

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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through October 11, 2001.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					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	
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	05/15/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
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16:02	07/16/01	06/22/01	09/17/01	07/31/01	08/15/01	08/20/01	05/00/02	09/14/01	09/20/01	05/00/02	04/12/02
16:03	08/01/01	07/11/01	10/01/01	08/16/01	08/31/01	09/20/01	05/00/02	10/01/01	10/22/01	05/00/02	04/28/02
16:04	08/15/01	07/25/01	10/15/01	08/30/01	09/14/01	09/20/01	05/00/02	10/15/01	10/22/01	05/00/02	05/12/02
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16:06	09/17/01	08/24/01	12/03/01	10/02/01	10/17/01	10/22/01	05/00/02	11/16/01	11/20/01	05/00/02	06/14/02
16:07	10/01/01	09/10/01	12/03/01	10/16/01	10/31/01	11/20/01	05/00/02	11/30/01	12/20/01	05/00/02	06/28/02
16:08	10/15/01	09/24/01	12/17/01	10/30/01	11/14/01	11/20/01	05/00/02	12/14/01	12/20/01	05/00/02	07/12/02
16:09	11/01/01	10/11/01	01/02/02	11/16/01	12/03/01	12/20/01	05/00/02	12/31/01	01/21/02	05/00/02	07/29/02
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16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

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

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

FILING DEADLINES

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

<p><i>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.</i></p>
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North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 662-4597

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1910 promulgated as of May 24, 2001, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Bloodborne Pathogens: Needlesticks and Other Sharps Injuries
(66 FR 5317-5325, January 18, 2001)
- Cotton Dust
(65 FR 76563, December 7, 2000)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Barbara A. Jackson, General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 662-4597

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1926 promulgated as of January 18, 2001, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Steel Erection
(66 FR 5196, January 18, 2001)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Barbara A. Jackson, General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

NOTICE OF PUBLIC MEETING TO BE HELD BY
THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION
ON INTENT TO ISSUE NPDES GENERAL PERMITS FOR ANIMAL OPERATIONS

SUBJECT: Public meetings have been scheduled concerning the issuance of animal waste NPDES general permits for the following types of animal operations:

NPDES General Permit NCA200000 - Swine Operations
NPDES General Permit NCA300000 - Cattle and Dairy Operations
NPDES General Permit NCA400000 - Poultry Operations

PURPOSE: On the basis of preliminary staff review and application of G.S. 143, Article 21 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue NPDES general permits for animal waste operations subject to specific limitations and special conditions. The Director of the Division of Water Quality, pursuant to G.S. 143-215. 4(b)(1) and (2) and 15A NCAC 02H, Section .0100, Rule .0127, has determined that it is in the public interest that meetings be held to receive all pertinent public comment on whether to issue the draft permits.

Comments are also being requested on the following issues related to the NPDES CAFO permitting program.

(1) Establishing specific conditions in the General Permits as enforceable only under state law where they are not specifically related to requirements of the Clean Water Act.

(2) Whether, and under what conditions of control or supervision, should the Division require Integrators who own the animals located at regulated facilities to be co-permittees with the owners of the facilities.

All information received by November 30, 2001 will be taken into consideration in finalizing the permitting decisions.

MEETINGS: The meetings will be conducted in the following manner:

(1) Explanation of the NC Environmental Management Commission's Permit Procedure and the proposed permit conditions by the Division of Water Quality staff;

(2) Public Comment - The public meetings are a forum for obtaining water quality information that was either overlooked or unavailable to the Division at the time the permits were drafted. INFORMATION PRESENTED SHOULD SPECIFICALLY ADDRESS ISSUES RELATED TO WATER QUALITY IMPACTS RESULTING FROM ANIMAL WASTE MANAGEMENT. Comments, statements, data and other information may be submitted in writing 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 that will be filed with the meeting clerk at the time of registration.

(3) Cross examination of persons presenting testimony will not be allowed; however, the meeting officer may ask questions for clarification.

(4) The meeting record will be closed on November 30, 2001.

WHEN: November 13, 15 and 19, 2001 at 7 p.m. (Registration will begin at 6:30 PM at each facility listed below)

WHERE: November 13, 2001
James Sprunt Community College
Highway 11 South
Kenansville, North Carolina

November 15, 2001
Iredell County Center
444 Bristol Drive
Statesville, North Carolina

November 19, 2001
Martin Community College
Highway 64 West
Williamston, North Carolina

INFORMATION: A copy of the draft animal waste NPDES general permits and fact sheets are available by writing or calling:

Ms. Thelma Williams or Sylvia Barbour
Non-Discharge Branch
NC Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Telephone number: (919) 733-5083, ext. 556 and ext. 574

The fact sheets and general permits are on file at the Division of Water Quality, 512 North Salisbury Street, Room 1219, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. All such comments and request regarding this matter should make reference to Permit Numbers NCA200000, NCA300000 and/or NCA400000.

Date_____

Gregory J. Thorpe, Ph.D., Acting Director
Division of Water Quality

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

Addison Investments, LLC

Pursuant to N.C.G.S. § 130A-310.34, Addison Investments, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of a 1.1338 acres and is located at 1306-1310 West Morehead Street. Environmental contamination exists on the Property in soil and groundwater. Addison Investments, LLC has committed itself to limit use of the Property to office, retail and warehouse use. In light of previous investigation activities conducted on the Property by Addison Investments, LLC, the land use restrictions included in the proposed Notice of Brownfields Property referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Addison Investments, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed in the Carolina Room at the Main Branch of the Public Library of Charlotte and Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202, (704) 336-2980; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
Superfund Section
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

**CHAPTER 34 – STRUCTURAL PEST CONTROL
DIVISION**

Notice of Rule-making Proceedings is hereby given by the North Carolina Structural Pest Control Committee 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 Rule Affected by this Rule-making: 02 NCAC 34 .0102, .0313, .0501, .0503, .0505, .0601, .0604-.0605, .0703, .0803, .0805-.0806, .0904 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-65.29

Statement of the Subject Matter:

02 NCAC 34 .0102 - This Rule establishes definitions for terms used in subsequent sections.

02 NCAC 34 .0313 - This Rule establishes requirements for registered technician cards and training of technicians.

02 NCAC 34 .0501 - This Rule establishes requirements for identification of wood-destroying insect infestations and proposals for treatment of such infestations.

02 NCAC 34 .0503 - This Rule establishes requirements for treatment of existing structures for subterranean termites.

02 NCAC 34 .0505 - This Rule establishes requirements for pre-construction subterranean termite treatment of residential structures.

02 NCAC 34 .0601 - This Rule establishes requirements for written agreements for wood-destroying organisms treatments.

02 NCAC 34 .0604 - This Rule establishes requirements for wood-destroying organisms treatment record keeping.

02 NCAC 34 .0605 - This Rule establishes requirements for wood-destroying organisms contractual agreements.

02 NCAC 34 .0703 - This Rule establishes requirements for household pest control record keeping.

02 NCAC 34 .0803 - This Rule establishes requirements for fumigation record keeping.

02 NCAC 34 .0805-.0806 - These Rules establish requirements for fumigation safety equipment and fumigation crew.

02 NCAC 34 .0904 - This Rule establishes certain prohibited acts under G.S. 106-65.22 et seq. and rules thereunder.

Reason for Proposed Action:

02 NCAC 34 .0102 - Proposed change would clarify several definitions.

02 NCAC 34 .0313 - Proposed change would exempt licensed individuals and certified applicators from the requirement of this Rule.

02 NCAC 34 .0501 - Proposed change would require written proposal to property owner/agent before work is performed. Clarify guarantee/warranty requirements.

02 NCAC 34 .0503 - Proposed change would delete impractical requirements for treatment.

02 NCAC 34 .0505 - Proposed change would clarify timing of treatment and modify treatment requirements.

02 NCAC 34 .0601 - Proposed change would establish special requirements for written agreements with builders for pre-construction treatments.

02 NCAC 34 .0604 - Proposed change would add applicator name to the current requirements and, for pre-construction termite treatment, add the volume and concentration of each liquid termiticide application.

02 NCAC 34 .0605 - Proposed change would simplify information required to be in contracts.

02 NCAC 34 .0703 - Proposed change would simplify records requirements.

02 NCAC 34 .0803 - Proposed change would simplify records requirements.

02 NCAC 34 .0805-.0806 - Proposed changes would bring language into compliance with current terminology and pesticide label requirements.

02 NCAC 34 .0904 - Proposed change would permit the use of more than one company name when pest control company has acquired other companies.

Comment Procedures: Written comments may be submitted to Carl Falco, Secretary, North Carolina Structural Pest Control Committee, PO Box 27647, Raleigh, NC 27611.

TITLE 05 – DEPARTMENT OF CORRECTION

CHAPTER 02 – DIVISION OF PRISONS

Notice of Rule-making Proceedings is hereby given by the Department of Correction 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 Rule Affected by this Rule-making: 05 NCAC 02C .0901; 02D .0310, .0501, .0503, .0802; 02E .0101-.0102, .0201-.0210, .0221, .0223, .0226-.0228, .0234, .0701, .1301, .1401-.1404, .1406; 02F .0103, .0105-.0107, .0208, .0401-.0403, .0504, .0506, .1503-.1507, .2001, .2007, .2304, .2501, .2504, .2601-.2602; 02G .0208, .0304, .0306, .0308-.0309, .0311-.0312, .0401; 02H .0101-.0102, .0104-.0105. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 148-4; 148-11

Statement of the Subject Matter: *The Department seeks repeal of all existing rules which should not be codified, either because they do not conform to the current requirements or because the Department is not required to have such rule.*

Reason for Proposed Action: *A recent internal review of policy and procedure included a comprehensive consideration of the existing Code provisions. It was determined that many provisions do not in fact qualify as rules, or they provide no substantive content, or they relate to persons or subject matters as to which the Department is exempt from rule-making pursuant to G.S. 150B-1(d)(6). The Department believes strongly that it will be more efficient, cost effective and will provide more accurate information to interested persons to retain only those rules which are in fact binding and, thus, kept current.*

Comment Procedures: *Comments should be directed to the Rule-making Coordinator Jane R. Garvey, 4201 MSC, Raleigh, NC 27699-4201.*

TITLE 11 – DEPARTMENT OF INSURANCE

CHAPTER 08 – ENGINEERING AND BUILDING CODES

CHAPTER 12 – LIFE AND HEALTH DIVISION

Notice of Rule-making Proceedings is hereby given by the NC Department of Insurance 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 Rule Affected by this Rule-making: 11 NCAC 08 .0900; 11 NCAC 12 .0307, .1000 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 58-2-40; 58-51-1; 58-54-35; 58-55-30; 58-84-45; 143-143-11B

Statement of the Subject Matter:

11 NCAC 08 .0900 – Continuing Ed requirements/Manufactured Housing Board licenses

11 NCAC 12 .0307 – Life, Accident & Health policy for filings

11 NCAC 12 .1000 – Long-term care insurance, disclosure provisions, loss ratios, filing requirements, outline of coverage, advertising, marketing and premiums

Reason for Proposed Action:

11 NCAC 08 .0900 – To carry out statutory authorization

11 NCAC 12 .0307 – Reflects changes in law

11 NCAC 12 .1000 – National Association of Insurance Commissioners Model Regulation changes in long-term care insurance

Comment Procedures: *Written comments may be sent to Ellen K. Sprenkel, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.*

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 07 - OSHA

Notice of Rule-making Proceedings is hereby given by NC 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 Rule Affected by this Rule-making: 13 NCAC 07F .0201. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 95-131; 95-133

Statement of the Subject Matter: *The Division of Occupational Safety and Health proposes to amend the scope, definition, and shear connector/fall protection provisions of the Federal Steel Erection Final Rule (CFR 1926.750-761)*

Reason for Proposed Action: *Effective January 18, 2002, the North Carolina Department of Labor Division of Occupational Safety and Health has proposed to adopt verbatim the new federal steel erection standard. The Department proposes to make two amendments to the verbatim adoption. First, the Department will narrow the scope of the definition of steel erection in order to enhance safety for North Carolina steel workers. Second, the Department proposes to permit shop installed shear connectors. In conjunction with this alteration, enhanced fall protection standards will be established in order to ensure that the North Carolina rule is at least as effective as the federal rule.*

Comment Procedures: *All interested and potentially affected persons or parties are encouraged to make known their views regarding the proposed rulemaking proceedings. Written comments may be submitted to Barbara A. Jackson at North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601. Fax transmittals may be transmitted via (919) 733-4235.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by Department of Environment and Natural Resources – Environmental Management Commission 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 Rule Affected by this Rule-making: 15A NCAC 02B .0100, .0200, .0300. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.1; 143-215.3(a)(1)

Statement of the Subject Matter: *Triennial Review of Surface Water Quality Standards and Classifications for 2000-2003.*

Reason for Proposed Action: *Every three years the State is required by the Federal Clean Water Act to review its surface water quality standards and classifications to determine if changes are needed and, if necessary, to make those changes. EPA has asked that the Division review bacteria, mercury, arsenic, and ammonia during this Triennial Review. Staff and the public have requested reviews of total residual chlorine, methyl tert-butyl ether, cyanide and methylene blue active substances. The Division of Water Quality is soliciting comments and information related to these parameters and any other parameters that may require updating and adding to the rules. More information on each of the parameters listed is available at <http://h2o.enr.state.nc.us/csu/>. Any information or requests should pertain specifically to standards and classifications. Management strategies found in the affected rules are not part of this review.*

Comment Procedures: *The purpose of this announcement is to encourage those interested in these proceedings to provide comments. You may provide comments, supporting data and other information either over the internet to dianne.reid@ncmail.net or in the writing to Dianne Reid, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone 919-733-*

5083 extension 568 or to Jason Wynn at the same address, email jason.wynn@ncmail.net, phone 919-733-5083 extension 351.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 36 – BOARD OF NURSING

Notice of Rule-making Proceedings *is hereby given by the NC Board of Nursing 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 Rule Affected by this Rule-making: 21 NCAC 36 .0227 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90-6; 90-18(c)(13); 90-18(c)(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.36; 90-171.37; 90-171.42; 90-171.83

Statement of the Subject Matter: *Describes the nurse practitioner qualifications for approval to practice and the practice requirements.*

Reason for Proposed Action: *To provide an equitable distribution of fees based on costs of nurse practitioner services by the Board of Nursing and the Medical Board.*

Comment Procedures: *Comments regarding this action should be directed to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129.*

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 DHHS – Commission for the Blind intends to adopt the rules cited as 10 NCAC 19A .0601-.0602, .0701, amend the rules cited as 10 NCAC 19B .0101-.0106, .0108, .0201; 19C .0101-.0102, .0105-.0106, .0206-.0210, .0309, .0311, .0408-.0410, .0504, .0506, .0509, .0511-.0512, .0514-.0515, .0601-.0602, .0604-.0605, .0607-.0609, .0701-.0704; 19E .0101, .0105-.0106, .0110, .0112, .0202-.0203, .0401, .0405, .0409-.0412, .0501, .0503, .0601-.0604, .0701, .0704, .0801, .0805, .0902; 19F .0104, .0107, .0401-.0402, .0601-.0603; 19G .0101-.0110, .0112-.0113, .0115, .0201-.0202, .0402, .0501-.0503, .0602-.0604, .0606-.0609, .0801-.0814, .0816-.0818, .0820-.0826; 19H .0101-.0105, .0201-.0204, .0206, .0402-.0403 and repeal the rules cited as 10 NCAC 19B .0202-.0203; 19C .0211, .0310; 19D .0101-.0103, .0201-.0202; 19E .0403, .0605, .0702, .0803-.0804; 19F .0501, .0504, .0506-.0507; 19G .0111, .0114, .0203-.0210, .0401, .0403, .0601, .0605, .0901-.0902; 19H .0207, .0210-.0211, .0301, .0306-.0308, .0311, .0401. Notice of Rule-making Proceedings was published in the Register on July 16, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 8, 2001

Time: 9:00 a.m. – 10:00 a.m.

Location: Division of Services for the Blind, Main Conference Room, 309 Ashe Ave. (Fisher Bldg.), Raleigh, NC

Reason for Proposed Action: Budget shortfall and changes in regulations implementing the Rehabilitation Act. A 1997 special provision required the Division to undergo a performance audit conducted by the Office of the Auditor. One recommendation of that audit was that the Division update its statutes and rules to reflect current program functions and delete dated content. Having completed this process with the statutes last year, many of the rule changes here reflect changes made resulting from that recommendation.

Comment Procedures: Any person may submit comments to the Commission either orally or in writing at the public hearing. All other written comments must be received by December 8, 2001. Written comments may be mailed to Ms. Debbie Jackson, Assistant Director, Division of Services for the Blind, 309 Ashe Ave. (Fisher Bldg.), 2601 Mail Service Center, Raleigh, NC 27699-2601.

