOMINATION OF STAMPS

History Note: Authority G.S. 105-228.31; 105-262;
Repealed Eff. July 1, 2000.

.0103 COST OF STAMPS

History Note: Authority G.S. 105-228.31; 105-262;
Repealed Eff. July 1, 2000.

.0104 POSTAGE PAID

History Note: Authority G.S. 105-228.31; 105-262;
Repealed Eff. July 1, 2000.

.0105 CONVEYANCE TAX (EXCISE TAX ON DEEDS) REPORTS

History Note: Authority G.S. 105-228.30; 105-262;
Repealed Eff. July 1, 2000.

TITLE 19A - DEPARTMENT OF STATE TRANSPORTATION

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

.0206 APPLICATIONS

(a) An application for an outdoor advertising permit shall be made on NCDOT form OA-1, which may be obtained at any District Office. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. The application shall include the following attachments:

(1) A written lease or written proof of interest in the land where a sign is proposed to be constructed. An applicant may delete information pertaining to term and amount of lease;
(2) A right of entry form to provide the right of entry from the property owner or adjacent property owners to allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor Advertising Control Act or these rules;
(3) If zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and its effective date. Upon request of the district engineer, the applicant shall submit copies of minutes from the appropriate zoning authority pertinent to the zoning action;
(4) If the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the requirements under .0203(5)(a)(i) and (ii) have been met;
(5) A sign permit of zoning permit, if required by the local government having jurisdiction over the proposed location;
(6) A written certification from the sign owner indicating there has been no misrepresentation of any material facts regarding the permit application, or other information supplied to acquire a permit; and
(7) The initial nonrefundable permit fee.

(b) Any omission of attachments or certification required in items (1) through (7) in this rule may cause the rejection of the application. If the application is incomplete, the entire

application package, including application fee, shall be returned to the applicant.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.

.0208 PERMIT AND PERMIT EMBLEM

(a) A permit shall be issued for lawful outdoor advertising structures by the Division of Highways of the Department of Transportation upon proper application, approval, and the payment of the nonrefundable initial permit fee.

(b) The erection of new outdoor advertising structures shall not commence until a permit has been approved and the emblem issued. The outdoor advertising structure except all sign faces must be completely constructed and erected within 180 days from the date of approval of the permit and issuance of the emblem. If the outdoor advertising structure except sign faces is not constructed within 180 days from the date of approval of the permit and issuance of the emblem then any intervening rule change shall apply to the sign structure. During the 180 day period, the new outdoor advertising structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the rules in this Section.

(c) The permit holder/sign owner shall notify the appropriate Division of Highways district engineer by certified mail, return receipt requested, within ten (10) days after the outdoor advertising structure is completed that it is ready for final inspection.

(d) Prior to notifying the appropriate District Engineer that the structure has been completed, the sign owner shall place the emblem, which will have an identifying number, on the outdoor advertising structure in such a position as to be visible and readable from the main traveled way of the controlled route.

(e) Prior to notifying the appropriate District Engineer that the structure has been completed, the sign owner shall affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be clearly visible from the main traveled way of the controlled route.

(f) Within 90 days after receiving notice that an outdoor advertising structure is complete, the appropriate District Engineer shall inspect the structure. If the structure fails to comply with the Outdoor Advertising Control Act or the rules in this Section, the District Engineer shall advise the permit holder/sign owner by certified mail of the manner in which the structure fails to comply and that the structure must be made to comply within 30 days of receipt of the notice or removed.

(g) Replacements for emblems that are missing or illegible may be obtained from the district engineer by submitting a written request accompanied by a copy of the permit application which approved the original emblem.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990.

.0210 REVOCATION OF PERMIT

The appropriate district engineer shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

(1) mistake of facts by the issuing District Engineer for which had the correct facts been known, he would not have issued the outdoor advertising permit;
(2) misrepresentations of any facts made by the permit holder/sign owner and on which the District Engineer relied in approving the outdoor advertising permit application;
(3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit holder/sign owner, the permit applicant or the owner of property on which the outdoor advertising structure is located;
(4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this Section;
(5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the date of issuance of the outdoor advertising permit;
(6) a determination upon initial inspection of a newly erected outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;
(7) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules adopted by the Board of Transportation pursuant thereto;
(8) alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause other than reasonable repair and maintenance as defined in Rule .0225(c). For purposes of this subsection, alterations include, but are not limited to:
    (a) enlarging a dimension of the sign facing, or raising the height of the sign;
    (b) changing the material of the sign structure's support;
    (c) adding a pole or poles; or
    (d) adding illumination;
(9) failure to affix the emblem within as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible and readable from the main-traveled way or controlled route;
(10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be clearly visible as required by Rule .0208 of this Section;
(11) destruction or cutting of trees, shrubs, or other vegetation located on the state-owned or maintained right of way where an investigation by the Department of Transportation reveals that the destruction or cutting:
    (a) occurred on the state-owned or maintained right of way within 500 feet on either side of the sign

location along the edge of pavement of the main traveled way of the nearest controlled route;

(b) was conducted by a person or persons other than the Department of Transportation or its authorized agents or assigns, or without permission from the Department of Transportation; and

(c) was conducted by one or more of the following: the sign owner, the permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents or assigns, including, but not limited to, independent contractors hired by the permit holder/sign owner, the lessee/agents or advertiser employing the sign, or the owner of the property upon which the sign is located;

(12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an outdoor advertising sign where an investigation reveals that the unlawful violation:

(a) was conducted actually or by design by the sign owner/permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including, but not limited to, independent contractors hired by any of the above persons; and,

(b) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of way; or

(c) involved crossing the control of access fence to reach the sign structure;

(13) maintaining a blank sign for a period of 12 consecutive months;

(14) maintaining an abandoned, dilapidated, or discontinued sign;

(15) a sign that has been destroyed or significantly damaged as determined by Rules .0201(8) and (29) of this Section;

(16) moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by Rule .0201(27) of this Section;

(17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, and the rules adopted by the Board of Transportation.

History Note: Authority G.S. 105-86(e); 136-133; Eff. July 1, 1978; Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993; October 1, 1991; December 1, 1990.

.0211 DENIAL OF PERMIT

(a) Should the appropriate district engineer determine that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act or the rules in this Section, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When such noncompliance of the Outdoor Advertising Control Act or these Rules has been determined, the district engineer shall notify the permit applicant by certified mail, return receipt requested, in the form of a letter setting forth the factual and statutory or regulatory basis for the denial, and include a copy of the Act and rules.

(c) The Department of Transportation shall not issue permits for new outdoor advertising signs at a sign location (as defined by .0201 of this Section) as follows:

(1) for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location, and as measured along the edge of pavement of the main traveled way of the nearest controlled route. For purposes of this paragraph only:

(A) "Unlawful destruction or illegal cutting" is the destruction or cutting of trees, shrubs, or other vegetation on the state-owned or maintained right of way which was conducted by a person or persons other than the Department of Transportation or its authorized agents or without the permission of the Department of Transportation;

(B) The Department of Transportation's investigation shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main-traveled way of the nearest controlled route;

(C) The five-year period shall run from the date on which the Department of Transportation has actual knowledge of the unlawful destruction or illegal cutting to be documented by the appropriate district engineer;

(D) The five-year prohibition period for a new sign permit shall apply equally to all sign locations including the following examples:

(i) sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location;

(ii) sign locations where a revocation of an existing permit has been upheld and a sign has been removed;

(iii) sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit application; and

(iv) sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to

final issuance of the permit by the Department of Transportation.

(2) Where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. For purposes of this subsection only:
   (A) "Existing trees" are those trees four inches or greater in diameter measured six inches from the ground;
   (B) "Average mature size" shall be determined by reference to the most recent edition of *Hortus 3rd, A Concise Dictionary of Plants Cultivated in the United States and Canada*, McMillan Publishing Co., Inc., New York, NY, published in 1976 or *Manual of Woody Landscape Plants*, Michael Dirr, Stipes Publishing Company;
   (C) Viewing Zone is the area which is 500 feet as measured along the edge of the main traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.
(3) Where the zoning is not part of comprehensive zoning or was zoned primarily to permit outdoor advertising structures or constitutes spot zoning or strip zoning as defined in 19A NCAC 2E .0201(4)(b)(iii).
(4) For a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed.
(5) On a route designated as a scenic byway.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.

.0212 NOTICE GIVEN FOR REVOKING PERMIT

(a) Prior to the revocation of an outdoor advertising permit, the district engineer shall notify the permit holder/sign owner by certified mail of the alleged violation under Rule .0210. The permit holder/sign owner shall be given thirty (30) days in which to bring the sign into compliance, if permissible by these rules, or provide information concerning the alleged violation to the district engineer to be considered prior to the actual revocation. The district engineer shall consider the information provided by the permit holder prior to any revocation of a permit.

(b) When, in the opinion of the District Engineer, a violation of Rule .0210 of this Section has occurred, he shall so notify the permit holder/sign owner for the outdoor advertising structure by certified mail, return receipt requested, stating the factual and statutory or regulatory basis for the revocation, and include a copy of the Outdoor Advertising rules The notification shall also state that because the structure is in violation of the provisions of the Outdoor Advertising Control Act or the rules in this Section, the structure is unlawful and a nuisance and that if the structure is not removed or made to conform to the provisions of the act or the rules within 30 days after receipt of the notification, if permitted by these rules, the Department of Transportation or its agents shall, at the expense of the permit holder/sign owner, remove the outdoor advertising structure.

(c) An outdoor advertising structure cannot be made to conform to the Outdoor Advertising Control Act or these Rules when the permit is revoked under 19A NCAC 2E .0210(2),(3),(11), or (12).

History Note: Authority G.S. 136-130; 136-134;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.

.0213 APPEAL OF DECISION OF DISTRICT ENGINEER TO SEC. OF TRANSPORTATION

(a) Should any permit applicant or permit holder/sign owner disagree with a decision of the appropriate district engineer pertaining to the denial or revocation of a permit for outdoor advertising or the determination that an outdoor advertising structure is illegal, the permit applicant or permit holder/sign owner shall have the right to appeal to the Secretary of Transportation pursuant to the procedures hereinafter set out.

(b) Within 30 days from the time of the receipt of the decision of the district engineer, the permit applicant or permit holder/sign owner shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by certified mail, return receipt requested, with a copy to the district engineer.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the District Engineer's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the final agency decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by certified mail, return receipt requested, no later than 90 days after the Secretary receives the written appeal. A copy of the final agency decision shall also be mailed to the district engineer.