Fiscal Impact

☒ **State** 10 NCAC 19G .0102, .0105, .0502, .0802-.0806, .0808-.0809

☐ **Local**

☐ **Substantive** (>\$5,000,000)

☒ **None** 10 NCAC 19A .0601-.0602, .0701; 19B .0101-.0106, .0108, .0201-.0203; 19C .0101-.0102, .0105-.0106, .0206-.0210-.0211, .0309-.0311, .0408-.0410, .0504, .0506, .0509, .0511-.0512, .0514-.0515, .0601-.0602, .0604-.0605, .0607-.0609, .0701-.0704; 19D .0101-.0103, .0201-.0202; 19E .0101, .0105-.0106, .0110, .0112, .0202-.0203, .0401, .0403, .0405, .0409-.0412, .0501, .0503, .0601-.0605, .0701-.0702, .0704, .0801, .0803-.0805, .0902; 19F .0104, .0107, .0401-.0402, .0501, .0504, .0506-.0507, .0601-.0603; 19G .0101, .0103-.0104, .0106-.0115, .0201-.0210, .0401-.0403, .0501, .0503, .0601-.0605, .0606-.0609, .0801, .0807, .0810, .0814, .0816-.0818, .0820-.0826; .0901-.0902; 19H .0101-.0105, .0201-.0204, .0206-.0207, .0210-.0211, .0301, .0306-.0308, .0311, .0401-.0403

CHAPTER 19 – SERVICES FOR THE BLIND

SUBCHAPTER 19A – ORGANIZATION

SECTION .0600 – RIGHTS

10 NCAC 19A .0601 NON-DISCRIMINATION

No individual seeking or receiving services through any program administered by the Division of Services for the Blind shall be discriminated against on the basis of age, race, national origin, gender, religion, or disabling condition.

Authority G.S. 143B-157.

10 NCAC 19A .0602 CONFIDENTIALITY

All information obtained by the Division shall remain confidential and can be used or released only under circumstances stipulated by applicable state statutes and federal laws.

Authority G.S. 111-28.

SECTION .0700 - DEFINITIONS

10 NCAC 19A .0701 DEFINITIONS

The following definitions apply throughout this Chapter. Where there are definitions that apply to only one program, they will be identified in the appropriate Subchapter.

- (1) "Blind" means totally blind; central visual acuity that does not exceed 20/200 in the better eye with best correction; or a visual field that subtends an angle no greater than 20 degrees at its widest diameter.
- (2) "Visually Impaired" means vision with correction that is so limited as to prevent the

performance of ordinary activity for which eyesight is essential.

- (3) "Division" means the Division of Services for the Blind.
- (4) "Consumer" means an individual who is seeking, is receiving, or has received services from at least one of the Division programs.
- (5) "Agency" means the Division of Services for the Blind.

Authority G.S. 111-11; 143B-157; 143B-158; 143B-159; 143B-160.

SUBCHAPTER 19B – PROCEDURAL RULES

SECTION .0100 – RULE-MAKING PROCEDURES

10 NCAC 19B .0101 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission for the Blind shall make his request in a petition addressed to:

Director
Division of Services for the Blind
309 Ashe Avenue
2601 Mail Service Center
Raleigh, North Carolina 27699-2601

(b) The petition shall contain the following information:

- (1) a draft of the proposed rule or a summary of its contents;
- (2) the statutory authority for the agency to promulgate the rule;
- (3) the reasons for the proposal;
- (4) its effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices, including cost factors;
- (7) the names and addresses, if known, of those most likely to be affected by the proposed rule; and
- (8) the name and address of the petitioner.

(c) The Commission for the Blind shall determine whether the public interest will be served by granting the petition. The Commission shall consider all of the contents of the submitted petition and any additional information it deems relevant.

(d) Within 120 days of submission of the petition, the Commission shall render a decision to deny the petition or to initiate rule-making proceedings, in accordance with G.S. 150B-20. If the decision is to approve the petition, the Commission shall initiate a rule-making proceeding by issuing notice, as provided in G.S. 150B-21.2.

Authority G.S. 143B-157; 150B-20; 150B-21.2.

10 NCAC 19B .0102 NOTICE

(a) Any person or agency desiring to be on the list for rule-making notices may file a written request, furnishing the name and mailing address, with the Commission for the Blind at the address shown in 10 NCAC 19B .0101(a).

The request must state the subject areas for which notice is requested. The Commission shall review the mailing list periodically and may write to any person on the list to inquire whether he wishes to remain on the list. If no response is received, that person may be removed from the list.

(b) Any person desiring information in addition to that provided in a particular notice of rule-making proceeding or notice of text may contact the Commission for the Blind at the address shown in 10 NCAC 19B .0101(a).

Authority G.S. 143B-157; 150B-21.2; 150B-21.6.

10 NCAC 19B .0103 HEARING OFFICER

The Commission for the Blind, or one or more members of the Commission, or one or more hearing officers designated and authorized by the Commission, shall be hearing officers in a rule making hearing.

Authority G.S. 143B-157.

10 NCAC 19B .0104 HEARINGS

(a) Written comments must clearly state the rule to which the comments are addressed and the name and address of the submitting person. Written comments must be sent to the Commission for the Blind at the address shown in 10 NCAC 19B .0101(a).

(b) The hearing officer shall promptly acknowledge receipt of all written submissions.

(c) The presiding officer at the hearing shall have complete control over the proceedings, including:

- (1) the responsibility of having a record made in accordance with G.S. 150B-21.2;
- (2) extension of any time allotments;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearings.

The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present information, views, and arguments.

Authority G.S. 143B-157; 150B-21.2.

10 NCAC 19B .0105 DECISION

(a) Any person who desires a written statement of the Commission's reasons for the decision to adopt or reject a rule

may, within 30 days after the decision, submit a request to the Commission for the Blind at the address shown in 10 NCAC 19B .0101(a).

(b) The Commission for the Blind shall issue the statement of reasons within 30 days after receipt of the request.

Authority G.S. 143B-157; 150B-21.2.

10 NCAC 19B .0106 RECORD OF PROCEEDINGS

A record of all rule-making proceedings, including any petitions received by the Division of Services for the Blind APA Coordinator's office, shall be maintained by the APA Coordinator's office and shall be available for public inspection during regular office hours. This record shall be kept in accordance with G.S. 150B-21.2.

Authority G.S. 143B-157; 150B-21.2.

10 NCAC 19B .0108 DECLARATORY RULINGS

(a) The director of the Division shall have the power to make declaratory rulings. All requests for declaratory rulings shall be made by written petition and shall be submitted to the Division at the address shown in 10 NCAC 19B .0101(a).

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner;
- (2) the rule to which the petition relates;
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or its potential application to him; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the director believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. The director shall then notify the petitioner and the hearing office in writing of his decision, stating the reasons for the denial. The director may refuse to issue a declaratory ruling:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) if there has been a similar controlling factual determination in a contested case, or if the question being raised was specifically considered upon adoption of the rule being questioned as evidenced by the rule-making record; or
- (3) if the circumstances show that a contested case hearing would be appropriate.

(d) Where a declaratory ruling is appropriate, the director of the Division shall issue the ruling within 60 days of the receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate by the director in that particular case.

(f) The director of the Division may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(g) A record of all declaratory ruling proceedings shall be maintained by the hearing office and shall be available for public inspection during regular business hours. This record shall include:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling, if applicable;
- (3) all written memoranda and information submitted;
- (4) any transcript or recording of an oral hearing; and
- (5) a statement of the ruling.

Authority G.S. 143B-157; 150B-4.

SECTION .0200 – CONTESTED CASES

10 NCAC 19B .0201 HEARING OFFICERS

All contested cases arising under the rules contained in Subchapters 19E, 19F and 19H of this Chapter shall be heard by an Administrative Law Judge from the Office of Administrative Hearings and conducted according to G.S. 150B. Contested cases arising under the Business Enterprises Program or the Vocational Rehabilitation Program shall be heard in accordance with the rules of Subchapter 19C or 19G as appropriate.

Authority G.S. 111-16; 143B-157; 150B-23; 34 C.F.R. 361; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

10 NCAC 19B .0202 DIRECTOR OR DESIGNATED AGENT

Authority G.S. 143B-157; 150B-23; 34 C.F.R. 361.48; 34 C.F.R. 395; 20 U.S.C. Sec. 107A - 107F.

10 NCAC 19B .0203 COMMISSION FOR THE BLIND

Authority G.S. 111-13; 143B-157; 150B-23.

SUBCHAPTER 19C – BUSINESS ENTERPRISES PROGRAM

SECTION .0100 – BUSINESS ENTERPRISES PROGRAM

10 NCAC 19C .0101 PURPOSE AND DEFINITIONS

(a) The Business Enterprises Program is a rehabilitative program which helps provide employment opportunities and economic security to blind individuals. The Rules in this Subchapter are promulgated pursuant to 34 CFR 395 for the purpose of governing the operation and administration of the Business Enterprises Program in this state.

(b) As used in this Subchapter:

- (1) "Blind licensee" means a blind person licensed by the Division to operate a Business Enterprises facility on federal or other property.
- (2) "Blind operator" means a blind licensee who is operating a Business Enterprises facility on federal or other property.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

10 NCAC 19C .0102 RESPONSIBILITY

- (a) The Division shall not provide for services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.
- (b) The Division shall assure that each operator is provided access to all program and financial data of the Division relevant to the operation of the state vending facility program, including quarterly and annual financial reports, to the extent that such disclosure does not violate applicable federal and state laws pertaining to the disclosure of confidential information; that insofar as practicable such data shall be made available on tape, disk, large print, Braille; and that, at the request of an operator, the Division will arrange a convenient time to assist in the interpretation of such data.
- (c) The Division shall furnish to each operator copies of documents relevant to the operation of the Business Enterprises facility, including the rules and regulations, a written description of the arrangements for providing services, and the agreement and permit covering the operation of the Business Enterprises facility, and shall explain these documents to each operator in a timely manner.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

10 NCAC 19C .0105 STAND EQUIPMENT: MERCHANDISE: AND SUPPLIES

- (a) The Division shall furnish each Business Enterprises facility with the equipment, initial stock, and initial supplies that are determined by the Division necessary to operate the unit.
- (b) The right, title to, and interest in Business Enterprises equipment, merchandise, petty cash, and all other assets used in the program is vested in the Division only and may be used and disposed of by the Division for program purposes only, and in accordance with state and federal law.
- (c) The Division shall maintain (or cause to be maintained) all Business Enterprises equipment in good repair and in attractive condition, and shall replace (or cause to be replaced) worn-out or obsolete equipment as required to assure the continued successful operation of the facility, subject to availability of funds. The licensed operator of a facility shall take the initiative in identifying needed equipment repairs and replacement.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107.

10 NCAC 19C .0106 TRAINING PROGRAM

The Division shall provide for the training of blind individuals according to the requirements of 34 CFR 395.11 and for the

training and retraining of blind operators with assistance from the state committee of blind vendors.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

SECTION .0200 - LICENSING AND PLACEMENT

10 NCAC 19C .0206 ISSUANCE OF LICENSES

The Division, through the Business Enterprises Program, shall license blind persons who meet eligibility requirements for the Business Enterprises Program. This license shall be issued for an indefinite period. The licensee shall signify his acceptance of the licensing agreement by affixing his signature or mark thereon.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10 NCAC 19C .0207 ELIGIBILITY FOR LICENSING

(a) The Division shall interview prospective licensees as referred by the rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) To be licensed:

- (1) The consumer must meet the definition of legally blind as outlined in 34 CFR 395.1;
- (2) The consumer must be at least 18 years of age;
- (3) The consumer must be physically able to perform all the duties as further detailed in this Chapter;
- (4) All consumers must be evaluated for and satisfactorily demonstrate proficiency of skill in basic mobility, activities of daily living, and mathematics, and possess other basic job-related skills and competencies;
- (5) The consumer must be familiar with the rules and regulations and other operational procedures of the North Carolina Business Enterprises Program. The consumer must successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility; and
- (6) The consumer must be a citizen of the United States.

Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

10 NCAC 19C .0208 SUSPEND: TERMINATE LICENSE: REMOVAL FROM BUSINESS ENTERPRISES FACILITY

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity for a full evidentiary hearing, when it finds that his facility is not being operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or permit

between the Division and the sponsor of the building or site upon which the Business Enterprises facility is located; or with the terms of the contract between the operator and the Division relating to the particular assignment.

(b) An operator may be warned prior to suspension or termination of a license, particularly in situations where lack of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit or irreparable damage to the Business Enterprises Program.

(c) Licenses to operators may also be suspended or terminated for any of the following reasons:

- (1) Vision improves so that the operator is no longer eligible for licensing;
- (2) Extended illness occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;
- (3) Withdrawal of the operator from the program upon his written notification to the Division;
- (4) Gross misconduct or conduct so reprehensible as to bring discredit to the program;
- (5) Conviction of a felony (Class A through E);
- (6) Falsified information pertaining to eligibility requirements;
- (7) Willful acts that would endanger the lives and property of others;
- (8) Possession of firearms or lethal weapons on the job;
- (9) Reporting to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the job.

(d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the seriousness of the situation, but shall not exceed a maximum of 60 days.

(e) If the Division finds that the public health, safety, or welfare requires emergency action, summary suspension of a license may be ordered.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10 NCAC 19C .0209 FILLING OF VACANCIES

(a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.

(b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.

(c) Transfers and promotions shall be based on the following procedures:

- (1) The Division shall send a notice of available facilities to all operators and licensees on the last working day of the month. The notice shall provide a short description of the vacancy and who to contact for more information.

- (2) All applications shall be post-marked by the 10th of the following month and mailed to the office of the Chief of Business Enterprises .
- (3) Interviews shall be conducted on the second Friday of the month which follows the application deadline.
- (4) At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.
- (5) After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7)) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.
- (6) Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- (7) Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30-day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15-day waiting period shall not apply.
- (8) If an applicant is awarded a facility and does not accept the position, the applicant shall not be able to apply for another position for one year. An applicant may withdraw his application up to two days prior to his interview and avoid the penalty. Applicants who apply for and are awarded more than one location shall not be penalized as long as they accept one award.
- (9) If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months

- that his agreement was in effect, the applicant shall be required to repeat the necessary on-the-job-training. The Interview Committee may also recommend refresher course training as necessary to assure qualified management.
- (10) Licensees/operators not selected have the right to file an administrative appeal as provided for in Subchapter 19C Section .0400. The 15-day limit to file an appeal shall begin from the date the licensee/operator is informed by telephone of the results of the award.
- (11) An applicant must have operated a Business Enterprises location for six months prior to the cut-off date for calculating financial performance according to standards to be considered an operator, otherwise, the operator shall be in licensee status. The cut-off date is defined as the 12-month period ending with the last day of the same month in which the vacancy is advertised.
- (12) If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving shall be used to calculate points in the Financial Performance Section.
- (13) Financial analyses of facilities shall be done every two years. The analysis shall be on the facility not the operator; however, an operator may request a new analysis after at least four months in the new facility, or the Rehabilitation Supervisor may order a new analysis. If an applicant's financial analysis is more than two years old but less than two and one half years old and the applicant's performance is neither above 100% nor below 85% on either measure, the financial analysis shall be considered current.
- (14) An applicant who does not hold the required level of license for the vacancy may be awarded the facility contingent upon successfully completing the required training. Applicants who hold the required level of license but have not operated a facility at that level for at least two years shall be required to complete refresher on-the-job training if the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect.
- (15) An operator may not sit on the Interview Committee for a location for which he/she is applying or if a member of his/her immediate family has applied for a vacant facility. For this purpose immediate family shall be defined as spouse, parent, child, brother and sister. Also included are the step, half and in-law relationships. If the Vice-Chairman and the Chairman of the Elected Committee of Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this rule, those three must pick another Elected Committee of Vendors member to sit on the Interview Committee.
- (16) The schedule for awarding vacancies may be changed to accommodate holidays, too many applications to process in one day, or at any time necessary due to program conflicts as determined by the chief of Business Enterprises and the Vice-Chairman of the Elected Committee of Vendors. All applicants shall be notified in writing of the date, time and place of their interview.
- (17) Applicants shall be reimbursed for their expenses to come to the interview at the state's established per diem rates. The Business Enterprises Program shall only reimburse for two interviews per year. After that, applicants shall bear their own expenses for coming to interviews. Licensees who have active rehabilitation cases shall be reimbursed through the rehabilitation program.
- (d) The Division shall use the following criteria in determining points:
- (1) Sanitation:
- (A) 10 point maximum,
- (B) One point for each sanitation grade point above ninety,
- (C) Sanitation grade to be arrived at by averaging all sanitation scores received during last two years,
- (D) Five points shall be subtracted for any adjusted B grade in the last two years,
- (E) The Business Enterprises Counselor shall determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. Operator shall inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. It is the operator's responsibility to make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that he or she can calculate an accurate grade.
- (2) Seniority:
- (A) Five point maximum,
- (B) Seniority points shall be awarded as follows:
- Years in Business Enterprises Program - Points
- 0 to 4.99 - 0 points
- 5 to 9.99 - 1 point
- 10 to 14.99 - 2 points
- 15 to 19.99 - 3 points
- 20 to 24.99 - 4 points
- 25 and over - 5 points

- (C) Seniority is defined as the amount of time in full month increments an individual has been working in the Business Enterprises Program as a licensee or operator. A licensee/operator must work 51% of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program shall be the end of the month when the vacancy is advertised.
- (3) Performance According to Financial Analysis/Operating Standards:
- (A) 50 Points Maximum,
- (B) Applicants shall receive 20 points for meeting their sales standard,
- (C) Applicants shall receive 20 points for meeting their gross profit percentage standard,
- (D) Applicants shall receive five points for meeting or exceeding 92.5% of their sales optimum
- (E) Applicants shall receive five points for meeting or exceeding 92.5% of their gross profit percentage optimum,
- (F) Points according to Financial Analysis/Operating Standards in this Section shall be calculated using the established optimum standards as determined by the current financial analysis for both sales and gross profit percentages:
- (i) Use sales and gross profit figures for the twelve-month period ending with the last day of the same month in which the vacancy is advertised. This is the cut-off date for financial performance calculations.
- (ii) Take the facility's average monthly sales for the past 12 months, and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points; if it is 92.5% or more, the applicant gets an additional five points.
- (iii) Take the facility's gross profit percentage for the last twelve months and calculate what percentage of the established optimum it is. If it is over 85%, the applicant gets 20 points. If it is 92.5% or more, the applicant gets an additional five points.
Example - The Level II facility in the XYZ Building has a sales standard of three thousand dollars (\$3,000) per month with an optimum of three thousand five hundred and twenty-nine dollars (\$3,529) per month. Its gross profit percentage standard is 40% with an optimum of 47%. The actual performance for the past twelve months of the facility is three thousand five hundred dollars (\$3,500) per month in sales and a 42.3% gross profit percentage. Three thousand five hundred dollars (\$3,500) in sales is 99.1% of the optimum sales and a 42.3% gross profit percentage is 90% of the established optimum gross profit. The applicant would receive 20 points for meeting or exceeding his sales standard, five points for exceeding 92.5% of his established sales optimum, and 20 points for meeting his gross profit percentage standard. Out of a possible 50 points for financial performance, the applicant would get 45 points.
- (4) Customer and Building Management Relations:
- (A) Five points shall be deducted for each substantiated customer complaint in the past two years, up to a maximum of 10 points.
- (B) If the applicant has more than three substantiated customer complaints, he shall not be considered for the award. A substantiated complaint is a written complaint which results in a letter to the operator from the Division with a copy to the operator's personnel file. The operator has the right to appeal the letter at the time the letter is placed in the operator's personnel file. No site management complaint can be used against an operator that is more than three years old.
- (5) Oral Exam/Interview:
- (A) 30 points maximum.
- (B) Interview shall be face to face (no conference calls).
- (C) All applicants shall be interviewed.
- (D) The Interview Committee shall consist of:

- (i) The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief;
 - (ii) The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs; and
 - (iii) The Vice-Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.
- (E) The Oral Exam part shall consist of 10 questions drawn either from a pool of standard questions or developed by the Interview Committee prior to the interview. The oral exam questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam and assign either zero, one, one and a half or two points to the applicant's answer. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.
- (F) The interview part shall consist of a variety of questions in a give and take format. Each member of the Interview Committee shall evaluate the applicant's response to the interview questions and shall award up to ten points at his/her discretion. The interview shall include the following elements: questions related to business philosophy to promote general discussion to enable the interview panel to properly evaluate the applicant's expertise, maturity, experience and ability; a discussion of any related work experience outside the Business Enterprises Program; at least two business math questions. Since points are awarded for seniority, time in the Business Enterprises Program shall not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants may bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.
- (G) Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.
- (6) Licensees and trainees:
 - (A) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/Operating Standards category. If the licensee scores 90% or above on the National Restaurant Association's ServSafe exam, he/she shall be awarded three points in the sanitation category.
 - (B) A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available. If no previous sanitation records are available, the applicant has the option of taking the National Restaurant Association's ServeSafe exam. If the licensee scores 90% or above on the ServSafe exam, he/she will be given three points in the Sanitation Section.
 - (C) Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed.

- (D) An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.

Authority G.S. 111-27; 143B-157; 20 U.S.C. Sec. 107.

**10 NCAC 19C .0210 CONTRACTUAL AGREEMENT
BETWEEN DIVISION AND OPERATOR**

- (a) Each licensee who accepts a Business Enterprises assignment must enter into a contractual operating agreement with the Division upon initial placement and upon subsequent reassignment.
- (b) A copy of the permit or contract with the sponsor of the site upon which the Business Enterprises facility is located shall become a part of the agreement, and the operator shall conduct the business in accordance with the provisions of that permit or contract.
- (c) The agreement shall include provisions which specify:
- (1) the responsibilities of the licensed operator as contained in the Rules in this Subchapter;
 - (2) the responsibilities of the Division as contained in the Rules in this Subchapter;
 - (3) that the licensed operator will receive the net proceeds [in accordance with 45 CFR 1369.1(k)] from the Business Enterprises facility he/she operates in accordance with Section .0700 of this Subchapter;
 - (4) the right of the operator to terminate the agreement at any time;
 - (5) that the agreement will be terminated upon termination of the permit or contract with the sponsor of the site upon which the Business Enterprises facility is located;
 - (6) that the agreement will be terminated upon failure of the licensed operator to operate the Business Enterprises facility in accordance with the agreement or applicable federal, state, or local laws or regulations;
 - (7) that the agreement will be terminated upon the closing of a facility which the Division has determined offers no possibility of being profitable;

Authority G.S. 111-27; 34 C.F.R. 395.1; 34 C.F.R. 395.3.

10 NCAC 19C .0211 CIVIL RIGHTS

Authority G.S. 111-27; 34 C.F.R. 395.3; 20 U.S.C. Sec. 107.

SECTION .0300 - SPECIAL PROVISIONS

10 NCAC 19C .0309 TEMPORARY CLOSING

- (a) A facility may be temporarily closed due to the closing of a public building, industry, or institution caused by an emergency condition such as snow days, fire, or death of a company official.
- (b) If a facility is closed for an extended period of time through no fault of the operator, that operator may be eligible for financial assistance through the Business Enterprises Program's Emergency Relief Fund. This fund is supported through Federal

Unassigned Vending based on a majority vote of the operators in the Program. The following guidelines apply:

- (1) Facility must be closed an entire calendar month due to no fault of the operator.
- (2) Facility must have a target date for reopening.
- (3) The closing is not covered by insurance or all coverage must be exhausted before the Emergency Fund is used.
- (4) The Elected Committee of Vendors shall establish the monthly rate to be paid to operators who qualify for use of the Fund. The monthly rate set by the Committee shall appear in the minutes from the Committee meeting when the rate was set and the rate shall be on file in the Office of the Chief of Business Enterprises Program, 309 Ashe Avenue, Raleigh, NC, 27606.
- (5) The operator may be subsidized for an initial period up to six months after which the situation will be reassessed by Committee members as appointed by the Chair and by the Chief of the Business Enterprises Program. They shall determine if an extension should be allowed and if so, for how long.
- (6) If a feasible satellite facility is available, the operator must apply for that location. Failure to apply for any satellite facility for which the operator is qualified shall result in immediate forfeiture of the Emergency Relief Funds for the period of time the satellite facility is available. If the operator applies for the satellite facility and is not awarded the facility, no penalty shall apply. If applying for the satellite facility would pose an undue financial hardship on the operator, the Division shall waive this requirement.

Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107.

10 NCAC 19C .0310 RETIREMENT

*Authority G.S. 111-27; 135-61; 34 C.F.R. 395;
20 U.S.C. Sec. 107.*

10 NCAC 19C .0311 MOVING EXPENSES

After consultation with the Elected Committee of Vendors, the Division may participate in the funding of moving expenses for operators who are forced to relocate due to the closing of a Business Enterprises facility. The operator must have applied for and been awarded a new Business Enterprises facility to receive compensation for moving expenses. The operator is not eligible for compensation if the closing of his previous Business Enterprises facility was a direct result of his performance.

Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107.

**SECTION .0400 - ADMINISTRATIVE APPEAL
PROCEDURES****10 NCAC 19C .0408 PURPOSE**

The purpose of the administrative appeal procedure is to provide a means of appeal to each operator/licensee who is dissatisfied with an action of the Division arising from the operation or administration of the Business Enterprises Program.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4;
34 C.F.R. 395.13.*

10 NCAC 19C .0409 POLICY

(a) Every operator/licensee has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This policy shall be covered fully during orientation procedures for new operators/licenseses.

(b) When presenting an appeal, an operator/licensee may be accompanied by a person or persons of his choice.

(c) The filing of a complaint with the Division shall indicate consent by the blind operator/licensee for the release of such information as is necessary for the conduct of the administrative appeal.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4;
34 C.F.R. 395.13.*

10 NCAC 19C .0410 PROCEDURE

(a) The operator/licensee shall discuss the problem with the Division staff person taking the action with which the operator is dissatisfied and request specific action in writing to resolve the grievance. This discussion shall be held within 15 working days of the occurrence of the action challenged by the operator. The operator/licensee shall receive a response within five working days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval.

(b) If the complaint is not resolved and the operator/licensee is not satisfied with the outcome of Paragraph (a) of this Rule, he shall have 15 working days to ask for a review by the operator relations committee in writing. Within five working days after asking for a review, the operator/licensee shall be notified of the date of the hearing, which shall be held within 25 working days after the operator's/licensee's request for a hearing. The committee shall render its decision within 20 working days after the hearing.

(c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the operator/licensee or the Division staff person responsible for the initial action, the matter may be referred by the operator/licensee or the Division staff person to the director of the Division. Any request for review shall be submitted within 15 working days after the operator relations committee has presented its recommendation. The party requesting the referral shall provide a written summary of the specific facts of the complaint and request for specific action to resolve the grievance, copies of which shall be provided at the same time to all other parties concerned. The director shall make the decision for the Division within 15 working days, and his decision shall be announced immediately to all parties concerned.

(d) If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (c) of this Rule, then the operator/licensee may file a complaint with the Division requesting a full evidentiary hearing:

- (1) If a blind operator/licensee requests a full evidentiary hearing, such request shall be made within 15 working days after the director's adverse direction rendered through the procedures in this Rule.
- (2) A blind operator/licensee shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally or by certified mail, return receipt requested, transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with Article 3 of Chapter 150B of the North Carolina General Statutes, to the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.
- (3) A blind operator/licensee shall be entitled to legal counsel or other representation in a full evidentiary hearing; reasonable costs of such legal counsel may be shared or funded by the Division, if the operator/licensee is unable to obtain such services at his own expense.
- (4) Reader services or other communication services shall be arranged for the blind operator/licensee should he so request. Transportation costs and per diem shall be provided also to the blind operator/licensee during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the operator/licensee.
- (5) The hearing shall be held at a time and place convenient and accessible to the blind operator/licensee requesting a full evidentiary hearing. The blind operator/licensee shall be entitled to have the hearing held in the county of his residence unless he waives this right. A hearing held during regular Division working hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 working days of its receipt of such a request, unless the Division and the blind operator/licensee mutually, in writing, agree to some other period of time. The Division shall notify the blind operator/licensee in writing of the time and place fixed for the hearing and of his right to be represented by legal or other counsel. The Division shall provide the blind operator/licensee a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.
- (6) The presiding officer at the hearing, to be appointed by the Secretary of the Department

of Health and Human Services, shall be an impartial and qualified official who has no involvement either with the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard Business Enterprises Program.

- (7) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing.
- (8) Both the blind operator/licensee and the Division shall be entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.
- (9) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.
- (10) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay all transcript costs and shall provide the blind operator/licensee with at least one copy of the transcript.
- (11) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.
- (12) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working days after the receipt of the official transcript. The decision shall be mailed promptly to the blind operator/licensee and the division.

(e) If the dispute(s) is not resolved to the satisfaction of a blind operator/licensee after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U.S. Department of Education for the convening of an arbitration panel.

(f) The results of the arbitration shall be considered the final agency action and the operator/licensee shall have exhausted his administrative remedies.

Authority G.S. 111-27; 143B-157; 20 U.S.C. Sec. 107.

SECTION .0500 - ELECTION: ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE STAND PROGRAM

10 NCAC 19C .0504 ELECTION

The Division shall provide for biennial election among the operators in the program to elect a state committee of blind operators called the Elected Committee of Vendors. This Elected Committee of Vendors shall be representative of all operators on the basis of factors such as geography and Business Enterprises facility type, and shall be proportionally representative of operators on federal property.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0506 NOMINATIONS AND ELECTIONS

The Division shall forward to each operator in a particular region a list containing the names of the operators in that region, from which each operator will nominate the person(s) of his choice. Those lists shall be returned to the Division and tallied, after which a ballot containing nominees shall be forwarded to the operators. After indicating his choice, the operator shall return the ballot to the Division for tallying.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0509 ORGANIZATION AND OPERATION

(a) The officers of the Elected Committee of Vendors shall be a chairman and a vice-chairman. They shall be elected by the Elected Committee of Vendors from among Elected Committee of Vendors members.

(b) Vacancies in any of the elective offices shall be filled by the Elected Committee of Vendors members for the unexpired term.

(c) The chairman shall preside over all the meetings of the Elected Committee of Vendors. He shall appoint subcommittees at such time as the business of the Elected Committee of Vendors may warrant, except for the Operator Relations Committee which shall be elected by the Elected Committee of Vendors from its members. The chairman shall appoint temporary replacements to this subcommittee as needed to fill any vacancy until a new member may be elected. He shall also appoint a temporary replacement for any Operator Relations Committee member who has filed an appeal and whose appeal is pending before the Operator Relations Committee. The chairman shall serve as non-voting ex officio member of all subcommittees.

(d) In the absence or disability of the chairman, the vice-chairman shall assume all the duties of the chairman.

(e) The meetings shall be conducted according to Roberts Rules of Order.

(f) A majority shall constitute a quorum.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0511 FUNCTIONS

- (a) The Elected Committee of Vendors shall actively participate with the Division in major administrative decisions and policy and program development decision affecting the overall administration of the Business Enterprises Program.
- (b) The Elected Committee of Vendors shall receive and transmit to the Division appeals at the request of the operators.
- (c) The Elected Committee of Vendors shall actively participate with the Division in the development and administration of a system for the transfer and promotion of operators.
- (d) The Elected Committee of Vendors shall actively participate with the Division in the development of training and retraining programs for operators.
- (e) The Elected Committee of Vendors shall sponsor, with the assistance of the Division, meetings and instructional conferences for the operators in the Business Enterprises Program.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0512 SUBCOMMITTEES

Between regular meetings of the Elected Committee of Vendors, it shall carry on its functions through the following subcommittees:

- (1) operator relations committee, whose function is to receive and transmit appeals at the request of operators;
- (2) committee on transfer and promotion of operators, whose function is to actively participate with the Division in the development and administration of a system for the transfer and promotion of operators;
- (3) committee on training and retraining, whose functions are to actively participate with the Division in the development of training and retraining programs and to assist the Division in sponsoring meetings and instructional conferences for the operators.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0514 COMMITTEE INITIATIVE

The committee may initiate matters for consideration and its views and positions will be considered by the Division.

Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

10 NCAC 19C .0515 DIVISION RESPONSIBILITY AND RELATIONSHIP WITH COMMITTEE

The Division has the ultimate responsibility for the administration of the Business Enterprises Program. It shall consider all recommendations forthcoming from the committee, which will act in an advisory capacity to the Division. If the Division does not adopt the views and positions of the committee on a particular issue, it shall give written notice to the committee of the decision reached, the actions taken, and the reasons therefor.

Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10 NCAC 19C .0601 GENERAL RESPONSIBILITIES

(a) The operator must:

- (1) perform faithfully and to the best of his ability the necessary duties in connection with the operation of the Business Enterprises facility in accordance with the Rules of the Commission and standards issued pursuant thereto and the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the building or property on which the facility is located;
- (2) operate the facility in accordance with all applicable health laws and Rules;
- (3) assume such responsibilities as purchasing needed supplies and merchandise, pricing, merchandising the facility, and control of inventory;
- (4) devote his full managerial attention to the responsibilities of operating the facility in accordance with the agreement between him and the Division and in accordance with the Rules in this Subchapter. The operator is not required to be on site at all times; and
- (5) maintain good customer relations with his patrons and with the property-managing officials at his work site.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall handle the proceeds, including payments to suppliers and deposits of funds, in accordance with Division guidelines developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance with the U. S. Department of Education reporting requirements.

(c) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner.

(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.

(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the permit or contract with the sponsor of the building or property where the facility is located.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10 NCAC 19C .0602 HOURS OF OPERATION

(a) The operator shall have the Business Enterprises facility open for business on the days and during the hours specified in the permit.

(b) After a reasonable period of time as determined by the Division, during which the Division shall work with the operator in developing a list of relief workers, the operator shall assume the responsibility for securing a relief worker to work in his facility whenever the operator must be absent. Visually

impaired persons may be given priority over all other persons hired by the operator. For the purpose of establishing a list of relief workers, a reasonable period of time shall be defined as no more than six months.