(d) Judicial review of the final agency decision is governed by G.S. 136-134.1.

History Note: Authority G.S. 136-130; 136-133; 136-134;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; November 1, 1991; June 15, 1981.

.0214 STANDARDS FOR DIRECTIONAL SIGNS

(a) General - For the purposes of this Section the following directional signs are prohibited:

(1) signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;
(2) signs which move or have any animated or moving parts;
(3) signs located in rest areas, parklands or scenic areas.

(b) Size
(1) No directional sign shall exceed the following limits:
Maximum area 150 square feet
Maximum height 20 feet
Maximum length 20 feet
(2) All dimensions include border and trim, but exclude supports.
(c) Lighting - Directional signs may be illuminated, subject to the following:
(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.
(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway or NHS route or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited.
(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.
(d) Spacing
(1) Each location of a directional sign must be approved by the division of highways.
(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other controlled access highways (measured along the highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).
(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.
(4) No two directional signs facing the same direction of travel shall be spaced less than one mile apart.
(5) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.
(6) Directional signs located adjacent to the interstate system shall be within 75 air miles of the activity.
(7) Directional signs located adjacent to the primary system shall be within 50 air miles of the activity.
(e) Message Content. - The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number, or exit numbers.
(f) Selection Criteria
(1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena, scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.
(2) Privately owned attractions or activities must be nationally or regionally known. For purposes of this rule the following meanings shall apply:
(A) Nationally known means the attraction has drawn attention through various forms of media within the continental United States.
(B) Regionally known means the attraction is known in a specific region of the state such as the mountains, piedmont, or coastal region, through published articles or paid advertisements available to a regional audience.

History Note: Authority G.S. 136-129; 136-130;
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Amended Eff. August 1, 2000.

.0224 SCENIC BYWAYS

(a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).
(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become nonconforming signs and shall be subject to all applicable outdoor advertising regulations provided in 19A NCAC 02E .0200. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.
(c) Permits shall not be required for signs adjacent to scenic byways which were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.
(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits are nonetheless governed by the rules in this section.

History Note: Authority G.S. 136-129.2;
Eff. August 1, 2000.

.0225 REPAIR/MAINTENANCE/ALTERATION OF SIGNS

(a) Signs may not be serviced from or across the right of way of freeways or from or across controlled access barriers or fences of controlled routes.
(b) Conforming signs may be altered within the limits of the rules in this Section.
(1) A conforming sign that has been destroyed or significantly damaged may be reconstructed within the limits of the rules in this Section by notifying the district engineer in writing of any substantial changes that would affect the original dimensions of the initial permit application.

(2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable state, federal or local rules, regulations or ordinances.

(c) Alteration to a nonconforming sign or sign conforming by virtue of the grandfather clause is prohibited. Reasonable repair and maintenance are permitted including changing the advertising message or copy. The following activities are considered to be reasonable repair and maintenance:

(1) Change of advertising message or copy on the sign face;
(2) Replacement of border and trim;
(3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;
(4) Alterations of the dimensions of painted bulletins incidental to copy change; and
(5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became nonconforming.

(d) The addition of lighting or illumination to existing nonconforming signs or signs conforming by virtue of the grandfather clause is specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such sign structure.

(e) A nonconforming sign or sign conforming by virtue of the grandfather clause may continue as long as it is not abandoned, destroyed, discontinued, or significantly damaged.

(f) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E .0201(29), the sign owner may request the Department to review the damaged sign, including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the unsalvageable sign components into the original sign structure component quantities, using the following criteria:

(1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and the percentage of damage attributable to sign face shall be 50%.
(2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.
(3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.

History Note: Authority G.S. 136-130; 136-89.58; Eff. August 1, 2000.

.0226 ORDER TO STOP WORK ON UNPERMITTED OUTDOOR ADVERTISING

(a) If outdoor advertising is under construction and the Department determines that a permit has not been issued for the outdoor advertising as required under the provisions of this chapter, the District Engineer may require that all work on the sign cease until the sign owner shows that the sign does not violate the provisions of this chapter. The order to cease work shall be in writing and prominently posted on the outdoor advertising structure, and no further notice of the stop work order is required. The failure of a sign owner to comply immediately with the stop work order shall subject the outdoor advertising structure to removal by the Department of Transportation or its agents.

(b) For purposes of this Rule only, outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public.

(c) The cost of removing outdoor advertising by the Department of Transportation or its agents shall be assessed against the sign owner.

(d) No stop work order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed. The District Engineer shall consult with the Outdoor Advertising coordinator to determine whether such an order has been served on the Department.

History Note: Authority G.S. 136-130; 136-133; Temporary Adoption Eff. November 16, 1999; Eff. August 1, 2000.

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

.0603 ISSUANCE OR DENIAL OF PERMIT

(a) Within 30 days following receipt of the application, the Division Engineer shall approve or deny the application. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

(1) It requires removal of trees that were in existence before the business or advertisement was established. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.
(2) The application is for the opening of view to a sign or business which has been declared illegal or is currently involved in litigation with the department.
(3) It is determined that the facility or advertisement is not screened from view.
(4) The application is for the opening of view to an outdoor advertising sign which was obscured from view at the time of erection of the sign.
(5) Removal of vegetation will adversely affect the safety of the traveling public.
(6) Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project.
(7) Planting was done in conjunction with a designed noise barrier.

(8) The applicant has not performed satisfactory work on previous requests under the provisions of the Rules in this Section (this may not be cause for denial if the applicant engages a landscape contractor to perform the work).
(9) It involves opening of views to junkyards.
(10) The application is contrary to ordinances or rules and regulations enacted by local government, within whose jurisdiction the work has been requested to be performed.

History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;
Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982.

.0604 CONDITIONS OF PERMIT

(a) Selected vegetation within the approved limits shall be thinned, pruned, or removed by the Permittee or his agent in accordance with accepted horticultural practices recommended by North Carolina State University. Roadside environmental personnel shall identify specific trees, shrubs, and other vegetation which may be pruned, thinned, or removed.
(b) The Permittee may be required to furnish a performance bond or check in an amount determined by the Division Engineer to run concurrently with the permit, as deemed necessary to restore the right of way to the original condition if damage occurs.
(c) A Division of Highways Roadside Inspector shall be present while work is underway.
(d) Permits may be issued for multiple sites; however, a permit must be secured prior to performing any vegetation control work. Routine maintenance by the Permittee or his agent shall not be permitted.
(e) The Permittee or his agent shall not impede traffic on the highway in performing the work. Access to the work site on controlled access highways must be gained without using the main travelway of the highway. The Division Engineer shall determine traffic control signing which may be required. The Permittee shall furnish, erect and maintain the required signs as directed by the Division Engineer.
(f) Any damage to vegetation which is to remain, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the Permittee to the satisfaction of the Division Engineer. All trimmings, laps, and debris shall be removed from the right of way and disposed of in areas provided by the Permittee. No burning or burying shall be permitted on the highway right of way. When chipping is used to dispose of trimmings, chips may be neatly spread on right of way at locations which the Division Engineer determines will not be harmful to the environment or traffic safety.
(g) Upon satisfactory completion of all work, the Roadside Inspector shall notify the Division Engineer who shall notify the Permittee in writing of such acceptance, terminate the permit, and return the performance bond or check.
(h) Failure to comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate revocation of the permit and forfeiture of any or all of the performance bond or check as determined by the Division Engineer based on conditions stated in Paragraph (b) of this Rule.

History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;
Amended Eff. August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, 1982.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

SECTION .0200 - LICENSING REQUIREMENTS

.0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualifications by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting, the Board shall consider the application. The regular meetings of the Board are in January, April, July and October of each year.
(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for the person's own individual license and for only one additional license. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than two years prior to the filing of the application found to be in complete order. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee which has been disciplined by the Board.
(c) The holder of a general contractors license shall notify the Board immediately in writing as to the termination date in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, or the Board determines that the qualifying individual or individuals are no longer connected with the licensee, the license shall remain in full force and effect for a period of 30 days from the termination date, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractors license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1 after the license has been cancelled, until another qualifying individual has passed a required examination.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 2000; June 1, 1994; June 1, 1992; May 1, 1989; July 1, 1987.

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

.0101 PROOF OF LICENSURE

(a) The annual license renewal pocket card issued by the Commission to each licensee shall be retained by the licensee as evidence of licensure. Each licensee shall carry his or her pocket card on his or her person at all times while engaging in real estate brokerage and shall produce the card as proof of licensure whenever requested.
(b) The principal broker of a firm shall retain the firm's renewal pocket card at the firm and shall produce it upon request as proof of firm licensure as required by Rule .0502(i)(3).
(c) Every licensed real estate business entity or firm shall prominently display its license certificate or facsimile thereof in each office maintained by the entity or firm. A broker-in-charge shall also prominently display his or her license certificate in the office where he or she is broker-in-charge.

History Note: Authority G.S. 93A-3(c);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; September 1, 1998; August 1, 1998; April 1, 1997; February 1, 1989.

.0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall be in writing, shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period.
(b) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his or her brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).
(c) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall incorporate the "Description of Agent Duties and Relationships" prescribed by the Commission which shall be set forth in a clear and conspicuous manner and shall not include or be accompanied by any additional text which contradicts its meaning and substance. The "Description of Agent Duties and Relationships" shall read as follows:

DESCRIPTION OF AGENT DUTIES AND RELATIONSHIPS

Before you begin working with any real estate agent, you should know who the agent represents in the transaction. Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction in North Carolina must contain this "Description of Agent Duties and Relationships" *[N.C. Real Estate Commission Rule 21 NCAC 58A .0104(c), eff. 7/1/95]*. Real estate agents should carefully review this information with you prior to entering into any agency agreement.

AGENTS' DUTIES

When you contract with a real estate firm to act as your agent in a real estate transaction, the agent must help you obtain the best price and terms possible, whether you are the buyer or seller. The agent also owes you the duty to:

- Safeguard and account for any money handled for you
- Be loyal and follow reasonable and lawful instructions
- Act with reasonable skill, care and diligence
- Disclose to you any information which might influence your decision to buy or sell

Even if the agent does not represent you, the agent must still be fair and honest and disclose to you all "material facts" which the agent knows or reasonably should know. A fact is "material" if it relates to defects or other conditions affecting the property, or if it may influence your decision to buy or sell. *This does not require a seller's agent to disclose to the buyer the*

minimum amount the seller will accept, nor does it require a buyer's agent to disclose to the seller the maximum price the buyer will pay.