(c) If an operator transfers to another location, or a new operator enters the program, the Division shall again develop with the operator a new or revised list of qualified relief workers.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10 NCAC 19C .0604 REPORTS

The operator shall have four options for reporting revenues and expenses:

- (1) Category A - The operator may send all invoices, deposit slips, repair bills, and other documents to the Division including overcash according to a schedule established by the Division's Accounting Office. All payroll functions shall be performed by the Division.
- (2) Category B - The operator may retain sales and deposit documentation and send a summation of his purchases for resale and all expenses paid out of the facility to the Division monthly along with overcash. All payroll functions shall be performed by the Division.
- (3) Category C - The operator may perform all functions as in Item (2) of this Rule and perform his own payroll functions.
- (4) Category D - The operator may perform all functions of Items (2) and (3) of this Rule and may calculate its own profit and loss statement and send only the set-aside due to the Division.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

10 NCAC 19C .0605 REPAIRS

- (a) Operators shall secure repairs to equipment not to exceed a dollar amount as determined by the Division on an annual basis.
- (b) If the repair rate exceeds the amount as determined by the Division, bids must be obtained and submitted to the Division for approval. The Division shall apply state purchasing procedures as found in 01 NCAC 05 under the State Division of Purchase and Contract.
- (c) If the operator is unable to secure bids, he shall contact the Division for assistance.

Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. Sec. 107.

10 NCAC 19C .0607 EQUIPMENT: MERCHANDISE: SUPPLIES: CASH

- (a) Each operator shall sign a receipt for all equipment, merchandise, supplies, and cash for which he is entrusted when initially placed in a Business Enterprises facility, and shall be held accountable for those assets.
- (b) Each operator shall properly maintain the equipment assigned to him, and shall ensure that the equipment is used only for the purposes of operating the business.

(c) All assets vested in the Division shall be safeguarded and protected.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. sec. 107.

10 NCAC 19C .0608 INSURANCE

(a) Each operator must maintain adequate bodily injury, property damage, and food products liability insurance as will protect the operator, anyone employed by the operator, and the Division against losses and claims arising out of the conduct of the business of the Business Enterprises facility. Each operator must also carry worker's compensation and unemployment insurance as required by state and federal law. Adequate coverage for liability insurance will be determined by the Business Enterprises Program Chief in consultation with the Elected Committee of Vendors and changes in limits shall be conveyed to the operators in writing with a 30-day advance notice.

(b) The costs of such insurance shall be a cost of operating the business of the Business Enterprises facility and taken into account as such in determining the net proceeds of the business.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10 NCAC 19C .0609 PRICING OF MERCHANDISE

(a) Each operator shall determine his own pricing structure commensurate with prevailing pricing of local competitors and shall not take advantage of customers through unfair pricing practices.

(b) Notwithstanding Paragraph (a) of this Rule, in Business Enterprises facilities where prices are determined in some manner by the contract between the Division and the location, the operator must comply with the terms of that contract.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS

10 NCAC 19C .0701 MINIMUM FAIR RETURN AND DEFINITIONS

(a) Operators may be guaranteed a fair minimum return as determined by the Division after consultation with the Elected Committee of Vendors.

(b) Definitions which apply to all of 10 NCAC 19C .0700:

- (1) Net profits means the amount remaining after subtracting the cost of goods sold and the operating expenses from the gross revenues.
- (2) Income means the net profit of the concession stand less any funds which must be set aside.
- (3) Net operating balance means the amount remaining at the end of the calendar year after subtracting the income paid year-to-date to the operator, from the income earned by the operation of the facility.
- (4) Fair minimum return is the amount agreed upon by the Division and the Elected Committee of Vendors as the minimum monthly income to be received by any Business Enterprises operator without regard to the profit or loss of the facility.

*Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9;
20 U.S.C. Sec. 107.*

10 NCAC 19C .0702 SET-ASIDE

(a) "Set-aside" and "Net Proceeds" are used as defined in 34 CFR 395.1.

(b) The Division shall set aside funds from the net proceeds of each facility to be used for the following purposes:

- (1) maintenance and replacement of equipment;
- (2) purchase of new equipment;
- (3) management services;
- (4) assuring a fair minimum return to operators;
- (5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, if it is so determined by a majority vote of blind operators licensed by the Division, after the Division provides to each operator information on all matters relevant to the proposed purposes.

(c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration.

(d) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis, shall be refunded on a pro rata basis at the end of the fiscal year.

(e) Set-aside rates may be adjusted to meet program goals and objectives and shall be determined by the Division in conjunction with the NC Commission for the Blind.

*Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157;
34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. Sec. 107.*

10 NCAC 19C .0703 DISTRIBUTION OF PROCEEDS

(a) The monthly income of the operator shall be the net proceeds of the Business Enterprises facility for that month less the funds which must be set aside.

(b) When the financial statements are completed at the end of each fiscal year, any differences between the monthly income actually earned for the year and the amount of monthly income paid during the year shall be reconciled. If at the end of the year there is a net operating balance above what has already been paid to the operator, the operator shall receive that balance. If, on the other hand, net proceeds received by the operator during the year exceed the net operating balance as reflected on the closing financial statements for the year, this overpayment shall be deducted from the net proceeds earned during the next fiscal year before any net proceeds for that year are paid.

(c) An operator whose license has been suspended shall not receive net proceeds generated during that period of time the license was suspended.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4;
20 U.S.C. Sec. 107.*

10 NCAC 19C .0704 INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY

(a) Income from vending machines on federal property which has been disbursed to the Division by a property managing

department, agency, or instrumentality of the United States under the vending machine income sharing provisions in 34 CFR 395.32 shall accrue to each operator of the Business Enterprises facility in an amount not to exceed the average net income of the total number of blind operators within such state as determined each fiscal year on the basis of each prior year's operation. Vending machine income shall not accrue to any operator in any amount exceeding the average net income of the total number of blind operators in the United States.

(b) No blind operator shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

(c) No limitation shall be imposed on income from vending machines, combined to create a Business Enterprises facility, when such facility is maintained, serviced, or operated by a blind operator. The Division shall retain vending machine income disbursed by a property managing department, agency, or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

(d) Vending machine income retained by the Division shall be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such purposes; any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; management services, and assuring a fair minimum return to operators; and any assessment charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

SUBCHAPTER 19D – SMALL BUSINESS ENTERPRISES

SECTION .0100 – ELIGIBILITY REQUIREMENTS

10 NCAC 19D .0101 PURPOSE AND PROCEDURE

Authority G.S. 111-28; 34 C.F.R. 361.50.

10 NCAC 19D .0102 PROJECT DEVELOPMENT

Authority G.S. 111-27.1; 34 C.F.R. 361.50.

10 NCAC 19D .0103 ELIGIBILITY CRITERIA

Authority G.S. 111-27.1; 34 C.F.R. 361.

SECTION .0200 – PROPOSAL AND PROJECT REVIEW

10 NCAC 19D .0201 PROPOSAL

Authority G.S. 111-27.1; 34 C.F.R. 361.50; 34 C.F.R. 361.72a.

10 NCAC 19D .0202 PROJECT REVIEW

Authority G.S. 111-27.1; 34 C.F.R. 361.31; 34 C.F.R. 361.72a.

SUBCHAPTER 19E – SPECIAL ASSISTANCE FOR THE BLIND

SECTION .0100 – ELIGIBILITY REQUIREMENTS

10 NCAC 19E .0101 ELIGIBILITY

Any person may receive special assistance for the blind if he:

- (1) meets the visual criteria of:
 - (a) no vision or vision with glasses so defective as to prevent the performance of ordinary activities requiring sight;
 - (b) central visual acuity of 20/200 or less in the better eye with correcting lens or a visual field limited to 20 degrees in the widest diameter.
- (2) is in need of food, clothing, shelter, and other necessities of life and has insufficient means for his own support and has no relative or other persons in this state able to provide for him who is legally responsible for his maintenance;
- (3) is not receiving any public assistance from other programs;
- (4) is a resident of North Carolina; and
- (5) is not an inmate of a public institution and is not a patient in an institution for mental disease.

Authority G.S. 111-11; 111-15; 111-21; 143B-157.

10 NCAC 19E .0105 MOVING FROM NORTH CAROLINA: TEMPORARY ABSENCE

- (a) When a consumer moves to another state, special assistance for the blind shall be continued for a minimum of 30 days to give the other state time to process the application.
- (b) A person shall remain eligible for assistance if he will be absent from the state temporarily. Temporary absence from the state with subsequent return or intent to return when the purposes for the absence have been accomplished does not interrupt residence. However, if the consumer's temporary absence from the state exceeds three months, the case shall be terminated and eligibility shall have to be reestablished.

Authority G.S. 111-13; 143B-157.

10 NCAC 19E .0106 MOVING AMONG COUNTIES

- (a) When a consumer moves to a second county, the home county shall be responsible for continued payment for 90 days beginning with the next pay period. If he moves for purposes of training or rest home or other group care, it shall not be considered a change of residence from the first county.
- (b) Moving from one county to another constitutes a change in condition and eligibility must be redetermined.

Authority G.S. 111-13; 111-19; 111-20; 143B-157.

10 NCAC 19E .0110 REPORT OF EYE EXAMINATION

- (a) An eye examination report used by eye doctors gives information concerning the condition of the consumer's eyes such as diagnosis, visual acuity, field of vision, and prescription for corrective lenses. These forms are used to determine whether there is sufficient visual impairment for the consumer to qualify for services of the agency. Applicants must have an eye report to establish eligibility for assistance. The report must be countersigned by the state supervising ophthalmologist.
- (b) No report is required when both eyes of the applicant are missing.

Authority G.S. 111-13; 111-14; 143B-157.

10 NCAC 19E .0112 APPLICATIONS

Applications may be made in person, by telephone, in writing, or through another person to either the county department of social services or to the Division of Services for the Blind. Separate applications must be filled out for each applicant. Any individual who believes he is eligible may apply for assistance; and if his application is rejected, he has a right to reapply at any time. If an applicant is rejected, the division must give the reasons of ineligibility. If the consumer is eligible, he must receive prompt notice of the award.

Authority G.S. 111-13; 111-14; 111-16; 143B-157.

SECTION .0200 – PAYMENTS

10 NCAC 19E .0202 PAYMENT STANDARDS

(a) The following payment standards includes amounts to meet all the needs of consumers except for special medical care and personal needs:

- (1) allowance for one person who pays shelter and utilities: one hundred forty-six dollars (\$146.00);
- (2) allowance for one person who does not pay shelter and utilities: ninety-seven dollars (\$97.00);
- (3) allowance for couple - one-sighted, one blind, - who pay shelter and utilities: two hundred nineteen dollars (\$219.00);
- (4) allowance for couple - one sighted, one blind - who do not pay shelter and utilities: one hundred forty-six dollars (\$146.00);
- (5) allowance for couple - both blind - who pay shelter and utilities: two hundred forty-three dollars (\$243.00);
- (6) allowance for couple - both blind - who do not pay shelter and utilities: one hundred ninety-four dollars (\$194.00); and
- (7) personal need allowance for every blind recipient shall be the amount set by the General Assembly. These funds are for the individual to spend at his discretion-includes items of clothing, toiletries, etc.

(b) Payments are to be paid in advance on the first day of each month.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

10 NCAC 19E .0203 DOMICILIARY CARE

(a) Payments for domiciliary care shall be determined by the Legislature.

(b) Patient's discharge and referral forms must be completed by a physician. The forms must be resubmitted every 12 months for special assistance for the blind recipients.

Authority G.S. 111-13; 111-17; 143B-157.

SECTION .0400 – RESOURCES

10 NCAC 19E .0401 DEFINITION OF RESOURCES

Resources include all income. All resources must be readily available, actually on hand and ready for use. Information to determine eligibility is secured from the consumer. Other contacts to secure information are made only after consent is received from the consumer.

Authority G.S. 111-13; 111-17; 143B-157.

10 NCAC 19E .0403 DEPENDENTS

Authority G.S. 111-13; 111-17; 143B-157.

10 NCAC 19E .0405 UNEARNED INCOME

Unearned income is not subject to the rule concerning disregarded income but includes pensions, unemployment benefits, managed rental property, interest or investment, and other income that the consumer receives in which he does not manage or actively work to earn the income. Income that is regularly available from relatives shall be treated as unearned income for budgeting purposes. There will be a disregard amount set by the Legislature from this unearned income in computing the budget for an individual. Where there is no unearned income, this amount will be added to the total needs.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

10 NCAC 19E .0409 EARNED INCOME

(a) Earned income is income in cash or in kind earned through wages, salary, commissions, or other profit from employment and self-employment activities.

(b) Earned income does not include:

- (1) returns from capital investments in which the consumer is not actively engaged;
- (2) benefits accrued as compensation or reward for services; and
- (3) compensation for unemployment.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

10 NCAC 19E .0410 RESOURCES FOR RESERVE

(a) A consumer may retain some resources in reserve as financial security to meet unanticipated needs.

(b) A family unit may not have more than two thousand dollars (\$2,000) in reserves to be considered eligible for assistance. When ineligibility due to excess reserve is determined, the individual must be notified in writing and informed of his rights

to a fair hearing and to reapply. A family unit is one or more persons domiciled under one roof and existing as a unit.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

10 NCAC 19E .0411 REAL PROPERTY

- (a) The value of property used as a home shall not be considered as a resource. In an unincorporated area, a home may include a house and approximately one acre of land. In a town or city, a home may include a house and the lot on which the house is situated.
- (b) Property producing an income that is available for consideration as a resource in determining payments is not a resource.
- (c) Real property not used as a home or to produce income must be sold if the consumer is to be considered eligible. The consumer shall sell his property within a year.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

10 NCAC 19E .0412 SALE OR TRANSFER OF REAL PROPERTY

The following rules shall apply to a sale or transfer of real property by the consumer:

- (1) When net proceeds from a sale are obligated for reinvestment within two months in a home for recipient and his family, only that amount in excess of the cost of the new home will be considered as reserve.
- (2) When proceeds are not reinvested, they will be considered as a resource. To determine the net proceeds of the sale, the indebtedness shall be deducted from the proceeds. From this amount, the amount of allowable reserve shall be deducted and the balance shall be treated as excess reserve.
- (3) When the property is transferred with no remuneration or a token remuneration, the appraised county tax value will be assigned. The reinvested proceeds shall be deducted from the appraised county tax value and the balance will be treated as reserve.

Authority G.S. 111-13; 111-14; 111-17; 143B-157.

SECTION .0500 – ASSISTANCE PAYMENT PROCEDURE

10 NCAC 19E .0501 ACCRUED PAYMENTS

An eligible consumer's right to payment accrues on the first day each month.

Authority G.S. 111-13; 111-17; 111-18; 143B-157.

10 NCAC 19E .0503 PAYMENTS TO OTHERS

Payments to other than the recipient may be made when a consumer has a legal guardian or when a consumer is a minor who has a person acting "in loco parentis." If the consumer is

under age 18, payment shall be made to the consumer if he is emancipated.

Authority G.S. 111-17; 111-18; 111-30; 111-31; 111-32; 111-33; 143B-157.

SECTION .0600 – PROCEDURE FOR PAYMENT

10 NCAC 19E .0601 CHECKS

- (a) Checks shall be mailed from the Department of Health and Human Services, Office of the Controller, on the last day of the month.
- (b) Emergency and supplementary checks shall also be mailed from the Department of Health and Human Services, Office of the Controller.

Authority G.S. 111-13; 111-17; 111-18; 143B-157.

10 NCAC 19E .0602 EXCEPTION TO DELIVERY

A check shall not be mailed if the recipient has entered a public institution before the first day of the month, if he cannot be located, or if the consumer requests termination.

Authority G.S. 111-13; 111-15(4),(5); 111-17; 111-18; 143B-157.

10 NCAC 19E .0603 ENDORSEMENT OF CHECKS

The consumer shall endorse as his name appears on the check; or, if he signs with an "X," two persons shall sign the check as witnesses.

Authority G.S. 111-13; 111-17; 111-18; 143B-157.

10 NCAC 19E .0604 LOST CHECKS: DUPLICATE CHECKS

- (a) When the county department of social services or Division of Services for the Blind area office is notified that a check has been lost, it shall notify the Division's state office immediately. Upon notification a stop payment request shall be sent to the State Treasurer.
- (b) Duplicate checks may be issued after the affidavit and indemnity bond has been filled out and returned, and 60 days after the stop payment request. A duplicate check shall only be written if the amount of the check is still in the State Treasury.

Authority G.S. 111-13; 111-17; 111-18; 143B-157.

10 NCAC 19E .0605 OVER-PAYMENT

Authority G.S. 111-13; 111-17; 111-18; 143B-157.

SECTION .0700 – INDIVIDUAL RIGHTS

10 NCAC 19E .0701 RESPONSIBILITIES OF AGENCY

The agency shall:

- (1) providing assistance and opportunities for consumers to express their rights;
- (2) keep recipients informed of changes in law or agency policy which may affect their payments;

- (3) explain fraud; and
- (4) employ methods that do not infringe upon the consumers' rights.

Authority G.S. 111-13; 143B-157.

10 NCAC 19E .0702 RIGHTS OF CLIENT

Authority G.S. 111-13; 111-16; 111-28; 143B-157.

10 NCAC 19E .0704 SAFEGUARDING INFORMATION

All information contained in the files, papers, or other documents in the files of consumers of the Division is confidential and shall not be released to anyone except upon written consent of the consumer or except as provided by law.

Authority G.S. 111-27.1; 111-28; 143B-157.