AGENTS WORKING WITH SELLERS

A seller can enter into a "listing agreement" with a real estate firm authorizing the firm and its agent(s) to represent the seller in finding a buyer for his or her property. The listing agreement should state what the seller will pay the listing firm for its services, and it may require the seller to pay the firm no matter who finds the buyer.

The listing firm may belong to a listing service to expose the seller's property to other agents who are members of the service. Some of those agents may be working with buyers as buyers' agents; others will be working with buyers but still representing the sellers' interests as an agent or "subagent." When the buyer's agents and seller's subagents desire to share in the commission the seller pays to the listing firm, the listing agent may share the commission with the seller's permission.

AGENTS WORKING WITH BUYERS

A buyer may contract with an agent or firm to represent him or her (as a **buyer's agent**), or may work with an agent or firm that represents the seller (as a **seller's agent or subagent**). All parties in the transaction should find out at the beginning who the agent working with the buyer represents.

If a buyer wants a buyer's agent to represent him or her in purchasing a property, the buyer should enter into a "buyer agency agreement" with the agent. The buyer agency agreement should state how the buyer's agent will be paid. **Unless some other arrangement is made which is satisfactory to the parties, the buyer's agent will be paid by the buyer**. Many buyer agency agreements will also obligate the buyer to pay the buyer's agent no matter who finds the property that the buyer purchases.

A buyer may decide to work with a firm that is acting as agent for the seller (a **seller's agent or subagent**). If a buyer does not enter into a buyer agency agreement with the firm that shows him or her properties, that firm and its agents will show the buyer properties as an agent or subagent working on the seller's behalf. Such a firm represents the seller (**not** the buyer) and must disclose that fact to the buyer.

A seller's agent or subagent must still treat the buyer fairly and honestly and disclose to the buyer all material facts which the agent knows or reasonably should know. The seller's agent typically will be paid by the seller. **If the agent is acting as agent for the seller, the buyer should be careful not to give the agent any information that the buyer does not want the seller to know.**

DUAL AGENTS

A real estate agent or firm may represent more than one party in the same transaction only with the knowledge and written consent of all parties for whom the agent acts. "Dual Agency" is most likely to occur when a buyer represented by a buyer's agent wants to purchase a property listed by that agent's firm. A dual agent must carefully explain to each party that the agent and the agent's firm are also acting for the other party.

In some situations, the agents may practice a form of dual agency known as "designated agency:" an agent in a firm is designated to represent the interests of the seller, and another agent in the same firm is designated to represent the interests of the buyer. This form of dual agency allows the designated agent to more fully represent the interests of the party with whom the agent is working.

In any dual agency situation, the agent must obtain a written agreement from the parties which fully describes the obligations of the agent and the agent's firm to each of them.

Immediately after the "Description of Agent Duties and Relationships", every listing and buyer agency agreement shall contain the following provision, including a box which the agent shall check when the provision is applicable: "¡ This firm represents both sellers and buyers. This means that it is possible that a buyer we represent will want to purchase a property owned by a seller we represent. When that occurs, the agent and firm listed above will act as **dual agents** if all parties agree."

(d) A broker or brokerage firm representing one party in a transaction shall not undertake to represent another party in the transaction without the express, written authority of each party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a

seller's agent or subagent shall disclose to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. The broker or salesperson shall make the disclosure on the "Disclosure to Buyer from Seller's Agent or Subagent" form prescribed by the Commission. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the form to the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents both the buyer and the seller in the same real estate sales transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the buyer and seller.

(j) When a firm represents both the buyer and seller in the same real estate sales transaction, the firm may, with the prior written approval of its buyer and seller clients, designate one or more individual brokers or salespersons associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

(1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
(2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
(3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or the salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

(1) that the buyer may agree to a price, terms, or any conditions of sale other than those offered by the buyer;
(2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
(3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salesperson so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

(1) that a party may agree to a price, terms or any conditions of sale other than those offered;
(2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
(3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

History Note: Authority G.S. 41A-3(1b); 93A-3(c); 41A-4(a);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.

.0105 ADVERTISING

(a) Blind Ads. A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell,

purchase, exchange, rent, or lease is being made by the licensee's principal only. Every such advertisement shall clearly indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address.

(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Authority to Advertise.

(1) A salesperson shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the salesperson is associated.

(2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

(d) Business names. A licensee shall not include the name of a salesperson or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

History Note: Authority G.S. 55B-5; 66-68; 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; February 1, 1989.

.0106 DELIVERY OF INSTRUMENTS

(a) Except as provided in Paragraph (b) of this Rule, every broker or salesperson shall immediately, but in no event later than five days from the date of execution, deliver to the parties thereto copies of any contract, offer, lease, or option affecting real property.

(b) A broker or salesperson may be relieved of his or her duty under Paragraph (a) of this Rule to deliver copies of leases or rental agreements to the property owner, if the broker:

(1) obtains the express written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;

(2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner except as may be required by law;

(3) promptly provides a copy of the lease or rental agreement to the property owner upon reasonable request; and

(4) delivers to the property owner within 45 days following the date of execution of the lease or rental agreement, an accounting which identifies the leased property and which sets forth the names of the tenants, the rental rates and rents collected.

History Note: Authority G.S. 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. October 1, 2000; May 1, 1990; July 1, 1989; February 1, 1989.

.0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include but not be limited to:

(1) bank statements.

(2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. When a check is used to disburse funds for more than one sales transaction, owner, or property,

the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check.

(3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.

(4) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.

(5) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

(6) copies of contracts, leases and management agreements.

(7) closing statements and property management statements.

(8) any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition and or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained or disbursed by a licensee, are trust monies and shall be treated as such in the manner required by this Rule.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or

property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by subdivision (e) of this rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheet to the corresponding property or property owner ledger sheet.

History Note: Authority G.S. 93A-3(c);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

.0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office or branch office. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker practicing alone shall designate himself or herself as a broker-in-charge. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker=s designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

(1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504 and .0506 of this Subchapter;

(2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;

(3) the proper conduct of advertising by or in the name of the firm at such office;

(4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;

(5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;

(6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter; and

(7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker.

(b) When used in this Rule, the term:

(1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker=s real estate business; and

(2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continuously maintain his or her license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm which demonstrates on a form prescribed by the Commission that it has qualified for licensure solely for the purpose of receiving compensation for brokerage services furnished by its principal broker through another firm, and that no person is affiliated with it other than its principal broker, shall not be required to designate a broker-in-charge.

(f) Every broker-in-charge shall complete the Commission=s broker-in-charge course at least once every five years following the effective date of this Rule. Every broker designated as a broker-in-charge after the effective date of this Rule shall complete the Commission=s broker-in-charge course within 90 days following designation and at least once every five years thereafter for so long as he or she remains broker-in-charge.

History Note: Authority G.S. 93A-3(c); 93A-4;
Eff. September 1, 1983;
Amended Eff. October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.

.0111 DRAFTING LEGAL INSTRUMENTS

(a) A broker or salesperson acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker or salesperson may complete preprinted offer, option contract, sales contract and lease forms in real estate transactions when authorized or directed to do so by the parties.

(b) A broker or salesperson may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print

offer, contract and lease documents. Provided, however, a broker or salesperson may not alter the form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or salesperson or their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this Rule shall be construed to prohibit a broker or salesperson from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

History Note: Authority G.S. 93A-3(c);
Eff. July 1, 1988;
Amended Eff. October 1, 2000; February 1, 1989.

.0112 OFFERS AND SALES CONTRACTS

(a) A broker or salesperson acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

(1) the names of the buyer and seller;
(2) a legal description of the real property sufficient to identify and distinguish it from all other property;
(3) an itemization of any personal property to be included in the transaction;
(4) the purchase price and manner of payment;
(5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
(6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to quality for the assumption of the loan;
(7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0107 of this Subchapter;
(8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, loan commitment date, and who shall pay loan closing costs; and a condition that the buyer shall make every reasonable effort to obtain the loan;
(9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
(10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
(11) the date for closing and transfer of possession;
(12) the signatures of the buyer and seller;
(13) the date of offer and acceptance;
(14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, and encumbrances, and the form of conveyance;
(15) the items to be prorated or adjusted at closing;
(16) who shall pay closing expenses;
(17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
(18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and
(19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.

The provisions of this rule shall apply only to preprinted offer and sales contract forms which a broker or salesperson acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract; nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

(b) A broker or salesperson acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed in Subparagraphs (b)(1) and (2) of this Rule. A broker, salesperson or anyone acting for or at the direction of the broker or salesperson shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys:

(1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker, salesperson or firm; or
(2) any provision that attempts to disclaim the liability of a broker or salesperson for his or her representations in connection with the transaction.

History Note: Authority G.S. 93A-3(c);

Eff. July 1, 1988; *Amended Eff. October 1, 2000; July 1, 1995; July 1, 1989; February 1, 1989.*

.0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by G.S. 47E-1, 47E-2, and 47E-3, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. G..S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.

2. You must check □ one of the boxes for each of the 20 questions on the reverse side of this form.

   a. If you check "Yes" for any question, you must describe the problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.

   c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.

   * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you are still responsible for completing and delivering the Statement to the purchasers; and the broker or salesperson must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.

4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See **"Note to Purchasers"** below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
Owner's Name(s):_____
Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.

Owner Signature:_____ Date _____, ____
Owner Signature:_____ Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature:_____ Date _____, ____
Purchaser Signature:_____ Date _____, ____

Property Address/Description:_____
_____
[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]
Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	Yes*	No	No Representation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	□	□	□
a. Siding is □ Masonry □ Wood □ Composition/Hardboard □ Vinyl □ Synthetic Stucco □ Other _____			□
b. Approximate age of structure? _____			□
2. ROOF (leakage or other problem)?	□	□	□
a. Approximate age of roof covering? _____			□
3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab?	□	□	□
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?	□	□	□
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?	□	□	□
6. HEATING AND/OR AIR CONDITIONING?	□	□	□
a. Heat Source is: □ Furnace □ Heat Pump □ Baseboard □ Other_____			□
b. Cooling Source is: □ Central Forced Air □ Wall/Window Unit(s) □ Other_____			□
c. Fuel Source is: □ Electricity □ Natural Gas □ Propane □ Oil □ Other _____			□
7. WATER SUPPLY (including water quality, quantity and water pressure)?	□	□	□
a. Water supply is: □ City/County □ Community System □ Private Well □ Other _____			□

b. Water pipes are: □ Copper □ Galvanized □ Plastic □ Other _____ □ Unknown			□
8. SEWER AND/OR SEPTIC SYSTEM?	□	□	□
a. Sewage disposal system is: □ Septic Tank □ Septic Tank with Pump □ Community System □ Connected to City/County System □ City/County System available □ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) □ Other _____			□
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?	□	□	□
Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:			
10. PROBLEMS WITH PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?	□	□	□
11. PROBLEMS WITH DRAINAGE, GRADING OR SOIL STABILITY OF LOT?	□	□	□
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?	□	□	□
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?	□	□	□
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)?	□	□	□
15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?	□	□	□
16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS?	□	□	□
17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?	□	□	□
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?	□	□	□
19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?	□	□	□
20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?	□	□	□

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):
_____
_____
_____

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

History Note: Authority G.S. 47E-4(b); 93A-3(c); 93A-6;
Eff. October 1, 1998;
Amended Eff. July 1, 2000.

SECTION .0300 - APPLICATION FOR LICENSE

.0301 FORM

An individual or business entity who wishes to file an application for a broker or salesperson license shall make application on a form prescribed by the Commission and can obtain the required form upon request to the Commission. In general, the application form for an individual calls for information such as the applicant's name and address, the applicant's social security number, satisfactory proof of the applicant's identity, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.

History Note: Authority G.S. 93A-3(c); 93A-4(a),(b),(d);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 2000; February 1, 1991; February 1, 1989; August 1, 1988; December 1, 1985.

SECTION .0400 - EXAMINATIONS

.0402 SUBJECT MATTER AND PASSING SCORES

(a) The real estate licensing examination shall test applicants on the following general subject areas:

(1) real estate law;
(2) real estate brokerage law and practices;
(3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
(4) real estate finance;
(5) real estate valuation (appraisal);
(6) real estate mathematics; and
(7) related subject areas.

(b) In order to pass the real estate licensing examination, an applicant must attain a score at least equal to the passing score established by the Commission in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score. A passing examination score obtained by a license applicant shall be recognized as valid for a period of one year from the date of examination, during which time the applicant must fully satisfy any remaining requirements for licensure that were pending at the time of examination; provided that the running of the one-year period shall be tolled by issuance of a notice to the applicant, pursuant to Rule .0501(c) of this Section, that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

History Note: Authority G.S. 93A-4(b),(d);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 2000; July 1, 1996; July 1, 1989; December 1, 1985; May 1, 1982; April 11, 1980.

SECTION .0500 - LICENSING

.0501 CHARACTER

(a) At a meeting of the Commission following each licensing examination, the applicants who have passed the examination shall be considered for licensing. When the moral character of an applicant is in question, action by the Commission will be deferred until the applicant has affirmatively demonstrated that he or she possesses the requisite truthfulness, honesty and integrity.

(b) When the moral character of an applicant is in question, the Commission shall notify the applicant and the applicant shall be entitled to demonstrate his or her character and fitness for licensure at a hearing before the Commission according to the provisions of G.S. 150B.

(c) Notice to the applicant that his or her moral character is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Commission. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his or her application for licensing, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for licensure.

History Note: Authority G.S. 93A-4(b),(d);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; July 1, 1989; February 1, 1989; May 1, 1984; September 1, 1979.

.0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity which changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by

the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall set forth the name of the entity, the name under which the entity will do business, the address of its principal office, and a list of all brokers and salespersons associated with the entity.

(b) The application of any partnership, including a general partnership, limited partnership and limited liability partnership, shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners; a copy of any Certificate of Limited Partnership as may be required by law; past conviction of criminal offenses of any general or limited partner; past revocation, suspension, or denial of a business or professional license of any general or limited partner; and the name and residence address of each general and limited partner.

(c) The application of a limited liability company shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Organization evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any manager or member; past revocation, suspension, or denial of a business or professional license of any manager or member; and the name and residence address of each manager or member.

(d) The application of a corporation shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Incorporation evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any corporate director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class; past revocation, suspension, or denial of a business or professional license to any director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class; the name and residence address of each director and officer of the corporation; and the name and address of each person, partnership, corporation, or other entity owning ten percent or more of the outstanding shares of any class.

(e) The application of any other business entity shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage; past conviction of criminal offenses of any principal in the company; past revocation, suspension or denial of a business or professional license of any principal; and the name and residence address of each principal. For purposes of this Paragraph, the term Aprincipal@ shall mean any person or entity who owns the business entity to any extent, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(f) A foreign business entity shall further qualify by filing with its application for license a copy of any certificate of authority to transact business in this state issued by the North Carolina Secretary of State which may be required by law and a consent to service of process and pleadings which shall be accompanied by a duly certified copy of the resolution of the general partners, managers or board of directors authorizing the proper partner, manager or officer to execute said consent.

(g) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as principal broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The principal broker of a partnership of any kind must be a general partner of the partnership, the principal broker of a limited liability company must be a manager of the company, and the principal broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the principal broker of another licensed business entity if the principal broker-entity has as its principal broker a natural person who is himself licensed as a broker. The natural person who is principal broker shall assure the performance of the principal broker=s duties with regard to both entities.

(h) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(i) The principal broker of a business entity shall assume responsibility for:

(1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
(2) renewing the real estate broker license of the entity;
(3) retaining the firm=s renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
(4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use; and
(5) notifying the Commission in writing of any change of his or her status as principal broker within ten days following the change.

(j) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity=s application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 93A-3(c); 93A-4(a),(b),(d); Eff. February 1, 1976;

Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

.0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Upon initial licensure, a salesperson's license shall be assigned by the Commission to inactive status and the license of a broker or firm shall be assigned to active status. A license shall be assigned by the Commission to inactive status upon the written request of the licensee. A salesperson's license shall be assigned by the Commission to inactive status when the salesperson is not under the active, personal supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a principal broker. A broker or salesperson shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A salesperson with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506(b) of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the firm and its principal broker. If the principal broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the principal broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's principal broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the principal broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the principal broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; February 1, 1989; December 1, 1985.

.0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than 12 months may be reinstated upon proper application and payment of the thirty-five dollar ($35.00) renewal fee plus five dollar ($5.00) late filing fee. In order to reinstate such license on active status, the applicant shall also present evidence satisfactory to the Commission of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his or her reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section.

(b) Reinstatement of licenses expired for more than 12 months may be considered upon proper application and payment of a thirty dollar ($30.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. To demonstrate current knowledge, skills and competence, the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license may be considered upon proper application and payment of a thirty dollar ($30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than 12 months.
(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) may be considered upon termination of the period of surrender specified in the order approving the surrender and upon proper application and payment of a thirty dollar ($30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than 12 months.
(e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period of active suspension; however, in order for the license to be restored on active status, the licensee shall be required to also demonstrate that the licensee has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter and is supervised by a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable.

History Note: Filed as a Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995.

.0506 SALESPERSON TO BE SUPERVISED BY BROKER

(a) A salesperson may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised by the broker-in-charge of the real estate firm or office where the salesperson is associated. A salesperson may be supervised by only one broker-in-charge at a time.
(b) Upon a salesperson=s association with a real estate broker or brokerage firm, the salesperson and the broker-in-charge of the office where the salesperson will be engaged in the real estate business shall immediately file with the Commission a salesperson supervision notification on a form prescribed by the Commission containing identifying information about the salesperson and the broker-in-charge, a statement from the broker-in-charge certifying that he or she will supervise the salesperson in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesperson and broker-in-charge. If the salesperson is on inactive status at the time of associating with a broker or brokerage firm, the salesperson and broker-in-charge shall also file, along with the salesperson supervision notification, the salesperson=s request for license activation on a form prescribed by the Commission containing identifying information about the salesperson, the salesperson=s statement that he or she has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesperson and the salesperson=s proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the salesperson may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesperson and broker-in-charge do not receive from the Commission a written acknowledgment of the salesperson supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesperson=s real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesperson and broker-in-charge are notified that the salesperson is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesperson to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesperson supervision notification and request for license activation is submitted to the Commission.
(c) A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and personally supervise the salesperson in a manner which reasonably assures that the salesperson performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesperson as prescribed in this Rule may be subject to disciplinary action by the Commission.
(d) Upon the termination of the supervisory relationship between a salesperson and his or her broker-in-charge, the salesperson and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

History Note: Authority G.S. 93A-2(b); 93A-3; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. October 1, 2000; August 1, 1998; July 1, 1996; July 1, 1995; July 1, 1993.

.0510 CANCELLATION OF SALESPERSON LICENSE UPON BROKER LICENSURE

When a person holding a salesperson license is issued a broker license, the person's salesperson license shall be automatically cancelled.

History Note: Authority G.S. 93A-3(c); 93A-4(d); Eff. July 1, 1996; Amended Eff. October 1, 2000.

SECTION .0600 - REAL ESTATE COMMISSION HEARINGS

.0610 SUBPOENAS

(a) Subpoenas issued in preparation for, or in the conduct of, a contested case pending before the Commission shall be issued in the name of the Commission and shall be signed by the Commission's legal counsel, chairman, vice chairman, the officer presiding at the hearing if a member of the Commission

other than the chairman or vice chairman has been designated to preside.
(b) After a notice of hearing in a contested case has been issued and served upon a respondent or, in a case concerning an application for licensure, the applicant, the respondent, or the attorney for the respondent or applicant may request subpoenas for the attendance of witnesses and the production of evidence. The subpoenas may be signed by the respondent or applicant, or the respondent's or applicant's attorney.
(c) All subpoenas issued in connection with a contested case pending before the Commission shall be on a form approved by the Commission. Subpoena forms shall be provided by the Commission without charge upon request.
(d) Motions to quash a subpoena issued in preparation for, or in connection with, a contested case pending before the Commission shall be submitted to the Commission in writing and shall clearly state the grounds therefor. The disposition of any motion to quash a subpoena shall be made by the chairman of the Commission in his or her discretion. If the chairman is unavailable, then the vice chairman or other Commission member designated to preside over the hearing may dispose of such a motion in the chairman's place.

History Note: Authority G.S. 93A-6(a); 150B-38(h); 150B-39(c); 150B-40;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; August 1, 1996; May 1, 1992; February 1, 1989; May 1, 1984.