SECTION .0800 – CONTESTED CASES

10 NCAC 19E .0801 APPEAL OF DIVISION ACTION

- (a) If an applicant or recipient is dissatisfied with the agency's action in his case, he may request a conference with the Division of Services for the Blind Area Social Services Supervisor.
- (b) A conference shall be held within 15 calendar days from the receipt of the original request.
- (c) If the conference solves the grievance or dissatisfaction, this shall be stated in writing by the Supervisor and signed by the consumer.

Authority G.S. 111-16; 143B-157; 150B-23.

10 NCAC 19E .0803 ACKNOWLEDGMENT OF REQUEST

Authority G.S. 111-16; 143B-157.

10 NCAC 19E .0804 INFORMAL CONFERENCE

Authority G.S. 111-16; 143B-157.

10 NCAC 19E .0805 SUMMARY OF INFORMAL CONFERENCE

- (a) If the petitioner is not satisfied with the results of the conference, he shall be informed of his right to a fair hearing by the Agency's designated representative.
- (b) All petitions for review of agency decisions (G.S. 150B) shall be heard by the Office of Administrative Hearings. The Division shall notify the applicant or recipient in writing that he has the right to petition the Office of Administrative Hearings and request a fair hearing. The Division shall notify the applicant or recipient to contact OAH and request the specific forms which the applicant or recipient must complete.

(c) In this same written notice the applicant or recipient shall be instructed that he has 60 calendar days from the date he receives the agency notice to request a fair hearing through OAH. Any petition for a contested case must be returned by the applicant or recipient directly to the Office of Administrative Hearings.

Authority G.S. 111-16; 143B-157.

SECTION .0900 - DISTRIBUTION OF EQUALIZATION FUNDS FOR SAB CASES BY COUNTIES

10 NCAC 19E .0902 NOTIFICATION OF DISTRIBUTION

At least one month prior to the actual distribution of the equalization funds, the Department of Health and Human Services, Office of the Controller, shall notify each county of its share by letter, and shall provide the computation procedures to any county upon request.

Authority G. S. 111-29.

SUBCHAPTER 19F – INDEPENDENT LIVING SERVICES

SECTION .0100 - ELIGIBILITY FOR SERVICES

10 NCAC 19F .0104 BASIC ELIGIBILITY CRITERIA

(a) In addition to the requirements of 10 NCAC 35D .0300, where applicable, an individual must be determined eligible to receive services under the Social Services Block Grant (Title XX) on the basis of:

- (1) need, with regard to income for In-Home Aide Services;
- (2) need without regard to income for all other services.

(b) For purposes of determining and redetermining eligibility for services provided by the Division of Services for the Blind in this Subchapter, the rules in Subchapters 10 NCAC 35D and 35E shall apply.

(c) Individuals are eligible for these services at the following income levels:

- (1) Adjustment services are provided without regard to income-these are services provided in any combination as needed and appropriate to enable blind and visually impaired individuals to attain and maintain the highest level of functioning possible;
- (2) In-Home Aide Services: Chore Services for the Blind are provided to individuals whose monthly gross family income is less than 100 percent of the state's established income. State's established income is 150% of the federal poverty level.

Authority G.S. 111-28; 143B-157; 42 U.S.C. 1397.

10 NCAC 19F .0107 ELIGIBILITY BASED ON VISION LOSS

The following categories show the level of vision loss which must exist in order for a person to meet the definition of visually

impaired or blind for the purpose of being served by the social worker for the blind:

- (1) legally blind ; or
- (2) persons with best corrected central visual acuity of 20/70 or less in the better eye; or
- (3) persons with one or both of the following conditions:
 - (a) the presence of chronic, progressive eye pathology;
 - (b) visual acuity better than 20/70 which nevertheless results in a vocational or functional handicap.

Authority G.S. 111-11; 111-28; 42 U.S.C. 1397.

SECTION .0400 – GOALS AND SERVICES

10 NCAC 19F .0401 GOALS

All services provided to consumers of the Division of Services for the Blind Independent Living Services Program shall be directed towards the three goals of:

- (1) achieving and maintaining self-sufficiency, including reduction or prevention of dependency;
- (2) preventing or reducing institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and
- (3) preventing and remedying neglect, abuse, or exploitation of persons unable to protect their own interests, or preserving, rehabilitating, or reuniting families.

Authority G.S. 111-28; 42 U.C.S. 1397.

10 NCAC 19F .0402 SERVICES

(a) The following services are provided by the Division of Services for the Blind under this Section:

- (1) In-Home Aide Services: Chore Services for the Blind. In-Home Aide Services are those services which assist the individual or family with essential home management tasks necessary to enable the individual and family to remain and function effectively at home for as long as possible.
- (2) Adjustment Services for the Blind and Visually Impaired. These are services provided in any combination as needed and appropriate to enable blind and visually impaired individuals to attain or maintain the highest level of functioning possible, to promote their well-being, and to prevent or reduce dependency. This is achieved through a focused regimen of counseling and casework assistance to individuals and their families to help individuals choose, obtain, and use needed resources, services, and mechanisms of support. Within this context one or more of the following service components or resource items may be provided as part of the

Adjustment Services for the Blind and Visually Impaired category.

- (A) Assistance with the demands of daily living may be provided through training in areas such as grooming skills; manipulative skills such as the use of household appliances; money identification and communication skills such as braille, typing, and use of the telephone;
- (B) The teaching of orientation and mobility skills;
- (C) Therapeutic experiences aimed at helping the individual to adjust to and accept his visual limitations through camping experiences, recreational programs, adjustment training at rehabilitation centers, and individual and group counseling sessions;
- (D) The following services/items may be provided: reader services, interpreter services for the deaf/blind, braille, large print and taped material, low vision optical aids, travel aids and devices, community sponsored recreational activities, devices to support independence such as talking clocks, talking calculators, and braille watches.

- (3) Individual and Family Adjustment Services. These services are designed to assist the consumer and his or her family in adjusting to the consumer's vision loss, making necessary accommodations and modifications to the environment after vision loss, and identifying community supports. Activities may include counseling to assist the consumer to recognize, understand, and cope with problems in such areas as household management, consumer affairs, family life education, and other disabling conditions.
- (4) Health Support Services. These services provide help to individuals and families to recognize health needs including those related to alcohol and drug abuse and to secure needed health services available under medicaid, medicare, or other agency health services programs and from other public or private agencies or providers of health services; counseling and planning with individuals, families, and health providers to help assure continuity of treatment and the carrying out of health recommendations; and helping individuals to secure admission to medical institutions and other health-related facilities as needed.
- (5) Housing and Home Improvement Services. These services provide assistance to individuals and families in obtaining and retaining housing and basic furnishings.

Services include helping to improve landlord-tenant relations, to identify housing, to secure correction of housing code violations, to obtain or retain ownership of own home, and to find and relocate to more suitable housing.

- (6) Information and Referral. This means giving information about services provided under the state's social services program and other service programs, both public and private; brief assessment to determine the most appropriate resource to meet the stated needs of the person requesting services; and referral to and follow-up with those community resources which provide or make available such services.

(b) The following services are mandated in all parts of the state; the responsibility for the provision of these services rests with the Division of Services for the Blind.

- (1) In-Home Aide Services;
- (2) adjustment services for the blind and visually impaired.

Authority G.S. 111-28; 143B-10.

SECTION .0500 – DELIVERY OF SERVICES

10 NCAC 19F .0501 DELIVERY OF SERVICES

Authority G.S. 111-28; 143B-157.

10 NCAC 19F .0504 IN-HOME AIDE SERVICES CONTRACT

Authority G.S. 111-28; 143B-157.

10 NCAC 19F .0506 REFERRAL FOR ORIENTATION AND MOBILITY TRAINING

Authority G.S. 111-28; 143B-157.

10 NCAC 19F .0507 CONTRACTS FOR SERVICES

Authority G.S. 111-28; 143B-157.

SECTION .0600 – INDIVIDUAL RIGHTS

10 NCAC 19F .0601 CONFIDENTIALITY

All information contained in the consumer files of the agency is confidential and shall not be released to anyone except upon the written consent of the consumer or in compliance with other state or federal laws or regulations.

Authority G.S. 111-28; 143B-157.

10 NCAC 19F .0602 APPEAL TO DESIGNATED AGENCY REPRESENTATIVE

(a) If a consumer is dissatisfied with an action taken by or service delivered by the independent living service program, that consumer may request a conference with the Designated agency representative.

(b) A conference shall be held within 30 calendar days from the receipt of the original request.

(c) If the conference solves the grievance or dissatisfaction, this will be stated in writing and signed by the consumer.

(d) The agency representative shall prepare a written report of the conference within 15 calendar days of the conference.

Authority G.S. 111-16; 143B-157.

10 NCAC 19F .0603 REQUEST FOR FAIR HEARING

(a) If the results of the conference are unsatisfactory, the consumer shall be informed by the designated agency representative of his or her right to a fair hearing.

(b) All petitions for review of agency decisions (G.S. 150B) shall be heard by the Office of Administrative Hearings. The agency shall notify the consumer in writing that he has the right to petition the Office of Administrative Hearings and request a fair hearing. The consumer shall be instructed to contact OAH and request the specific forms to be completed.

(c) In this same written notice the consumer shall be instructed that he or she has 60 calendar days from the date of receipt of the agency notice to request a fair hearing through OAH. Any request for a fair hearing must be returned by the consumer directly to the Office of Administrative Hearings.

(d) The Office of Administrative Hearings issues, as appropriate, either a final decision or a recommended decision which will be sent to the Director of the Division of Services for the Blind. The agency shall provide the consumer a written copy of the final decision. A copy shall also be placed in the consumer's file.

Authority G.S. 111-8; 143B-157; 150B-3.

SUBCHAPTER 19G – VOCATIONAL REHABILITATION

SECTION .0100 – SERVICES

10 NCAC 19G .0101 ELIGIBILITY FOR AND AUTHORIZATION OF SERVICES

(a) An Individualized Plan for Employment shall be developed to provide services to applicants to the vocational rehabilitation program who meet the following criteria:

- (1) the applicant for services has a physical or mental impairment; and
- (2) that the physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

that the applicant requires vocational rehabilitation services in order to prepare for, secure, retain, or regain employment.

(b) It is presumed that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless it can be demonstrated through clear and convincing evidence that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability.

(c) Applicants who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act are presumed eligible for vocational rehabilitation

services; however, the applicant must intend to achieve an employment outcome.

(d) Authorization of Services:

(1) The Division shall issue a written authorization for services prior to or simultaneously with the provision of the service. A copy of the authorization shall be retained in the case file.

(2) The Division shall authorize services that are required for a consumer to participate in an assessment to determine eligibility for services. The Division shall also authorize services required for a consumer to complete the goals identified on his or her Individualized Plan for Employment (IPE).

(3) Authorizations are issued based on availability of funds.

(c) Oral authorizations may be issued on occasions for services when it is a matter of urgency. Such authorizations may be made by a rehabilitation counselor or a rehabilitation supervisor. On such occasions, a record of such oral authorizations shall be made and retained in the consumer's case file. In all such cases confirming authorizations shall be written.

Authority G.S. 111-28.1; 34 C.F.R. 361.1; 34 C.F.R. 361.3; 34 C.F.R. 361.42(a); 34 C.F.R. 361.45.

10 NCAC 19G .0102 TRAINING AND TRAINING MATERIALS

(a) The Division shall furnish training to all eligible individuals to the extent necessary to achieve their vocational rehabilitation outcome and to the extent that entry level qualifications of the job, profession or employment are achieved.

(b) Training provided by the Division includes vocational, prevocational, personal adjustment training, and other rehabilitation training which contributes to the determination of the rehabilitation potential or to the individual's personal and vocational adjustment; it covers training provided directly by the Division or procured from other public or private training facilities, including community rehabilitation programs.

(c) The Division shall provide necessary books and other training materials to applicants accepted for evaluation of the rehabilitation potential and to financially eligible consumers.

(d) The Division shall provide financial support for post-secondary education under the following terms and conditions:

(1) Financial support for consumers attending institutions of higher learning shall not exceed the maximum rate for tuition and fees, established at state supported colleges and universities in North Carolina

(2) Requests for support will be considered only when the consumer has applied for grants and scholarships at the accepting institution. The Division shall deduct the grant amount from the consumer's training allotment.

(3) Consumers who are sponsored for an undergraduate degree shall not receive more than 10 semesters or 15 quarters of sponsorship to complete their undergraduate

- degree. The Division may grant an exception to the semester/quarter requirements when necessary to accommodate the special training needs of consumers with severe disabilities;
- (4) Consumers who are sponsored for undergraduate programs must maintain a grade point ratio of 2.0. Agency sponsorship will be withdrawn from any consumer in an undergraduate program whose GPR falls below 2.0 for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative GPR to 2.0, the consumer may again be considered for sponsorship through the VR Program of this agency. Consumers under our sponsorship for graduate or professional programs must maintain a grade point ratio commensurate with the standards established by the educational institution they are attending for degree requirements. Agency sponsorship shall be withdrawn from any consumer in graduate or professional programs whose GPR falls below the standards established by the educational institution for degree requirements for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative GPR to the standard established by the educational institution, the consumer may again be considered for sponsorship through the VR Program of this agency. Consumers may receive agency sponsorship for vocational training and/or on-the-job training outside of programs offered in undergraduate, graduate, and professional schools. A consumer who is participating in such a program must maintain grades or standards of performance commensurate with the standards established by the institution or trainer for satisfactory completion of the training program within an established time frame. The agency shall not sponsor a consumer in a vocational training or on-the-job training program for more than one additional unit of time as defined by the particular institution or trainer in order to complete the program. The Division may grant an exception to the length of training sponsorship when necessary to accommodate the special training needs of consumers with severe disabilities;
- (5) The Division may provide graduate training for consumers when said training is required to enter a position. It shall be required that the consumer's case file contain a letter from an official of the appropriate graduate school of higher learning designating the number of semesters or quarters required to achieve the graduate degree. The Division shall not sponsor consumers in excess of one quarter or

one semester above that specified in the letter as a time required to receive the graduate degree. The Division may grant an exception to the length of training when necessary to accommodate the special training needs of consumers with severe disabilities.

(e) Other training services, including training at community rehabilitation programs, are purchased on the basis of agreements made between the trainer and staff members of the Division.

(f) Training at the Rehabilitation Center for the Blind and with the Business Enterprises program is purchased on the basis of rates established by the Division in consultation with the supervisors of the training units in this Rule. The rates are usually based on per diem costs.

Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; 34 C.F.R. 361.48(f).

10 NCAC 19G .0103 PHYSICAL AND MENTAL RESTORATION SERVICES

(a) The following physical and mental restoration services may be provided to consumers if required in order to complete an assessment for the purposes of determining eligibility or as part of an Individualized Plan for Employment for consumers determined eligible for vocational rehabilitation services:

- (1) surgery or treatment;
- (2) psychological and psychiatric treatment;
- (3) dental treatment;
- (4) nursing services;
- (5) hospitalization (either in-patient or out-patient care) and clinic services;
- (6) drugs and supplies;
- (7) prosthetic devices essential to obtaining or retaining employment;
- (8) physical therapy;
- (9) occupational therapy;
- (10) medically directed speech or hearing therapy;
- (11) eyeglasses, lenses, and visual aids including the services necessary to prescribe and train in the use of specialized visual aids;
- (12) treatment of medical complications and emergencies, either acute or chronic, which are associated with or arise out of the provision of physical restoration services, or are inherent in the condition under treatment; and
- (13) other medical or medically related rehabilitation services.

(b) The Division may furnish physical restoration services to eligible individuals if the following criteria are met:

- (1) The clinical status of the individual's condition is stable or slowly progressive (i.e., the condition must not be acute or transitory); and
- (2) Physical restoration services are likely to eliminate or substantially reduce the impairment that constitutes an impediment to employment within a reasonable period of time.

Authority G.S. 111-28; 34 C.F.R. 361.5(b)(40).

10 NCAC 19G .0104 TRANSPORTATION

(a) The Division shall furnish transportation to eligible individuals and to members of their family, in connection with the provision of diagnostic and other services when such transportation is necessary to the individual's vocational rehabilitation.

(b) Such transportation includes:

- (1) costs of travel and subsistence during travel (or per diem allowance in lieu of subsistence) for eligible consumers and their attendants or escorts, where such assistance is needed; and
- (2) may include relocation and moving expenses necessary for the achievement of a job after it is determined that the eligible consumer has adjusted to the employment situation and the job is permanent.

(c) The Division shall pay an amount representing the down payment of the purchase price of an automobile for an eligible consumer who has been determined to be rehabilitated when the employment goal requires the individual to travel in the performance of his responsibilities and the employment goal is at or above the substantial gainful activity level as defined by the Social Security Administration. The Division shall not:

- (1) make monthly automobile payments; or
- (2) retain title to the automobile.

Authority G.S. 111-28; 34 C.F.R. 361.5(b)35; C.F.R. 361.48(h).

10 NCAC 19G .0105 MAINTENANCE

(a) Maintenance shall be provided by the Division only in order to enable an applicant or eligible consumer to derive the full benefit of other vocational rehabilitation services being provided. Service costs shall be limited to the amount of increased costs that are in excess of the normal expenses that are necessitated by the applicant or the eligible consumer's participation in a rehabilitation program.