.0612 PRESIDING OFFICER
The Commission may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Commission shall preside, or, in his or her absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Commission.

History Note: Authority G.S. 93A-3(c); 150B-40(b);
Eff. May 1, 1992;
Amended Eff. October 1, 2000.

SECTION .0900 - DECLARATORY RULINGS

.0902 REQUESTS FOR RULINGS: DISPOSITION OF REQUESTS
(a) All requests for declaratory rulings shall be written and filed with the Commission. The request must contain the following information:
(1) the name, address and signature of petitioner;
(2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him or her;
(3) a statement of the interpretation given the statute or rule in question by petitioner;
(4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.
(b) The Commission shall either deny the request, stating the reasons therefor, or issue a declaratory ruling. When, in its discretion, the Commission determines that the issuance of a declaratory ruling is undesirable, it may refuse to issue such ruling.
(c) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Real Estate Commission or contested case before the Commission.

History Note: Authority G.S. 93A-3(c); 150B-4(a);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. October 1, 2000; May 1, 1992; February 1, 1989; May 1, 1984.

SECTION .1700 - MANDATORY CONTINUING EDUCATION

.1701 PURPOSE AND APPLICABILITY
This Section describes the continuing education requirement for real estate brokers and salespersons authorized by G.S. 93A-4A, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;
Amended Eff. October 1, 2000.

.1702 CONTINUING EDUCATION REQUIREMENT
(a) In order to renew a broker or salesperson license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission.
(b) No continuing education shall be required to renew a broker or salesperson license on inactive status; however, to change a license from inactive status to active status, the licensee must

satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the North Carolina General Assembly to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, and reinstatement of an expired or revoked license.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. October 1, 2000; August 1, 1998; July 1, 1996.

.1703 CONTINUING EDUCATION FOR LICENSE ACTIVATION

(a) A broker or salesperson requesting to change an inactive license to active status on or after the licensee's second license renewal following his or her initial licensure shall be required to demonstrate completion of continuing education as described in Paragraph (b) or (c) of this Rule, whichever is appropriate.

(b) If the inactive licensee's license has properly been on active status at any time since the preceding July 1, the licensee is considered to be current with regard to continuing education and no additional continuing education is required to activate the license.

(c) If the inactive licensee's license has not properly been on active status since the preceding July 1 and the licensee has a deficiency in his or her continuing education record for the previous license period, the licensee must make up the deficiency and fully satisfy the continuing education requirement for the current license period in order to activate the license. Any deficiency may be made up by completing, during the current license period or previous license period, approved continuing education elective courses; however, such courses will not be credited toward the continuing education requirement for the current license period. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours. When evaluating the continuing education record of a licensee with a deficiency for the previous license period to determine the licensee's eligibility for active status, the licensee shall be deemed eligible for active status if the licensee has fully satisfied the continuing education requirement for the current license period and has taken any two additional continuing education courses since the beginning of the previous license period, even if the licensee had a continuing education deficiency prior to the beginning of the previous license period.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. July 1, 2000; July 1, 1995.

.1709 EXTENSIONS OF TIME TO COMPLETE CONTINUING EDUCATION

A licensee on active status may request and be granted an extension of time to satisfy the continuing education requirement for a particular license period if the licensee provides evidence satisfactory to the Commission that he or she was unable to obtain the necessary education due to an incapacitating illness or other circumstance which existed for a substantial portion of the license period and which constituted a severe and verifiable hardship such that to comply with the continuing education requirement would have been impossible or unreasonably burdensome. The Commission shall in no case grant an extension of time to satisfy the continuing education requirement for reasons of business or personal conflicts. The Commission also shall not grant such an extension of time when, in the opinion of the Commission, the principal reason for the licensee's inability to obtain the required education in a timely manner was unreasonable delay on the part of the licensee in obtaining such education. If an extension of time is granted, the licensee shall be permitted to renew his or her license on active status but the license shall be automatically changed to inactive status at the end of the extension period unless the licensee satisfies the continuing education requirement prior to that time. If an extension of time is not granted, the licensee may either satisfy the continuing education requirement prior to expiration of the license period or renew his or her license on inactive status. The length of any extension of time granted and the determination of the specific courses which shall be accepted by the Commission as equivalent to the continuing education the licensee would have been required to have completed had the licensee not been granted the extension is wholly discretionary on the part of the Commission. The licensee's request for an extension of time must be submitted on a form prescribed by the Commission.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. October 1, 2000.

.1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) Real estate brokers and salespersons licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status may fully satisfy the continuing education requirement by any one of the following means:

(1) A nonresident licensee may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the licensee holds such license.

(2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus four classroom hours of instruction in Commission-approved continuing education elective courses.

(3) A nonresident licensee may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the

Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars ($20.00) per request and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.

(4) A nonresident licensee may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident licensee for an unapproved course or educational activity is eight hours.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than 12 months, a nonresident broker or salesperson may fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;
Amended Eff. October 1, 2000; March 1, 1996; July 1, 1995.

SUBCHAPTER 58B - TIME SHARES

SECTION .0100 - TIME SHARE PROJECT REGISTRATION

.0104 AMENDMENTS TO TIME SHARE PROJECT REGISTRATION

(a) A developer shall notify the Commission immediately, but in no event later than 15 days, after any material change in the information contained in the time share project registration.

(b) A material change shall be any change which reflects a difference in:

(1) the nature, quality or availability of the purchaser's ownership or right to use the time share;

(2) the nature, quality or availability of any amenity at the project;

(3) the developer's title, control or right to use the real property on which the project is located;

(4) the information concerning the developer, the managing or marketing entities, or persons connected therewith, previously filed with the Commission;

(5) the purchaser's right to exchange his or her unit; however, a change in the information required to be disclosed to a purchaser by G.S. 93A-48 shall not be a material change; or

(6) the project or time share as originally registered which would be significant to a reasonable purchaser.

(c) Amendments to time share project registrations shall be submitted in the form of substitute pages for material previously filed with the Commission. New or changed information shall be conspicuously indicated by underlining in red ink. Every amendment submitted shall be accompanied by a cover letter signed by the developer or the developer's attorney containing a summary of the amendment and a statement of reasons for which the amendment has been made. The cover letter shall state:

(1) the name and address of the project and its registration number;

(2) the name and address of the developer;

(3) the document or documents to which the amendment applies;

(4) whether or not the changes represented by the amendment required the assent of the time share owners and, if so, how the assent of the time share owners was obtained; and

(5) the recording reference in the office of the register of deeds for the changes, if applicable.

Developers of multiple projects must submit separate amendments and cover letters for each project for which amendments are submitted.

(d) The Commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without fee.

History Note: Authority G.S. 93A-51;
Eff. March 1, 1984;
Amended Eff. October 1, 2000; February 1, 1989; April 1, 1987.

SECTION .0200 - PUBLIC OFFERING STATEMENT

.0201 GENERAL PROVISIONS

(a) Information contained in a public offering statement shall be accurate on the day it is supplied to a purchaser. Before any public offering statement is supplied to a purchaser, the developer shall file a copy of the statement with the Commission.

(b) In addition to the information required to be contained in a public offering statement by G.S. 93A-44, every public offering statement shall disclose to the purchaser of a time share complete and accurate information concerning:

(1) the real property type of the time share program, whether tenancy-in-common, condominium or other, and a description of the estate the purchaser will own, the term of that estate and the remainder interest, if any, once the term has expired;

(2) the document creating the time share program, a statement that it is the document which governs the program and a reference to the location where the purchaser may obtain or examine a copy of the document;

(3) whether or not the property is being converted to a time share from some other use and, if so, a statement to that effect and disclosure of the prior use of the property;
(4) the maximum number of time shares in the project, each recreational and other commonly used facility offered, and who or what will own each facility, if the project is to be completed in one development or construction phase;
(5) if the project is planned in phased construction or development, the complete plan of phased offerings, including the maximum number of time shares which may be in the project, each recreational and other commonly used facility, who or what will own each facility, and the developer's representations regarding his or her commitment to build out the project;
(6) the association of owners or other entity which will ultimately be responsible for managing the time share program, the first date or event when the entity will convene or commence to conduct business, each owner's voting right, if any, and whether and for how long the developer, as time share owner, will control the entity;
(7) the location where owners may inspect the articles and bylaws of the owners association, or other organizational documents of the entity and the books and records it produces;
(8) whether the entity has lien rights against time share owners for failure to pay assessments;
(9) whether or not the developer has entered into a management contract on behalf of the managing entity, the extent to which the managing entity's powers are delegated to the manager and the location where a copy of the management contract may be examined;
(10) whether or not the developer will pay assessments for time shares which it owns and a statement that the amount of assessments due the managing entity from owners will change over time, as circumstances may change;
(11) whether or not the developer sponsors or will sponsor a rental or resale program and, if so, a summary of the program or programs; and
(12) the developer's role at the project, if the developer is a separate entity from any other registered developer of the time share project.

(c) The inclusion of false or misleading statements in a public offering statement shall be grounds for disciplinary action by the Commission.

History Note: Authority G.S. 93A-44(8); 93A-51; Eff. March 1, 1984; Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989; April 1, 1987.

.0202 PUBLIC OFFERING STATEMENT SUMMARY

Every public offering statement shall contain a one page cover prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary. The Public Offering Statement Summary shall read as follows:

PUBLIC OFFERING STATEMENT

SUMMARY

NAME OF PROJECT:

NAME AND REAL ESTATE LICENSE NUMBER OF SALESPERSON:

This Public Offering Statement contains information which deserves your careful study, as you decide whether or not to purchase a time share.

The Public Offering Statement includes general information about the real estate type, the term, and the size of this time share project. It also includes a general description of the recreational and other facilities existing now, or to be provided in the future. The Public Offering Statement will tell you how maintenance and management of the project will be provided and how the costs of these services will be charged to purchasers. From the Public Offering Statement, you will also learn how the project will be governed and whether purchasers will have a voice in that government. You will also learn that a time share instrument will be recorded to protect your real estate interest in your time share.

The Public Offering Statement contains important information, but is not a substitute for the detailed information contained in the contract of purchase and the legal documents which create and affect the time share program at this project.

Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

NOTICE

UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME SHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME SHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.

History Note: Authority G.S. 93A-44; 93A-51; Eff. March 1, 1984; Amended Eff. October 1, 2000; February 1, 1989; April 1, 1987.

.0203 RECEIPT FOR PUBLIC OFFERING STATEMENT

(a) Prior to the execution of any contract to purchase a time share, a time share developer or a time share salesperson shall obtain from the purchaser a written receipt for the public offering statement, which shall display, directly over the buyer signature line in type in all capital letters, no smaller than the largest type on the page on which it appears, the following statement: DO NOT SIGN THIS RECEIPT UNLESS YOU HAVE RECEIVED A COMPLETE COPY OF THE PUBLIC OFFERING STATEMENT TO TAKE WITH YOU.
(b) Receipts for public offering statements shall be maintained as part of the records of the sales transaction.

History Note: Authority G.S. 93A-45(a); 93A-51;
Eff. February 1, 1988;
Amended Eff. October 1, 2000.

SECTION .0300 - CANCELLATION

.0301 PROOF OF CANCELLATION

(a) The postmark date affixed to any written notice of a purchaser's intent to cancel his or her time share purchase shall be presumed by the Commission to be the date the notice was mailed to the developer. Evidence tending to rebut this presumption shall be admissible at a hearing before the Commission.
(b) Upon receipt of a purchaser's written notice of his or her intent to cancel his or her time share purchase, the developer, or his or her agent or representative, shall retain the notice and any enclosure, envelope or other cover in the developer's files at the project, and shall produce the file upon the Commission's request.
(c) When there is more than one registered developer at a time share project and a purchaser gives written notice of his or her intent to cancel his or her time share purchase that is received by a developer or sales staff other than the one from whom his or her time share was purchased, the developer or sales staff receiving such notice shall promptly deliver it to the proper developer who shall then honor the notice if it was timely sent by the purchaser.

History Note: Authority G.S. 93A-51; 93A-54(d);
Eff. September 1, 1984;
Amended Eff. October 1, 2000; August 2, 1993; February 1, 1989.

SECTION .0400 - TIME SHARE SALES OPERATION

.0401 RETENTION OF TIME SHARE RECORDS

A time share developer and a time share salesperson shall retain or cause to be retained for a period of three years complete records of every time share sale, rental, or exchange transaction made by or on behalf of the developer. Records required to be retained shall include but not be limited to offers, applications and contracts to purchase, rent or exchange time shares; records of the deposit, maintenance and disbursement of funds required to be held in trust; receipts; notices of cancellation and their covers if mailed; records regarding compensation of salespersons; public offering statements; and any other records pertaining to time share transactions. Such records shall be made available to the Commission and its representatives upon request.

History Note: Authority G.S. 93A-51; 93A-54(d);
Eff. September 1, 1984;
Amended Eff. October 1, 2000.

SECTION .0500 - HANDLING AND ACCOUNTING OF FUNDS

.0501 TIME SHARE TRUST FUNDS

(a) Except as otherwise permitted by G.S. 93A-45(c), all monies received by a time share developer or a time share salesperson in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.
(b) All monies received by a person licensed as a salesperson in connection with a time share transaction shall be delivered immediately to his or her project broker.
(c) When a time share purchaser timely cancels his or her time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bankcard or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.
(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his or her trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his or her purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

History Note: Authority G.S. 93A-42(c); 93A-51;
Eff. September 1, 1984;
Amended Eff. October 1, 2000; February 1, 1989; July 1, 1988; February 1, 1988.

SECTION .0600 - PROJECT BROKER

.0602 DUTIES OF THE PROJECT BROKER

(a) The broker designated by the developer of a time share project to be project broker shall assume responsibility for:
(1) The display of the time share project certificate registration and the license certificates of the real estate

salespersons and brokers associated with or engaged on behalf of the developer at the project;

(2) The determination of whether each licensee employed has complied with Rules .0503 and .0506 of Subchapter 58A;

(3) The notification to the commission of any change in the identity or address of the project or in the identity or address of the developer or marketing or managing entities at the project;

(4) The deposit and maintenance of time share purchase or rental monies in a trust or escrow account until proper disbursement is made; and

(5) The proper maintenance of accurate records at the project including all records relating to the handling of trust monies at the project, records relating to time share sales and rental transactions and the project registration and renewal.

(b) The project broker shall review all contracts, public offering statements and other documents distributed to the purchasers of time shares at the project to ensure that the documents comport with the requirements of the Time Share Act and the rules adopted by the commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The project broker shall not permit time share sales to be conducted by any person not licensed as a broker or salesperson, and shall not delegate or assign his or her supervisory responsibilities to any other person, nor accept control of his or her supervisory responsibilities by any other person.

(d) The project broker shall notify the commission in writing of any change in his or her status as project broker within ten days following the change.

History Note: Authority G.S. 93A-51; 93A-58(c);
Eff. February 1, 1988;
Amended Eff. October 1, 2000; February 1, 1989.

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS

.0217 LICENSE RENEWAL AND FEES

(a) Private real estate school licenses expire on the next June 30 following the date of issuance. In order to assure continuous licensure, applications for license renewal, accompanied by the prescribed renewal fee shall be filed with the Commission annually on or before June 1. Incomplete renewal applications not completed by July 1 shall be treated as original license applications.

(b) The license renewal fee shall be one hundred dollars ($100.00) for each previously licensed school location and twenty dollars ($20.00) for each real estate pre-licensing course for which the applicant requests continuing approval. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable. If the applicant requests approval of additional courses for which approval was not granted in the previous year, the fee for such additional courses is forty dollars ($40.00) per course.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-34(b); 93A-35(b);
Eff. October 1, 1980;
Amended Eff. February 1, 1989; December 1, 1987;
Transferred and Recodified from 21 NCAC 58A .1317 Eff. November 27, 1989;
Amended Eff. July 1, 2000; July 1, 1990.

SECTION .0600 – PRE-LICENSING INSTRUCTORS

.0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a pre-licensing course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: A current North Carolina real estate broker license; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years; 120 classroom hours of real estate education excluding company or franchise in-service sales training; and 60 semester hours of college-level education at an institution accredited by a nationally recognized college accrediting body.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of an instructor seminar prescribed by the Commission and shall submit a two-hour videotape which depicts the applicant teaching a real estate pre-licensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The videotape must comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to fully satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission may in its discretion extend the six-month period for up to three additional months when the

Commission requires more than 30 days to review and act on a submitted videotape, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances. An individual applying for instructor approval shall be allowed the authorized six-month period to satisfy the requirements stated in this Paragraph only once.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-34;
Eff. October 1, 2000.

.0606 BROKER COURSE REPORTS
The Commission may require an instructor to submit, on a form prescribed by the Commission, periodic reports providing information on student enrollment and course completion for each course taught by the instructor.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-34;
Eff. October 1, 2000.

.0607 EXPIRATION AND RENEWAL OF APPROVAL
Commission approval of pre-licensing instructors shall expire on the third December 31 following issuance of approval, except as otherwise provided in Rule .0603(c) of this Section. In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form prescribed by the Commission on or before December 1 immediately preceding expiration of their approval. To qualify for renewal of approval, instructors must demonstrate that they continue to satisfy the criteria for original approval set forth in Rule .0603(b) of this Section and that they have attended, during the immediately preceding approval period, at least three separate real estate instructor educational programs of at least six hours each. When considering an application for renewal of instructor approval, the Commission may recognize experience in teaching real estate pre-licensing courses, Commission-approved continuing education courses or comparable courses in lieu of the real estate brokerage experience requirement set forth in Rule .0603(b) of this Section.

History Note: Authority G.S. 93A-4(a),(d); 93A-33; 93A-34;
Eff. October 1, 2000.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0300 - ELECTIVE COURSES

.0302 ELECTIVE COURSE COMPONENT
(a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.
(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate continuing education purposes between June 11 and June 30, inclusive, of any approval period.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994.;
Amended Eff. October 1, 2000; September 1, 1996.

.0310 DISTANCE EDUCATION COURSES
(a) As used in this Chapter, the term "distance education" shall be understood to refer to educational programs in which instruction is accomplished through the use of media whereby teacher and student are separated by distance and sometimes by time. An entity requesting approval of a distance education course must, in addition to satisfying all other requirements for elective course approval specified in this Section, demonstrate that the proposed distance education course satisfies the following criteria:

(1) The course shall be designed to assure that students actively participate in the instructional process while completing the course by utilizing techniques that require substantial student interaction with the instructor, other students or a computer program. The course design must not permit students to merely sit passively and observe instruction or read instructional materials. If the nature of the subject matter is such that the learning objectives for the course cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course design must provide for such interaction.
(2) A course that does not provide the opportunity for continuous audio and visual communication between the instructor and all students during the course presentation shall utilize testing and remedial processes appropriate to assure student mastery of the subject material.
(3) A course that involves students completing the course on a self-paced study basis shall be designed so that the time required for a student of average ability to complete the course will be at least four hours, and the sponsor shall utilize a system that assures that students have actually performed all tasks designed to assure student participation and mastery of the subject material. The number of equivalent classroom hours assigned by the course sponsor or developer to the course must be supported by appropriate studies or field tests, and the applicant must submit a description of such studies or field tests with the course application.
(4) The proposed instructional delivery methods shall be appropriate to enable effective accomplishment of the proposed learning objectives and the scope and depth of

the instructional materials must also be consistent with the proposed learning objectives.

(5) The sponsor shall provide appropriate technical support to enable students to satisfactorily complete the course.

(6) An instructor shall be reasonably available to respond in a timely manner to student questions about the subject matter of the course and to direct students to additional sources of information. Instructors shall have appropriate training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other equipment and systems.

(7) The sponsor shall provide students an orientation or information package which contains all information required by the Commission to be provided to students and all necessary information about the course, including but not limited to information about course fees and refund policies, course subject matter and learning objectives, procedures and requirements for satisfactory course completion, any special requirements with regard to computer hardware and software or other equipment, and instructor and technical support.

(8) The sponsor shall utilize procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed all the work required to complete the course. For courses that involve independent study by students, such procedures must include, at a minimum, a direct contact with the student, initiated by the sponsor and directed to the student's home or business, using the telephone or electronic mail and a signed statement by the student certifying that he or she personally completed all course work. Signed student course completion statements and records of student contacts shall be retained by the sponsor along with all other course records the sponsor is required to maintain.