(b) The major types of living expenses covered by maintenance payments are as follows:

- (1) board;
- (2) room;
- (3) laundry;
- (4) clothing; and
- (5) other subsistence expenses necessary to achieve the eligible consumer's vocational rehabilitation outcome.

(c) The Division may provide maintenance or partial maintenance following placement only until the eligible consumer receives his first full minimum remuneration. In case of a self-employed person, maintenance may not exceed a period of 30 days.

(d) The Division shall maintain guidelines for these expenditures with the provision that exceptions may be granted.

Authority G.S. 111-28; 34 C.F.R. 361.5(b)(35); 34 C.F.R. 361.41(a)(5); 34 C.F.R. 361.48(g).

10 NCAC 19G .0106 JOB PLACEMENT

(a) Successful employment in a competitive integrated setting is the ultimate goal of the vocational rehabilitation program and the goal toward which all services are directed. Division staff shall

assist eligible consumers pursue employment in a job that is, to the greatest extent possible, consistent with that consumers skills, interests, needs, and informed choice. Job seeking skills training, job development, job placement, on-the-job training, supported employment, follow-up after placement, and employer education about vision loss and other employment-related incentives shall be used by staff in providing job placement service.

(b) The case file shall be closed for a consumer who has achieved a successful employment outcome when the following requirements have been met:

- (1) The consumer has achieved the employment outcome as stated on his or her Individualized Plan for Employment consistent with that consumer's skills, abilities, interests, and informed choice, and the consumer is employed in the most integrated setting possible consistent with his or her informed choice;
- (2) The consumer has maintained the job for period of time sufficient to demonstrate the stability of the employment outcome and that the consumer no longer needs vocational rehabilitation services. The job must be maintained for at least 90 days; and
- (3) At the time of case closure the consumer and the Division's rehabilitation counselor must agree that the employment outcome is satisfactory and that the consumer is performing well in the job.

(c) There will be a reasonable period of follow-up after placement to assure that the vocational rehabilitation of the ~~client~~ consumer has been successfully achieved. The Division shall advise the consumer of the availability of post-employment services. These services shall be provided consistent with the following:

- (1) The service is provided subsequent to the achievement of an employment outcome;
- (2) The service is necessary in order for the consumer to maintain, regain, or advance in employment; and
- (3) The services are designed to meet rehabilitation needs that do not require a complex or comprehensive program of services and are limited in scope and duration.

Authority G.S. 111-28; 34 C.F.R. 361.5(b)(42); 34 C.F.R. 361.45(a)(7),(8),(9),(10),(14)(15); 34 C.F.R. 361.48(l),(m)(o); 34 C.F.R. 361.56.

10 NCAC 19G .0107 ESTABLISHMENT OF SMALL BUSINESS OPERATIONS

~~The services for the blind may provide to eligible clients tools and equipment; initial stocks (including livestock) and supplies; equipment, initial stocks and supplies for vending stands; and occupational licenses when there is reasonable assurance that such equipment, initial stocks and supplies will result in vocational rehabilitation.~~

(a) The Division shall provide technical assistance and other services to eligible individuals for whom it has been determined that self-employment through a small business operation is the

employment outcome to be achieved through services outlined on the Individualized Plan for Employment. These services include market analyses, development of a business plan, and provision of funds that will in full or in part support the business operation as outlined on the IPE at a level agreed upon by the consumer and the Division's counselor. The employment outcome must allow the eligible individual to become a successful entrepreneur with projected income equivalent to, or above, the level of Substantial Gainful Activity (SGA) as established by the Social Security Administration annually. Outside resources, such as the University of North Carolina's Small Business and Technology Development Centers, shall be used to develop a proposal for the establishment or expansion of a small business. The proposal shall consist of a business plan with the following data:

- (1) A summary of product/service or the proposed business;
- (2) Company background information;
- (3) Detailed description of product/service;
- (4) Market information specific to the proposed business location;
- (5) Competition information specific to the proposed business location;
- (6) Marketing strategies;
- (7) Location of the small business with specific details;
- (8) Management and operation plans, to include the eligible individual's role;
- (9) Financial information including a projection of anticipated income per month (or per completed task) and the anticipated expensed of operating the business (If the consumer is unable to establish this independently, an accountant of CPA may be hired to conduct an independent objective assessment; and
- (10) Specific costs of the establishment, including information of the eligible individual's contributions.

(b) All proposals must contain written approval by the Rehabilitation Counselor, the Area Rehabilitation Supervisor, and the Chief of Rehabilitation Field Services for sponsorship by the Division. The feasibility of the venture and the eligible individual's skills, knowledge, experience, competency and contribution of time and money are factors that shall be used considered in the review of the proposals.

(c) Review and written approval by the Division's Projects Review Committee is required for the following and shall consider the feasibility of a business plan to include a summary, company background, product/service, competition, marketing of product/service, location, personnel management, and financial information:

- (1) Proposals requesting Division sponsorship of less than five thousand dollars (\$5,000.00) as requested by the Chief of Rehabilitation Field Services when feasibility of the proposal is not clear, and
- (2) All proposals requesting Division sponsorship of five thousand dollars (\$5,000.00) or above.

(d) The Division shall set thirty thousand dollars (\$30,000.00) as the maximum amount of Division contribution for the establishment of small business ventures by eligible individuals.

The Division may modify the maximum level based on availability of funds. The Division may exceed the maximum level on a case-by-case basis.

Authority G.S. 111-28; 34 C.F.R. 361.48(s).

21 NCAC 19G .0108 READER SERVICES

~~The following policies will be followed in providing reader services to eligible blind clients to the extent necessary to achieve their vocational rehabilitation.~~

- (a) Reader service may be provided in order to assist a consumer in completing an assessment or as part of the services required under a consumer's Individualized Plan for Employment in order to achieve the stated employment outcome.
- (b) When reader service is provided, the consumer shall employ and manage the reader and shall report to the Division any and all information necessary for the Division to reimburse the reader for services rendered as submitted by the consumer.
- (c) Reader services will be provided at a hiring rate not to exceed the State minimum wage or the university or college work-study rate, whichever is higher.

Authority G.S. 111-28; 34 C.F.R. 361.48(k).

10 NCAC 19G .0109 INTERPRETER SERVICES

The Division shall provide sign language interpreter services for deaf and hard of hearing consumers and foreign language interpreter services for consumers for whom English is not their native language as follows:

- (1) Interpreter service may be provided to consumers to enable them to participate in an assessment or as part of the services identified on the Individualized Plan for Employment as required for the consumer to achieve the stated employment outcome.
- (2) The authorization for services will be issued by the Division to the interpreter and the interpreter will bill the Division for services rendered based upon an agreed to number of hours, competence, and certification.
- (3) The Division shall obtain the services of interpreters who can meet the needs of the consumer.

Authority G.S. 111-28; 34 C.F.R. 361.48(j).

10 NCAC 19G .0110 SERVICES TO FAMILY MEMBERS

(a) For purposes of this Subchapter, "family members" is used as defined in 34 C.F.R. 361.5(b)(23).

(b) Services may be provided to family members of applicants or consumers receiving services under an Individualized Plan for Employment if the services are necessary for the applicants or eligible consumer to participate in an assessment or to achieve the employment outcome stated on the consumer's Individualized Plan for Employment.

(c) Such services shall include only those services which may be expected to contribute to the determination of rehabilitation

potential or to the rehabilitation of the ~~handicapped individual~~
individual with a disability.

Authority G.S. 111-28; 34 C.F.R. 361.48(l).

10 NCAC 19G .0111 RECRUITMENT AND TRAINING SERVICES~~When appropriate and when handicapped individuals are determined to be eligible for individual or group training, the services for the blind will organize and operate, either at a state owned facility or on a contract basis with a qualified non state owned facility, a program to prepare handicapped individuals for employment in such operations as rehabilitation aide, social work aide, and other appropriate service occupations.~~

Authority G.S. 111-28; 34 C.F.R. 361.42(a)(11).

10 NCAC 19G .0112 SERVICES TO GROUPS OF INDIVIDUALS

- (a) Consistent with the provision of 34 C.F.R. 361.49 the Division may provide vocational rehabilitation services to groups of individuals including construction of a facility for community rehabilitation purposes as contained in 34 C.F.R. 361.60 and 361.61.
- (b) Such facilities and services may include, but are not limited to, the removal of architectural barriers from buildings to be used for the training or employment of people with disabilities, the provision of instructional materials or services for a group of blind or visually impaired individuals, or the provision of a special bus or other vehicle for the transportation of individuals with disabilities.
- (c) All such services shall be provided based upon the availability of federal rehabilitation funds and non-federal matching funds as stated in 34 C.F.R. 361.60.

Authority G.S. 111-28; 34 C.F.R. 361.49; 34 C.F.R. 361.60; 34 C.F.R. 361.61.

10 NCAC 19G .0113 OTHER SERVICES: MEDICAL CARE

- (a) The Division shall provide to eligible ~~clients~~ consumer other goods and services available as provided in 34 C.F.R. 361.42(a)(15), when such services are necessary to determine the rehabilitation potential of the ~~client~~ consumer or to render him fit for gainful employment.
- (b) The Division shall furnish medical care for up to 30 days for acute conditions arising in the course of vocational rehabilitation, which, if not cared for, would constitute a hazard to the achievement of the vocational rehabilitation objective, or the completion of the extended evaluation to determine rehabilitation potential.

Authority G.S. 111-28; 34 C.F.R. 361.42(a)(14),(15); 34 C.F.R. 361.71(a).

10 NCAC 19G .0114 FOLLOW-UP SERVICES

Authority G.S. 111-28; 34 C.F.R. 361.42(a)(13).

10 NCAC 19G .0115 RATES OF PAYMENT

Vendors providing any services authorized by the state agency must agree not to make any charge to or accept any payment

from the consumer or his family for services unless the amount of the charge or payment is previously known and approved by the state Division consistent with the consumer's Individualized Plan for Employment.

Authority G.S. 111-28; 34 C.F.R. 361.46.

SECTION .0200 - CONSTRUCTION OF REHABILITATION FACILITY

10 NCAC 19G .0201 PURPOSE

The primary purpose of the construction of any rehabilitation facility is to provide vocational rehabilitation services to individuals with disabilities that include work evaluation and training that will lead to competitive employment in an integrated setting.

Authority G.S. 111-28; 34 C.F.R. 361.49(a)(1).

10 NCAC 19G .0202 DEFINITIONS

The Division shall comply with definitions and guidelines as specified for "Construction of a public or nonprofit community rehabilitation program" " as found in 34 C.F.R. 361.5(b)(12).

Authority G.S. 111-28; 34 C.F.R. 361.5(b)(12).

10 NCAC 19G .0203 DETERMINATION OF FACILITY NEEDS

Authority G.S. 111-28; 34 C.F.R. 361.19; 34 C.F.R. 361.52.

10 NCAC 19G .0204 STANDARDS OF CONSTRUCTION

Authority G.S. 111-28; 34 C.F.R. 361.14(a); 34 C.F.R. 361.45; 34 C.F.R. 361.52(b),(g).

10 NCAC 19G .0205 EXPENDITURE REQUIREMENTS

Authority G.S. 111-28; 34 C.F.R. 361.52(d),(e).

10 NCAC 19G .0206 INITIAL STAFFING

Authority G.S. 111-28; 34 C.F.R. 361.51(d).

10 NCAC 19G .0207 CONSTRUCTION PROPOSALS

Authority G.S. 111-28; 29 U.S.C. 701 et seq.; 34 C.F.R. 361.52(b).

10 NCAC 19G .0208 FEDERAL FINANCIAL PARTICIPATION

Authority G.S. 111-28; 34 C.F.R. 361.74.

10 NCAC 19G .0209 PRIVATE CONTRIBUTIONS: PROPOSALS

Authority G.S. 111-28; 34 C.F.R. 361.74(c); 34 C.F.R. 361.76(d); 42 U.S.C. 2000e;.

10 NCAC 19G .0210 RECOVERY

Authority G.S. 111-28; 29 U.S.C. 701 et seq.

SECTION .0400 – STANDARDS FOR FACILITIES

10 NCAC 19G .0401 PURPOSE OF STANDARDS

Authority G.S. 111-28; 34 C.F.R. 361.45; 34 C.F.R. 361.51.

10 NCAC 19G .0402 TYPES OF FACILITIES

(a) The Division shall use, whenever feasible, facilities that are accredited by the public authority or professional organization to provide medical care, education, and other services. Facilities shall be selected for use in providing the eligible consumer's rehabilitation program based on the individualized rehabilitation needs of the consumer. Facilities may include hospitals, convalescent and nursing homes, rehabilitation centers, colleges, universities, community colleges and technical schools, community rehabilitation program or other facilities as needed by the eligible consumer.

(b) Students shall receive their training in schools and colleges accredited by the Southern Association of Secondary Schools and Colleges or state accrediting agencies.

(c) Any facility in which vocational rehabilitation services are provided and any provider of vocational rehabilitation services shall meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51.

Authority G.S. 111-6; 111-6.1; 111-28; 34 C.F.R. 361.51; 34 C.F.R. 361.52.

10 NCAC 19G .0403 MAINTENANCE OF STANDARDS

Authority G.S. 111-28; 34 C.F.R. 361.17(a)(4),(5).

SECTION .0500 – ECONOMIC NEED

10 NCAC 19G .0501 BENEFITS

(a) The Division of Services for the Blind shall give consideration to all other benefits available to the consumer with a visual disability by way of pension, compensation, or insurance to meet, in whole or in part, the cost of any vocational rehabilitation services provided to the consumer except the following:

- (1) assessment for determining eligibility and vocational rehabilitation needs;
- (2) counseling and guidance; including information and support services to assist the applicant or consumer in exercising informed choice;
- (3) referral and other services to secure needed services from other agencies if those services are not available;
- (4) job-related services, including job search and placement assistance, job retention services, and follow-up services;

(5) rehabilitation technology, including telecommunications, sensory, and other technological aids; and

(6) post-employment services listed in Subparagraphs (1) through (5) of this Paragraph.

(b) When and to the extent that a consumer is eligible for such benefits, such benefits shall be utilized unless such a determination would interrupt or delay:

- (1) the progress of the consumer toward achieving the employment outcome in the individualized plan for employment; or
- (2) an immediate job placement; or
- (3) the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided a medical professional.

(c) If benefits exist, but are not available at the time needed to achieve the consumer's rehabilitation outcome, the services shall be provided until those benefits become available. Such benefits include but need not be limited to:

- (1) medicare, medicaid hospital and physician's services plans in relation to physical restoration services; and
- (2) workmen's compensation, veterans' benefits, private insurance benefits, old age and survivors disability insurance benefits and unemployment compensation in relation to basic maintenance.

(d) "Consumer" means a person eligible for vocational rehabilitation services.

Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.53.

10 NCAC 19G .0502 ECONOMIC NEEDS POLICIES

(a) The Division of Services for the Blind shall establish economic need for each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule. 0503 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer. A financial needs test will be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

(b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;
- (2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;

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| <p>(3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice; (4) tuition and supplies for Community Rehabilitation Program training;</p> <p>(5) tuition and fees for:</p> <p style="padding-left: 20px;">(A) community college/college parallel and vocational programs up to the catalog rate; and</p> <p style="padding-left: 20px;">(B) post-secondary education up to the maximum rate charged for the North Carolina public university system. The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;</p> <p>(6) interpreter services including sign language and oral interpreter services, for applicants or consumers who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who are deaf-blind;</p> <p>(7) reader services, rehabilitation teaching services, and orientation and mobility services;</p> <p>(8) job-related services, including job search, job placement employment assistance and job retention services;</p> <p>(9) DSB Rehabilitation Center or fundamental independent living rehabilitation adjustment services including transportation and training supplies contingent on a consumer's participation in the program;</p> <p style="padding-left: 20px;">(10) diagnostic transportation;</p> <p>(11) on-the-job training;</p> <p>(12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;</p> <p>(13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;</p> <p>(14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;</p> <p>(15) Supported Employment Services;</p> <p>(16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;</p> <p>(17) referral and other services designed to assist applicants or consumers with disabilities in</p> | <p>securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act (P.L. 102-569), if such services are not available under this Act and to advise those individuals about client assistance programs established under the Act;</p> <p>(18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment except for those services based on economic need; and</p> <p>(19) technical assistance and other consultation services to consumers who are pursuing self-employment or telecommuting or establishing a business operation as an employment outcome.</p> <p>(c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic need:</p> <p style="padding-left: 20px;">(1) Physical and mental restoration services (medical services other than diagnostic);</p> <p style="padding-left: 20px;">(2) maintenance for additional costs incurred while participating in rehabilitation;</p> <p style="padding-left: 20px;">(3) transportation, in connection with the rendering of any vocational rehabilitation service, except where necessary in connection with determination of eligibility or nature and scope of services;</p> <p style="padding-left: 20px;">(4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;</p> <p style="padding-left: 20px;">(5) Rehabilitation technology including telecommunications, sensory, and other technological aids and devices;</p> <p style="padding-left: 20px;">(6) post-employment services necessary to assist consumers with visual disabilities to maintain, regain or advance in employment except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;</p> <p style="padding-left: 20px;">(7) occupational licenses;</p> <p style="padding-left: 20px;">(8) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;</p> <p style="padding-left: 20px;">(9) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective;</p> <p style="padding-left: 20px;">(10) books and other training materials; and</p> <p style="padding-left: 20px;">(11) other goods and services not prohibited by the Act (P.L. 102-569), which can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.</p> <p>(d) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring the financial need of consumers with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining</p> |
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the amount of agency supplementation required to procure the necessary services.