(b) An entity seeking approval of a computer-based distance education course must submit a complete copy of the course on the medium that is to be utilized and, if requested, must make available, at a date and time satisfactory to the Commission and at the sponsor's expense, all hardware and software necessary for the Commission to review the submitted course. In the case of an internet-based course, the Commission must be provided access to the course via the internet at a date and time satisfactory to the Commission and shall not be charged any fee for such access.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1996;
Amended Eff. July 1, 2000.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

.0406 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall be completed on forms prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information on such reports. Sponsors must submit these reports to the Commission in a manner that will assure receipt by the Commission within fifteen calendar days following the course, but in no case later than June 15 for courses conducted prior to that date.

(b) At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form prescribed by the Commission. Sponsors must submit the completed evaluation forms to the Commission with the reports verifying completion of a continuing education course .

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his or her proof of having completed the course.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses on forms prescribed by the Commission, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar ($5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a

certificate on a form prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. October 1, 2000; July 1, 1996; July 1, 1995.

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

.0511 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

(1) A student shall direct his or her active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.

(2) A student shall refrain from engaging in any activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.

(3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) Instructors and sponsors have the authority to dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall sponsors include the name of such student on their reports verifying completion of a continuing education course. Sponsors shall submit to the Commission with their reports for the class session a written statement which includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. October 1, 2000; July 1, 1996.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

.0103 ORIGINAL AND DUPLICATE COPY

(a) The agency shall submit an original and one copy of any document and form for publication in the Register or Code.

(b) With the exception of Temporary Rules, the Office of Administrative Hearings shall permit the filing of documents for publication in the Code and Register by electronic transmission during regular business hours; provided the original document and one copy is received by OAH within five business days following the electronic transmission. Electronic transmissions submitted for filing with OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site: http://www.oah.state.nc.us/. Other electronic transmissions, for example, electronic mail, shall not constitute a valid filing with the OAH under this Rule.

(c) The agency shall include an additional copy of the rule and a copy of the fiscal note and attachments with any permanent rule that is submitted to the Commission.

(d) The agency shall permanently mark the original rule and form as original.

Note: Rules Review Commission requests that documents be submitted in the following order:

(1) the original submission form;
(2) the agency return copy of the submission form, if any;
(3) the copy of the submission form;
(4) the original of the rule;
(5) the copy, highlighted if required by Rule .0405 of this Subchapter;
(6) the agency return copy of the rule, if any;
(7) the copy of the fiscal note and attachments;
(8) the remaining copy for RRC.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19; Temporary Adoption Eff. November 1, 1995; Eff. April 1, 1996; Amended Eff. August 1, 2000; April 1, 1997.

.0105 ELECTRONIC VERSION

(a) The electronic version shall be a 3 l/2 inch (1.44 Mb) high density diskette compatible with or convertible to the most recent version of Word for Windows. The filed diskette shall identify the name of the document to be retrieved and the software used. OAH shall refuse to accept for publication any document in which the diskette is not compatible with or convertible to the most recent version of Word for Windows.

(b) An electronic version shall not be required if an agency that is unable to provide a diskette that is compatible with or convertible to the most recent version of Word for Windows submits a written statement to the Codifier of Rules to that effect. This statement shall be signed by the agency head or rule-making coordinator.

(c) An electronic version shall not be required if the agency submits the document(s) by electronic transmission pursuant to 26 NCAC 2C .0103(b).

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. August 1, 2000.

CHAPTER 3 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

.0101 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

(1) The Rules of Civil Procedure as contained in G.S. 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes and Canons 1, 2 and 3 of the Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1 shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

(2) The Office of Administrative Hearings may supply, at the cost of reproduction, forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(3) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic transmission during regular business hours. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 3 .0102(a)(2) provided the original document and one copy is received by OAH within five business days following the faxed or electronic transmission. Electronic transmissions submitted for filing under Item (3) of this Rule with OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site: http://www.oah.state.nc.us/. Other electronic transmissions, for example, electronic mail, shall not constitute a valid filing with the OAH under this Rule.

(4) Electronic transmissions filed by licensed North Carolina attorneys shall be in accordance with the *Electronic Commerce Act*, G.S. 66, Article 11A. Attorneys shall register for an account on the Office of Administrative Hearings internet web site: http://www.oah.state.nc.us/. Electronic filings submitted under Item (4) of this Rule shall be deemed an original "filing" within the meaning of 26 NCAC 3 .0102(a)(2). Electronic transmissions submitted for filing under Item (4) of this Rule with the OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site. Other electronic transmissions, for example, electronic mail, shall not constitute a valid filing with the OAH under this Rule.

(5) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

(6) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

History Note: Authority G.S. 7A-750; 150B-40(c);
Eff. August 1, 1986;
Amended Eff. August 1, 2000; February 1, 1994; July 1, 1992; May 1,1989; January 1, 1989.

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, July 20, 2000, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, July 14, 2000, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate	**Appointed by House**
Teresa L. Smallwood, Chairman	R. Palmer Sugg, 1st Vice Chairman
John Arrowood	Jennie J. Hayman, 2nd Vice Chairman
Laura Devan	Walter Futch
Jim Funderburke	Paul Powell
David Twiddy	George Robinson

RULES REVIEW COMMISSION MEETING DATES

July 20, 2000	September 21, 2000
August 17, 2000	October 19, 2000

LOG OF FILINGS

RULES SUBMITTED: ***May 20, 2000 through June 20, 2000***

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
DHHS/DIVISION OF FACILITY SERVICES			
	Applicability of Rules	10 NCAC 3R .3002	Repeal
	Multi-County Groupings	10 NCAC 3R .3010	Repeal
	CON Review Schedule	10 NCAC 3R .3020	Repeal
	Facility and Service Need Determinations	10 NCAC 3R .3030	Repeal
	Dialysis Station Need Determination	10 NCAC 3R .3032	Repeal
	Reallocations and Adjustments	10 NCAC 3R .3040	Repeal
	Policies	10 NCAC 3R .3050	Repeal
	Applicability of Rules	10 NCAC 3R .3051	Repeal
	CON Review Categories	10 NCAC 3R .3052	Repeal
	CON Review Schedule	10 NCAC 3R .3053	Repeal
	Multi-County Groupings	10 NCAC 3R .3054	Repeal
	Reallocations and Adjustments	10 NCAC 3R .3055	Repeal
	Dialysis Station Need Determination	10 NCAC 3R .3056	Repeal
	Acute Care Bed Need Determination	10 NCAC 3R .3057	Repeal
	Rehabilitation Bed Need Determination	10 NCAC 3R .3058	Repeal
	Ambulatory Surgical Facilities Need Determination	10 NCAC 3R .3059	Repeal
	Open Heart Surgery Services	10 NCAC 3R .3060	Repeal
	Heart-Lung Bypass Machines	10 NCAC 3R .3061	Repeal
	Heart-Lung Bypass Machines	10 NCAC 3R .3062	Repeal
	Cardiac Catheterization Equipment	10 NCAC 3R .3063	Repeal
	Cardiac Catheterization Equipment	10 NCAC 3R .3064	Repeal
	Cardiac Angioplasty Equipment	10 NCAC 3R .3065	Repeal
	Cardiac Angioplasty Equipment	10 NCAC 3R .3066	Repeal
	Burn Intensive Care Services	10 NCAC 3R .3067	Repeal
	Positron Emission Tomography Scanners	10 NCAC 3R .3068	Repeal
	Bone Marrow Transplantation Services	10 NCAC 3R .3069	Repeal
	Solid Organ Transplantation Services Need	10 NCAC 3R .3070	Repeal
	Gamma Knife Need Determination	10 NCAC 3R .3071	Repeal
	Nursing Care Bed Need Determination	10 NCAC 3R .3072	Repeal
	Demonstration Project	10 NCAC 3R .3073	Repeal
	Home Health Agency Office	10 NCAC 3R .3074	Repeal

Hospice Need Determination	10 NCAC 3R .3075	Repeal
Hospice Inpatient Facility Bed Need	10 NCAC 3R .3076	Repeal
Psychiatric Bed Need Determination	10 NCAC 3R .3077	Repeal
Chemical Dependency Treatment Bed	10 NCAC 3R .3078	Repeal
Intermediate Care Beds	10 NCAC 3R .3079	Repeal
Polices for General Acute Care Hospitals	10 NCAC 3R .3080	Repeal
Policies for Inpatient Rehabilitation Services	10 NCAC 3R .3081	Repeal
Policies for Ambulatory Surgical Facilities	10 NCAC 3R .3082	Repeal
Policies for Nursing Care Facilities	10 NCAC 3R .3083	Repeal
Policies for Home Health Services	10 NCAC 3R .3084	Repeal
Policies for End-Stage Renal Disease	10 NCAC 3R .3085	Repeal
Policies for Psychiatric Inpatient Facilities	10 NCAC 3R .3086	Repeal
Policies for chemical Dependency Treatment	10 NCAC 3R .3087	Repeal
Policies for Intermediate Care Facilities	10 NCAC 3R .3088	Repeal
Applicability of Rules	10 NCAC 3R .6101	Repeal
Certificate of Need	10 NCAC 3R .6102	Repeal
Certificate of Need Review Schedule	10 NCAC 3R .6103	Repeal
Multi-County Groupings	10 NCAC 3R .6104	Repeal
Service Areas	10 NCAC 3R .6105	Repeal
Reallocations and Adjustments	10 NCAC 3R .6106	Repeal
Acute Care Bed Need Determination	10 NCAC 3R .6107	Repeal
Rehabilitation Bed Need Determination	10 NCAC 3R .6108	Repeal
Ambulatory Surgical Facilities	10 NCAC 3R .6109	Repeal
Open Heart Surgery Services Need	10 NCAC 3R .6110	Repeal
Heart-Lung Bypass Machines	10 NCAC 3R .6111	Repeal
Fixed Cardiac Catheterization	10 NCAC 3R .6112	Repeal
Mobile Cardiac Catheterization	10 NCAC 3R .6113	Repeal
Burn Intensive Care Services Need	10 NCAC 3R .6114	Repeal
Positron Emission Tomography Scanners	10 NCAC 3R .6115	Repeal
Bone Marrow Transplantation	10 NCAC 3R .6116	Repeal
Solid Organ Transplantation Services	10 NCAC 3R .6117	Repeal
Gamma Knife Need Determination	10 NCAC 3R .6118	Repeal
Lithotripter Need Determination	10 NCAC 3R .6119	Repeal
Radiation Oncology Need Determination	10 NCAC 3R .6120	Repeal
Nursing Care Bed Need	10 NCAC 3R .6121	Repeal
Demonstration Project	10 NCAC 3R .6122	Repeal
Home Health Agency Office	10 NCAC 3R .6123	Repeal
Dialysis Station Need	10 NCAC 3R .6124	Repeal
Hospice Need Determination	10 NCAC 3R .6125	Repeal
Hospice Inpatient Facility Bed Need	10 NCAC 3R .6126	Repeal
Psychiatric Bed Need	10 NCAC 3R .6127	Repeal
Chemical Dependency Treatment	10 NCAC 3R .6128	Repeal
Intermediate Care Beds	10 NCAC 3R .6129	Repeal
Policies for General Acute Care	10 NCAC 3R .6130	Repeal
Policies for Inpatient Rehabilitation	10 NCAC 3R .6131	Repeal
Policy for Ambulatory Surgical Facilities	10 NCAC 3R .6132	Repeal
Policy for Provision of Hospital	10 NCAC 3R .6133	Repeal
Policy for Nursing Care Beds	10 NCAC 3R .6134	Repeal
Policy for Determination of Need	10 NCAC 3R .6135	Repeal
Policy for Relocation	10 NCAC 3R .6136	Repeal
Policy for Home Health Services	10 NCAC 3R .6137	Repeal
Policy for End-Stage Renal Disease	10 NCAC 3R .6138	Repeal
Policies for Psychiatric Inpatients	10 NCAC 3R .6139	Repeal
Policy of Chemical Dependency	10 NCAC 3R .6140	Repeal
Policies for Intermediate Care	10 NCAC 3R .6141	Repeal
DHHS/DIVISION OF MEDICAL ASSISTANCE		
Physician's Fee Schedule	10 NCAC 26H .0401	Amend
DHHS/DIVISION OF MEDICAL ASSISTANCE		
Deprivation	10 NCAC 50B .0305	Amend
DENR/COASTAL RESOURCES COMMISSION		
Estuarine Shorelines	15A NCAC 7H .0209	Amend
DENR		

Lavatories and Baths	15A NCAC 18A .1809	Amend
Drinking Water Facilities	15A NCAC 18A .1811	Amend
Guestrooms	15A NCAC 18A .1812	Amend
Approval of Construction and Renovation Plans	15A NCAC 18A .2802	Amend
Food Storage	15A NCAC 18A .2806	Amend
Specifications for Kitchens	15A NCAC 18A .2810	Amend
Manual Cleaning and Sanitizing	15A NCAC 18A .2812	Amend
Water Supply	15A NCAC 18A .2815	Amend
Walls and Ceilings	15A NCAC 18A .2825	Amend
DENR/DHHS		
Access to Immunization Information	15A NCAC 19A .0406	Amend
Definitions	15A NCAC 19B .0101	Amend
Application for Initial Permit	15A NCAC 19B .0301	Amend
Limitation of Permit	15A NCAC 19B .0302	Amend
Conditions for Renewal of Permit	15A NCAC 19B .0304	Amend
Qualifications of Maintenance Personnel	15A NCAC 19B .0309	Amend
Log	15A NCAC 19B .0311	Amend
Breath-Testing Instruments	15A NCAC 19B .0313	Amend
Intoxilyzer: Model 5000	15A NCAC 19B .0320	Amend
Preventive Maintenance: Intoxilyzer: Model 5000	15A NCAC 19B .0321	Amend
Reporting of Alcohol Concentrations	15A NCAC 19B .0322	Repeal
Approval: Alcohol Screening Test Devices	15A NCAC 19B .0502	Amend
Approved Alcohol Screening Test Devices	15A NCAC 19B .0503	Amend
DENR/COMMISSION FOR HEALTH SERVICES		
General	15A NCAC 26B .0101	Amend
Definitions	15A NCAC 26B .0102	Amend
Confidentiality	15A NCAC 26B .0103	Amend
Reporting of Cancer	15A NCAC 26B .0104	Amend
Cooperation of the Central Cancer Registry	15A NCAC 26B .0105	Amend
Release of Central Cancer Registry Data	15A NCAC 26B .0106	Amend
Coding of Incidence Reports	15A NCAC 26B .0107	Repeal
Assistance and Consultation	15A NCAC 26B .0108	Amend
Failure to Report	15A NCAC 26B .0109	Adopt
SECRETARY OF STATE		
Registration of Legislative Agents	18 NCAC 2 .0201	Repeal
Written Authorization	18 NCAC 2 .0202	Repeal
Written Expenditures	18 NCAC 2 .0203	Repeal
Influencing Public Opinion or Legislation	18 NCAC 2 .0204	Repeal
SECRETARY OF STATE		
Location and Hours	18 NCAC 7 .0101	Amend
General Purpose	18 NCAC 7 .0102	Amend
Disposition of Commissions	18 NCAC 7 .0204	Amend
Requirements for Reappointment	18 NCAC 7 .0206	Amend
Revocation of Commissions	18 NCAC 7 .0207	Amend
Approved Course of Study	18 NCAC 7 .0301	Amend
Instructors	18 NCAC 7 .0302	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Repair/Maintenance/Alteration of Signs	19A NCAC 2E .0225	Amend
STATE BOARDS/DENTAL EXAMINERS, BOARD OF		
Dental Hygienists	21 NCAC 16M .0102	Amend
Definitions	21 NCAC 16S .0101	Amend
Board Agreements with Peer Review	21 NCAC 16S .0102	Amend
Receipt and Use of Information	21 NCAC 16S .0201	Amend
Intervention and Referral	21 NCAC 16S .0203	Amend
Monitoring Rehabilitation and Performance	21 NCAC 16S .0205	Amend
Direction Defined	21 NCAC 16W .0101	Adopt
Training for Public Health Hygienists	21 NCAC 16W .0102	Adopt
Training for Public Health Hygienists	21 NCAC 16W .0103	Adopt

RULES REVIEW COMMISSION

June 15, 2000
MINUTES

The Rules Review Commission met on June 15, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Vice Chairman Palmer Sugg, John Arrowood, Jim Funderburk, Paul Powell, Laura Devan, David R. Twiddy, Walter Futch, and George Robinson.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Celia Cox.

The following people attended:

Jan Morley	DHHS/Division of Aging
David Tuttle	Engineers & Land Surveyors
David McLeod	AGRICULTURE
Lynne Berry	DHHS/Division of Aging
Harry Wilson	State Board of Education
John Runkle	Conservation Council of NC
Portia Rochelle	DHHS/DMA
Jim Payton	DHHS/DMA
Emily Lee	TRANSPORTATION
Elsee Roane	DHHS/Social Services
Carol Roberts	DHHS/DMA
Carolyn Wiser	DHHS/DMA

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Vice Chairman Sugg presiding. The Vice Chairman asked for any discussion, comments, or corrections concerning the minutes of the May 18, 2000 meeting. There being none, the minutes were approved.

FOLLOW-UP MATTERS

2 NCAC 52B .0206, .0401, .0406, .0407, .0409, .0410, .0411, and .0412: AGRICULTURE/Board of Agriculture B The Commission approved the rewritten rules with the exception of .0406. The original rule .0406 submitted by the agency was approved.

10 NCAC 42A .0807: DHHS/Social Services Commission B This rule was returned to the agency at their request.

10 NCAC 42C .2506: DHHS/Medical Care Commission B No action was necessary.

18 NCAC 10 .0201, .0303, .0304, .0305, .0306, .0307, .0701, .0801, .0802, and .0901: SECRETARY OF STATE B No action was necessary on these rules.

21 NCAC 33 .0106: Midwifery Joint Committee B At the request of the agency this rule was returned to them.

21 NCAC 56 .0503, .0603, .0804, and .0901: N C Board of Examiners of Engineers and Surveyors B No action was necessary.

LOG OF FILINGS

Vice Chairman Sugg presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 26B .0113: DHHS/Division of Medical Assistance B The Commission objected to this rule due to ambiguity. In (5)(c), it is not clear what is meant by Asignificant@ regression. This objection applies to existing language in the rule.

10 NCAC 42E .0704: DHHS/Social Services Commission B The Commission objected to this rule due to lack of statutory authority. There is no authority for the provision in (a) requiring programs exempted by statute from the certification requirements to meet them if they receive funding administered by the Division of Aging. This objection applies to existing language in the rule.

10 NCAC 42Q .0016: DHHS/Social Services Commission B The Commission objected to this rule due to lack of statutory authority. There is no authority to require compliance with procedures that have not been adopted as rules. This objection applies to existing language in the rule.

10 NCAC 42S .0501: DHHS/Social Services Commission B The Commission objected to this rule due to lack of statutory authority. There is no authority for the provision in (1). The Social Services Commission is the rulemaking authority, not the Division of Aging. This objection applies to existing language in the rule.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca reported that $48,000 had been placed in our budget for attorney fees and $200,000 had been placed in a special reserve for attorney fees. The Commission approved a motion that staff be allowed to stay at the NASS/ACR conference headquarter=s hotel and be reimbursed at the full rate. The rate is reasonable and there would be serious questions about the adequacy, convenience, and especially safety of any nearby locations that could provide accommodations at the state rate.

The next meeting will be on Thursday, July 20, 2000.

The meeting adjourned at 10:55 a.m.

Respectfully submitted,
Sandy Webster

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: http://www.state.nc.us/OAH/hearings/decision/caseindex.htm.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter
James L. Conner, II
Robert Roosevelt Reilly Jr.
Beryl E. Wade

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
CRIME CONTROL AND PUBLIC SAFETY				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
HEALTH AND HUMAN SERVICES				
William M. Gardin v. Department of Health &Human Services	98 CRA 1054	Lassiter	06/20/00	
Child Support Enforcement Section				
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00	
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00	
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00	
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00	
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00	
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00	
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00	
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00	
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00	
Izell Anthony Twiggs v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00	
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00	
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00	
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00	
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00	
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00	
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00	
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00	
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00	
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00	
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00	
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00	
Division of Social Services				
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Division of Facility Services				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	

ENVIRONMENT AND NATURAL RESOURCES

Division of Air Quality					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
JUSTICE					
Alarm Systems Licensing Board					
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00		
Education and Training Standards Division					
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00		
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00		
Private Protective Services Board					
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00		
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00		
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00		
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00		
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00		
PUBLIC INSTRUCTION					
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR	45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00		
DEPARTMENT OF INSURANCE					
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00		
STATE PERSONNEL					
Health and Human Services					
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR	47
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR	52