Authority G.S. 111-28; 34 C.F.R. 361.5; 34 C.F.R. 361.48; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103.

10 NCAC 19G .0503 ECONOMIC NEEDS SCHEDULE

A consumer's financial need shall be determined by application of the financial eligibility scale established by the General Assembly. Copies of the economic needs schedule can be found at any Division office.

Authority G.S. 111-28; 34 C.F.R. 361.54; S.L. 1989, c. 500, s. 43.

SECTION .0600 –APPLICATION FOR SERVICES

10 NCAC 19G .0601 REHABILITATION COUNSELORS

Authority G.S. 111-28; 34 C.F.R. 361.14; 34 C.F.R. 361.30.

10 NCAC 19G .0602 REFERRALS

Applicants for services shall be assigned to a rehabilitation counselor. The rehabilitation counselor shall contact all referrals as promptly as possible. The counselor must make a decision regarding eligibility of the applicant within 60 days of completion of application for services or, unless exceptional and unforeseen circumstances beyond the control of the Division preclude making an eligibility decision, the counselor must obtain the signature of the applicant agreeing to extend the time frame for making the eligibility determination. The counselor shall use all existing information available from other sources in order to assure that an eligibility decision is made as promptly as possible.

Authority G.S. 111-28; 34 C.F.R. 361.41.

10 NCAC 19G .0603 ORDER OF SELECTION FOR SERVICES

All necessary vocational rehabilitation services shall be provided without delay to all individuals determined to be eligible for services; however, if a situation should develop under which vocational rehabilitation services cannot be extended without delay to all eligible individuals, because the Division does not have the financial or staff resources to serve all eligible individuals who apply for services, an order of selection for provision of services shall be implemented. Rules .0606, .0607, and .0608 in this Section set out the order of selection for services that shall be followed by the Division of Services for the Blind Rehabilitation Program. The Rules in this Section do not apply to the Independent Living Rehabilitation Program. As used in this order of selection, the following terms have the meaning specified:

- (1) "Division" means the Division of Services of the Blind of the Department of Health and Human Services.
- (2) "Division Director" or "Director" means the Director of the Division of Services for the Blind.
- (3) "Eligible individual" means an applicant whom the Division has determined meets the

eligibility criteria as stated in Rule .0101 of this Subchapter.

- (4) "Individual with a significant disability" has the meaning specified in P.L. 105-220, Title IV, Section 7(21) which is incorporated by reference.
- (5) "Individual with the most significant disability" means an individual with a significant disability whose impairment seriously limits two or more functional capacities in terms of an employment outcome.
- (6) "Functional capacity" means the ability to perform in the following areas:
 - (a) mobility;
 - (b) communication;
 - (c) self-care;
 - (d) self-direction;
 - (e) interpersonal skills;
 - (f) work skills; and
 - (g) work tolerance.

The Section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the Section of the Public Law so incorporated may be obtained at no cost from the Division.

Authority G.S. 111-28; 150B-21.6; 34 C.F.R. 361.36; P.L. 105-220, Title IV, Section 7(21), Section 101(a)(5)(A).

10 NCAC 19G .0604 CASE RECORDS AND CONFIDENTIALITY OF INFORMATION

The Services for the Blind will Division shall carry out provisions relative to case records and confidentiality of information as indicated in 34 C.F.R. 361.38 and 361.47.

Authority G.S. 111-28; 34 C.F.R. 361.39; 34 C.F.R. 361.49.

10 NCAC 19G .0605 CONSULTATION

Authority G.S. 111-28; 34 C.F.R. 361.41(a) (6).

10 NCAC 19G .0606 IMPLEMENTATION OF ORDER OF SELECTION

- (a) The Director of the Division shall make a determination of the necessity for implementing the order of selection specified in Rule .0603 of this Section.
- (b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis; and the Director shall determine the priority categories which can be served within available resources.
- (c) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services affected by the decision. This notification shall inform the programs and vendors of the decision to implement an order of selection.

Authority G.S. 143-545A; 143-546A; P.L. 105-220, Title IV, Section 101(a)(5)(A).

10 NCAC 19G .0607 DETERMINATION OF ORDER OF SELECTION PRIORITY

(a) The Division shall provide written notification to all applicants for services at the time of application of either:

- (1) the existing order of selection as set out in this Section; or
- (2) that an order of selection will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.

(b) When an Order of Selection has been implemented, the Division shall determine each individual's priority category at the time the individual is determined eligible for service. The individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

(c) The Division shall notify in writing each eligible individual of his/her priority classification at the same time the eligibility notification is provided.

(d) The Division shall change an individual's priority classification immediately if there are changes in the individual's circumstances that warrant a change. The Division shall notify the individual in writing of any change in priority classification.

(e) The individual's case file shall contain documentation of the rationale for the priority category assignment.

Authority G.S. 143-545.1; 105-220, Title IV, P.L. 102-569, Section 101(a)(5)(A);

10 NCAC 19G .0608 PRIORITY CATEGORIES

(a) The priority categories for the order of selection for services for eligible individuals are as follows:

- (1) Category One - Individuals with the most significant disabilities;
- (2) Category Two - Individuals with a significant disability; and
- (3) Category Three - Individuals with a non-significant disability.

(b) An individual's priority category is determined when eligibility is determined as outlined in Rule .0607 of this Section.

Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A).

10 NCAC 19G .0609 PROCEDURES

(a) Eligible individuals who are already receiving services under an Individualized Plan for Employment (IPE) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs shall continue until their records of service are closed.

(b) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order from Priority Category Two down through Priority Category Three according to the availability of resources.

(c) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories approved for service shall be placed in a "waiting" status. They shall remain in the "waiting" status until their priority category is opened for services.

(d) When the order of selection is implemented, all individuals whose classification will mean they will be placed in a "waiting" status shall be notified in writing of their status. When services are made available to any category in which individuals have been in a "waiting" status, the Division shall notify all persons in that priority category that their rehabilitation plan can be developed.

(e) Individuals determined eligible after the order of selection for service is implemented shall receive services if they are classified in the categories being served or shall be placed in a "waiting" status if their classification places them in a category not currently being served.

Authority G.S. 143-545.1; P.L. 105-220, Title IV, Section 101(a)(5)(A).

SECTION .0800 – HEARING PROCEDURE

10 NCAC 19G .0801 APPLICABILITY OF RULES

(a) The Rules in this Section apply to contested cases of applicants for and consumers receiving vocational rehabilitation services or independent living rehabilitation services from the Division of Services for the Blind.

(b) "Consumer" means a person eligible for vocational rehabilitation services or independent living rehabilitation services.

Authority G.S. 111-28; 143-546.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.58.

10 NCAC 19G .0802 WRITTEN INFORMATION FOR APPLICANTS AND CONSUMERS

(a) The Division shall inform all applicants for and consumers receiving vocational rehabilitation or independent living rehabilitation services of the opportunities for an administrative review, mediation, and impartial due process hearing available under 34 C.F.R. 361.57 and the Rules of this Section.

(b) The Division shall provide written information to all applicants and consumers informing them:

- (1) of their right to an impartial due process hearing when they are dissatisfied with any determinations made by the Division concerning the furnishing or denial of services;
- (2) that they may seek resolution of the issue through an administrative review and mediation prior to an impartial due process hearing;
- (3) that the rehabilitation counselor or other designated staff of the Division will inform them of the name and address of the area rehabilitation supervisor to whom the request shall be submitted and of the manner in which a mediator or impartial hearing officer is selected; and that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) The Division shall inform all applicants and consumers in writing of the rights established in Paragraph (b) of this Rule at the time of application for vocational rehabilitation services, at the time of assignment to a category in the State's order of selection, if established, at the time of development of the

Individualized Plan for Employment (IPE), and whenever vocational rehabilitation services are reduced, suspended, or terminated.

Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.30.

10 NCAC 19G .0803 REQUEST FOR ADMINISTRATIVE REVIEW, MEDIATION, AND IMPARTIAL DUE PROCESS HEARING

(a) When any applicant for or consumer receiving vocational rehabilitation or independent living rehabilitation services wishes to request an administrative review, mediation, or an impartial due process hearing, the individual shall submit a written request to the area rehabilitation supervisor of the Division designated pursuant to Rule .0802 of this Section.

(b) The request shall indicate if the individual is requesting:

- (1) An administrative review, mediation, and an impartial due process hearing to be scheduled concurrently; or
- (2) An administrative review and an impartial due process hearing to be scheduled concurrently; or
- (3) Mediation and impartial due process hearing to be scheduled concurrently; or
- (4) only an impartial due process hearing.

(c) The request shall contain the following information:

- (1) the name, address, and telephone number of the applicant or consumer and the individual's representative, if one has been designated; and
- (2) a concise statement of the determination made by the rehabilitation staff for which an administrative review, mediation, or impartial due process hearing is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) The Division shall not suspend, reduce, or terminate vocational rehabilitation or independent living rehabilitation services being provided an applicant or consumer for evaluation and assessment, for development of an Individualized Plan for Employment (IPE) or Independent Living Plan (ILP), and as provided for under an IPE or ILP pending final resolution of the issue through either an administrative review, mediation, or impartial due process hearing unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

(e) Participation in the mediation is voluntary on the part of all parties.

Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 102-569, Section 102(d).

10 NCAC 19G .0804 DIVISION ACTIONS IN RESPONSE TO REQUEST

(a) Upon receipt of a request for an impartial due process hearing, the area rehabilitation supervisor shall immediately forward the original request to the Division Director for appointment of a hearing officer to conduct the impartial due

process hearing. If the individual requests mediation in addition to an impartial due process hearing, the Division Director shall arrange for the appointment of an impartial mediator to conduct the mediation session.

(b) If the individual has requested an administrative review in addition to an impartial due process hearing, the area rehabilitation supervisor shall:

- (1) make a decision to conduct the administrative review or with the concurrence of the Division Director appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in the controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's rules and the State Plan for Vocational Rehabilitation Services State Plan for Independent Living Services, hereinafter referred to as the "State Plans;" and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provision of Rules .0805, .0808 and .0809 of this Section.

(c) The area rehabilitation supervisor shall send the applicant or consumer written acknowledgement of receipt of the request and inform the individual that additional information will be sent regarding the administrative review, mediation, or impartial due process hearing.

(d) The area rehabilitation supervisor shall provide the Client Assistance Program with a copy of the request and the response to the request.

Authority G.S. 143B-157; 150B-1 (e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57; 34 C.F.R. 364.20.

10 NCAC 19G .0805 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW AND MEDIATION

(a) Administrative Review

- (1) If an administrative review is to be conducted, the area rehabilitation supervisor or his designee shall:
 - (A) set a date, time and place for the administrative review;
 - (B) send written notification by certified mail to the applicant or consumer and the individual's parent or guardian if the individual is a minor, or his or her representative if one has been designated, with a statement of the date, time and place for the administrative review;
 - (C) advise the applicant or consumer in a written notice that the hearing officer will be appointed by the Director to conduct a hearing if the matter is not resolved in the administrative review (or mediation, if requested) and that the applicant or consumer will also

receive a written notice from the hearing officer regarding the impartial due process hearing which will be held after the administrative review; and

- (D) notify the Director of the Client Assistance Program (CAP) and the parties to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.

- (2) Prior to the administrative review, the area rehabilitation supervisor or his designee shall review all previous decisions and casework related to the applicant or consumer and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the CAP Director if deemed necessary.

(b) Mediation

- (1) Upon receipt of the applicant's or the consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator as defined in 34 C.F.R. 361.5(b)(43) and who is certified by the State of North Carolina, whose name resides on the State's list of certified mediators, and who is mutually agreed upon by the Director and the individual or individual's representative.
- (2) The mediator shall arrange a mediation session at a date, time and location that is convenient for the applicant or consumer and the individual's representative, if one has been designated, and the agency representative, and to the impartial due process hearing. The mediation process shall not be used to deny or delay a due process hearing.
- (3) The mediator shall provide the applicant or consumer and the individual's representative, the Division, and the Client Assistance Program written notice of the mediation session. The written notice shall:
 - (A) Identify the agreed date, time and place for the mediation session; and
 - (B) Advise the applicant or consumer that the hearing officer will be appointed by the Director to conduct an impartial due process hearing if the matter is not resolved in mediation (or in an administrative review, if conducted) and that the applicant or consumer will receive a written notice from the hearing officer regarding the impartial due process hearing, which will after the mediation session (and administrative review, if applicable).

34 C.F.R. 361.57.

10 NCAC 19G .0806 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

(a) Upon receipt of the applicant's or consumer's request for an impartial due process hearing from the area rehabilitation supervisor, the Director shall arrange for the appointment of an impartial hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative, if one has been designated.

(b) Upon receipt of the applicant's or consumer's request for mediation from the area rehabilitation supervisor, the Director shall arrange for the appointment of a qualified and impartial mediator who is mutually agreed upon by the Director and the individual or the individual's representative. The appointment shall come from an Agency-maintained pool of qualified mediators who are:

- (1) Certified by the North Carolina Resolution Dispute Commission or approved by the Mediation Network of North Carolina; and
- (2) Knowledgeable of federal and State law and policies governing vocational rehabilitation and independent living rehabilitation programs.

Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.5; 34 C.F.R. 361.57; P.L. 102-569.

10 NCAC 19G .0807 SCHEDULING AND NOTICE OF IMPARTIAL DUE PROCESS HEARING

(a) The hearing officer shall schedule the impartial due process hearing to be held within 60 days of the original request by the applicant or consumer as described in Rule .0803 of this Section.

(b) The hearing officer shall provide the parties written notice of the date, time and place of the hearing and the issue to be considered at least ten days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program.

(c) The notice shall inform the parties of the following:

- (1) the procedures to be followed in the hearing;
- (2) the particular sections of the statutes, federal regulations, state rules, and state plan involved;
- (3) the rights of the applicant or consumer as specified in 34 C.F.R. 361.57;
- (4) that the hearing officer shall extend the time for the hearing for up to 30 days if the parties jointly agree to a delay and submit a written statement to that effect to the hearing officer; and
- (5) that the hearing shall be cancelled if the matter is resolved in an administrative review or in mediation.

(d) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCAC 19G .0808 ADMINISTRATIVE REVIEW AND MEDIATION

Authority G.S. 143B-157; 150B-(e)(5); 150B-2; 150B-23;

(a) Administrative Review

- (1) Within 15 days of the original request for an administrative review by the applicant or consumer, the area rehabilitation supervisor or his designee shall hold the administrative review with the applicant or consumer; the individual's parent or guardian if the individual is a minor, or representative if one has been designated, the CAP Director, if participating,; and other individuals deemed necessary by the area rehabilitation supervisor or his designee.
- (2) Within five working days of the administrative review, the area rehabilitation supervisor or his designee shall make a decision and notify the applicant or consumer and others using the following procedures:
 - (A) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
 - (B) send the written report containing the decision to the applicant or consumer by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Division Director and the CAP Director; and
 - (C) provide instructions to the applicant or consumer of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or consumer's signature if the individual agrees with the decision.

- (b) Mediation(1) The qualified and impartial mediator shall conduct the mediation session with the parties and their representatives. All mediation discussions are confidential and the content may not be used as evidence in subsequent impartial due process hearings or civil proceedings.
- (2) The Division shall bear the costs of mediation.
- (3) At any point in the mediation process, either party or the mediator may elect to terminate the mediation process should this occur. Resolution through an impartial due process hearing shall continue unless cancelled by the applicant or consumer.
- (4) If an agreement is reached during the mediation session, a written mediation agreement must be developed by the parties with the assistance of the mediator. Both parties must sign it. It must include a clear statement from the consumer that he or she is

satisfied with the agreement and that they request cancellation of the impartial due process hearing.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.R.F. 361.57;

10 NCAC 19G .0809 RESPONSE TO ADMINISTRATIVE REVIEW DECISION AND MEDIATION

(a) Administrative Review

- (1) If the applicant or consumer is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0808 (a)(2)(C) of this Section and submit it to the area rehabilitation supervisor within five days of receipt of the decision. The area rehabilitation supervisor shall inform the Director of the request to cancel the hearing immediately and forward the form to the Director who shall submit it to the hearing officer.
- (2) If, after the administrative review, the hearing officer does not receive a written request from the applicant or consumer that the hearing be cancelled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (3) If the hearing is cancelled due to a decision resulting from the administrative review, the hearing officer shall send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0807(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

- (b) Mediation(1) If a mediation agreement is signed as described in Rule .0808(b)(4) of this Section containing a statement regarding the applicant's or consumer's satisfaction with the agreement and his or her desire to cancel the impartial due process hearing, the mediator shall provide a copy of the signed mediation agreement to the applicant or consumer and to the Division representative, then forward a copy of the signed agreement to the Director.
- (2) The Director shall submit it to the hearing officer. The Director shall also forward a copy of the request to cancel the impartial due process hearing to the Client Assistance Program.
- (3) If, after mediation, the hearing officer does not receive a written request from the applicant or consumer to cancel the hearing, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (4) If the hearing is cancelled due to an agreement reached in mediation, the hearing officer shall

send the applicant or consumer and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0807(d) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program.

*Authority G.S. 143B-157; 150B-(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0810 ADMINISTRATIVE REVIEW BY DIRECTOR

In situations where the issue currently in controversy involves action taken by the central office of the Division, the Director or a designee of the Director shall perform the duties prescribed for the area rehabilitation supervisor in these Rules.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0811 PROCEDURES GOVERNING HEARING

The impartial due process hearing shall be conducted according to the provisions of 34 C.F.R. 361.57(e)(1) and 34 C.F.R. 361.57 (e)(2) and according to Rules .0812 through .0821 and Rule .0824 of this Section.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0812 VENUE

(a) Absent a change of venue pursuant to the procedure described in this Rule, the impartial due process hearing shall be held in the county of residence in this state of the applicant or consumer.(b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.

(c) The motion shall include the following information:

- (1) The name, address, and telephone number of the movant;
- (2) identification by the case name and docket number of the proceeding for which the change is sought;
- (3) the time, date, and place for which the hearing is scheduled;
- (4) the county in which the party requests that the hearing be held;
- (5) a statement of the requested change, including the names and addresses of any witnesses whose convenience represents the basis for this request; and
- (6) any other factors that should be included in ruling on the request.

(d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and service copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.

(e) The hearing officer shall determine whether a change of venue promotes the ends of justice or serves the convenience of

witnesses and shall issue a order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0813 DISCOVERY

(a) Parties in impartial due process hearings shall exchange information, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.

(b) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall base the resolution on the interests of justice. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0814 PRE-HEARING CONFERENCE

(a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.

(b) The conference shall be informal in nature.

(c) The purpose of the conference shall be to discuss:

- (1) The possibility of simplification of issues,
- (2) stipulation of facts or findings,
- (3) identification of areas where evidence will be needed,
- (4) indication of discovery or subpoenas needed, and
- (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23;
34 C.F.R. 361.57.*

10 NCAC 19G .0816 EVIDENCE

(a) G.S. 150B-29, G.S. 150B-30, and G.S.150B-31 are hereby incorporated by reference, including subsequent amendments and editions.

(b) A copy can be obtained from the Division at no cost.

*Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-14(c);
150B-23; 150B-29; 150B-30; 150B-31; 34 C.F.R. 361.57.*

10 NCAC 19G .0817 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefore.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as

part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impractical for the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) the case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361-57; P.L. 102-569.

10 NCAC 19G .0818 EX PARTE COMMUNICATIONS

(a) Ex parte communications in the impartial due process hearing shall be governed by G.S. 150B-35, which is hereby incorporated by reference, including subsequent amendments and editions.

(b) A copy may be obtained from the Division at no cost.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-14(c); 150B-23; 150B-35; 34 C.F.R. 361-57.

10 NCAC 19G .0820 CONDUCT OF HEARING

(a) The hearing officer shall have complete control over the hearing including:

- (1) the responsibility of having a record made of the hearing;
- (2) the administration of oaths and affirmations;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearing.

(b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or consumer the rights required by 34 C.F.R. 361.57(e)(2).

(c) The hearing shall not be open to the public.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCA 19G .0821 FAILURE TO APPEAR

(a) If the applicant or consumer fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.

(b) The applicant or consumer may submit a written request for rescheduling of the hearing to the Director. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Director may

instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or consumer. Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the applicant or consumer.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCAC 19G .0822 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in 34 C.F.R. 361.57 (e) (3). The decision shall be given to the applicant or consumer personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCAC 19G .0823 SECRETARY'S REVIEW AND FINAL DECISION

(a) Either party may request a review of the hearing officer's decision by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.

(b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.

(c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) The reviewing official's review shall be based on the following standards of review:

- (1) The hearing officer's decision shall not be arbitrary, capricious, abuse of discretion, or otherwise unreasonable.
- (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
- (3) In reaching the decision, the hearing officer shall consider such factors as:
 - (A) the federal statute and regulations as they apply to a specific issue in question;
 - (B) the State Plans as they apply to a specific issue in question;
 - (C) Division rules as they apply to a specific issue in question;
 - (D) key portions of conflicting testimony;
 - (E) Division options in the delivery of services where such options are permissible under federal statute; and
 - (F) restrictions in the federal statute with regard to supportive services as maintenance and transportation.

(e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 days from receipt of the request to review the hearing officer's decision. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(f) If the applicant or consumer does not request the Secretary's review, the hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

(g) The Division Director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the CAP Director, the area rehabilitation supervisor, and the applicant's or consumer's representative, if one is designated. A copy shall also be included in the individual's official case record.

Authority G.S. 143-545.1; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 105-220.

10 NCAC 19G .0824 EXTENSIONS OF TIME

(a) Time extensions may be granted for the procedures in these Rules for good cause at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during an administrative review or mediation as specified in Rule .0803(d) of this Section;
- (2) the time for conducting the impartial due process hearing as specified in Rule .0807(a) of this Section which may be extended only as specified in Rule .0807(c)(4) of this Section; and
- (3) the time for issuance of the written notice of the impartial due process hearing as specified in Rule .0807(b) of this Section.

(b) When an extension of time is being granted by the person conducting the administrative review, the mediator, or by the hearing officer, consideration shall be given to the effect of the extension of deadlines for other steps in the administrative review, mediation, and impartial due process hearing procedures.

(c) Good cause includes Acts of God, illness, death in the family, or other reasons not in the control of the parties.

Authority G.S. 143B-157; 150B-1(3)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCAC 19G .0825 RECORD

(a) The official records of impartial due process hearings shall be maintained in the central office of the Division.

(b) Any person wishing to examine a hearing record shall submit a written request to the Director in sufficient time to

allow the record to be prepared for inspection, including the removal of any confidential material.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

10 NCAC 19G .0826 TRANSCRIPTS

Any person desiring a transcript of all or part of an impartial due process hearing shall contact the office of the Director. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance or receipt of the transcript. The transcript may be edited to remove confidential material.

Authority G.S. 143B-157; 150B-1(e)(5); 150B-2; 150B-23; 34 C.F.R. 361.57.

SECTION .0900 – NONDISCRIMINATION

10 NCAC 19G .0901 CIVIL RIGHTS

Authority G.S. 111-28; 34 C.F.R. 361.31.

10 NCAC 19G .0902 HEARING PROCEDURES

Authority G.S. 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

SUBCHAPTER 19H - MEDICAL/EYE CARE PROGRAM

SECTION .0100 – SERVICES

10 NCAC 19H .0101 COVERED SERVICES

(a) Services provided to any eligible North Carolina resident, pursuant to G.S. 111-8, include:

- (1) eye examinations. Refractions are restricted to one every two years for persons 25 years of age or older and one refraction per year for persons under 25 years of age, without prior approval by division staff;
- (2) treatment to the eye including medication;
- (3) eyeglasses and ocular prostheses. Eyeglasses are restricted to one pair every two years for persons 25 years of age or older and one pair per year for persons under 25 years of age, without prior approval by Division staff. Contact lenses are restricted to therapeutic types;
- (4) hospitalization for eye-related disorders; and
- (5) surgery to the eye and supporting structures except that there shall be no cosmetic surgery for adults and no payment shall be made for unnecessary surgery as determined by the State Supervising Ophthalmologist. The State Supervising Ophthalmologist is a medical doctor with a specialty in ophthalmology duly licensed to practice by the State of North Carolina. Services are obtained by contract between the Agency and practitioner.

(b) Prior Approval means:

- (1) Eye refractions, with the following restrictions, do not require prior approval: For

clients age 25 or older, refractions and eyeglasses are restricted to one every two years. For clients under age 25, refractions and eyeglasses are restricted to one per year.

- (2) A second refraction request within the time limitation period must be submitted on the general Request for Prior Approval form documenting the medical necessity for a second refraction (loss of vision, significant decrease in acuity, eye injury, retinal or muscle surgery, etc.).
- (3) Prior approval is required for all visual aids. The Area Nursing Eye Care Consultant reviews each request for prior services, medical justification, necessity, age, and other criteria before approving or denying the request.
- (4) Prior approval is required for all treatment, surgery, and prescription drugs. The Area Nursing Eye Care Consultant reviews each request for prior services, medical justification, necessity, age, and other criteria before approving or denying the request.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0102 ELIGIBILITY CRITERIA

- (a) A North Carolina resident is eligible to receive services if:
- (1) the services are not covered by the North Carolina medical assistance (medicaid) program; or
 - (2) the resident is a medicaid recipient on a spend-down who qualifies under the appropriate income criterion; or
 - (3) the services cannot be reimbursed by any other state or federal program providing eye care.
- (b) If the resident is a preschool child or school age child, the family's annual net income cannot exceed the amounts as established by the General Assembly.
- (c) If the resident is an adult, the family's annual net income cannot exceed the amount set out in the North Carolina Budget Bill.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0103 APPLICATION FOR SERVICES

- (a) In order to be determined eligible for services, pursuant to this Subchapter, the resident must:
- (1) have been determined to be ineligible for medicaid and other state or federal programs that offer eye care services;
 - (2) complete the application for services in person or by mail;
 - (3) verify income in the form of a statement from their employer or written proof of other sources of income.
- (b) Individuals wishing to apply for services may contact either the county department of social services or the Division of

Services for the Blind field office to determine where application should be made.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0104 ELIGIBILITY FOR SERVICES

(a) The Division shall issue any resident determined eligible for services an authorization for an eye examination and a certification for fitting and dispensing of eyeglasses. These copies must be taken by the applicant to his selected vendor and will authorize the Division of Services for the Blind to pay only for eye examinations by physicians (ophthalmologists) or optometrists and fitting and dispensing of eyeglasses.

(b) All other services including purchase of eyeglasses, medications, follow-up visits, surgery, and other treatments must receive prior approval from the Division of Services for the Blind.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0105 RETROACTIVE ELIGIBILITY

The division may issue authorizations to pay for emergency inpatient and outpatient surgery and hospital services plus other services or treatment provided prior to determining eligibility if:

- (1) services were received no more than 90 days before application;
- (2) the person would have been eligible at the time the services were performed; and
- (3) the services were those covered by this program.

Surgery and hospitalization not of an emergency nature requires prior approval.

Authority G.S. 111-8; 143B-157.

SECTION .0200 – ADMINISTRATIVE PROCEDURES

10 NCAC 19H .0201 USE OF AUTHORIZATION AND CERTIFICATION

- (a) The consumer shall deliver the authorization to the eye practitioner for the examination and the certification for fitting and dispensing to the eye practitioner or licensed optical provider who will provide these services.
- (b) Out-of-state services must have prior approval by the state supervising ophthalmologist.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0202 CLAIMS

- (a) Claims for services or supplies must be submitted no later than twelve months from the date of service. The division shall not pay claims received more than 12 months from the date of service.
- (b) The amount reimbursed is payment in full. The consumer cannot be billed for any unrealized balance except a co-payment. A co-payment not to exceed five dollars (\$5.00) may be charged the consumer by both the practitioner who provides the eye exam and follow-up and by the optical supplier. This will reduce the division's liability by the amount of the co-payment.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0203 FRAUD: PAYMENT OF CLAIM

(a) All services billed by licensed eye practitioners and optical providers, institutions and suppliers must be consistent with the services actually performed.

(b) The Division shall use the Medicaid schedule of benefit payments for services charged the Division. This schedule is maintained by the Department of Health and Human Services, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603-2001. The schedule is incorporated by reference including subsequent amendments and additions.

(c) Eye practitioners, licensed optical providers, institutions, and suppliers must keep records disclosing the services charged the division for five years. The division may have access to these records on written request by the division director.

Authority G.S. 108-48; 111-8; 111-23; 143B-157.

10 NCAC 19H .0204 FREEDOM OF CHOICE

In accordance with G.S. 90-127.1, all eligible consumers shall be afforded a free choice to select a licensed eye practitioner or optical provider to receive services.

Authority G.S. 90-127.1; 111-8; 143B-157.

10 NCAC 19H .0206 EXAMINATION REPORTS

(a) An eye examination report shall be completed by physicians (ophthalmologists) and optometrists on all persons having:

- (1) a chronic, degenerative eye disorder; or
- (2) no vision or vision with glasses so defective as to prevent the performance of ordinary activities requiring sight.

(b) The Division may request specific reports on persons not meeting the criteria in Paragraph (a) of this Rule, with the person's consent.

(c) Licensed eye practitioners shall not be paid for services until the requested information is supplied.

Authority G.S. 111-8; 111-8.1; 143B-157.

10 NCAC 19H .0207 CONFIDENTIALITY OF RECORDS

Authority G.S. 111-8; 111-28; 143B-157.

10 NCAC 19H .0210 EMERGENCY AUTHORIZATION

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0211 MANUAL

Authority G.S. 111-8; 143B-157.

SECTION .0300 – EYE CLINIC STANDARDS

10 NCAC 19H .0301 CRITERIA FOR CONDUCTING

CLINIC

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0306 CLINIC PREPARATION

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0307 OPTICAL PROVIDER CONTRACTS

Authority G.S. 111-8; 143B-157; 150B-13.

10 NCAC 19H .0308 STAFFING REQUIREMENTS

Authority G.S. 92-127.1; 111-8; 143B-157; 150B-13; S.L. 1977, c. 482.

10 NCAC 19H .0311 FOLLOW-UP CARE: RECORDS

Authority G.S. 111-8; 143B-157.

SECTION .0400 – HEARING

10 NCAC 19H .0401 CIVIL RIGHTS

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0402 APPEAL OF DIVISION ACTIONS

(a) If a consumer is dissatisfied with an action or service delivered by the medical/eye care program, that consumer may request a conference with the program chief for the Medical/Eye Care Program.

(b) A conference shall be held within 15 working days from the receipt of the original request.

(c) If the conference solves the grievance or dissatisfaction, this shall be stated in writing by the program chief and signed by the Consumer.

Authority G.S. 111-8; 143B-157.

10 NCAC 19H .0403 REQUEST FOR CONTESTED CASE HEARING

(a) If the results of the conference are unsatisfactory, the consumer shall be informed by the Division of his or her right to a contested case hearing.

(b) All contested case hearings shall be heard by the Office of Administrative Hearings pursuant to G.S. 150B, Article 3. The consumer shall be notified by the designated agency representative in writing that he has the right to petition the Office of Administrative Hearings and request a contested case hearing. The consumer shall be instructed by the designated agency representative to contact OAH and request the specific forms to be completed.

(c) In this same written notice the consumer shall be instructed that they have 60 calendar days from the date they receive the agency notice to request a contested case hearing through OAH. Any petition for a contested case must be returned by the consumer directly to the Office of Administrative Hearings.

Authority G.S. 111-8; 143B-157; 150B-23.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – Division of Vocational Rehabilitation Services intends to amend the rules cited as 10 NCAC 20A .0102; 20C .0304, .0314. Notice of Rule-making Proceedings was published in the Register on October 1, 1999 and August 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 12, 2001

Time: 3:00 p.m.

Location: Haywood Gymnasium – Dix Campus, Raleigh, NC

Reason for Proposed Action: To decrease its expenditures in training programs as required by the budgetary actions outlined in item 7, Division staff developed more stringent requirements for providing training services to clients. These requirements affect the public and must be included in rules.

Comment Procedures: Comments may be presented orally or in writing at the hearing. Oral statements may be limited at the discretion of the hearing officer. Written comments may also be submitted to Steven Hairston, Division of Vocational Rehabilitation Services, 2801 Mail Service Center, Raleigh, NC 27699-2801. To obtain additional information or indicate need for alternative communication format contact Steven Hairston in writing or by phone (919) 733-3364 or TDD (919) 733-5924. In addition, a fiscal note is available upon written request from the same address. The deadline for receiving written comments is December 17, 2001.

Fiscal Impact

- ☒ **State**
☐ **Local**
☐ **Substantive** (>\$5,000,000)
☐ **None**

CHAPTER 20 – VOCATIONAL REHABILITATION

SUBCHAPTER 20A – GENERAL INFORMATION

SECTION .0100 – INFORMATION REGARDING RULES

10 NCAC 20A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

- (1) "Division" means the Division of Vocational Rehabilitation Services of the Department of Health and Human Services.
- (2) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (3) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division

Director and chaired by the Chief of Operations to review for approval or disapproval:

- (a) amounts for residence or job site modifications that exceed standard amounts specified in 10 NCAC 20C .0316; and
- (b) purchase of vehicles as set forth in 10 NCAC 20C .0316.
- (4) "Functional Capacity" means the ability to perform in the following areas:
 - (a) communication;
 - (b) interpersonal skills;
 - (c) mobility;
 - (d) self-care
 - (e) self-direction
 - (f) work skills; and
 - (g) tolerance.
- (5) "Individual with a severe disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
- (6) "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits three or more functional capacities in terms of an employment outcome.
- (7) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.
- (8) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.
- (9) Transferable work skills means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

Authority G.S. 143-545.1; 150B-21.6; P.L. 102-569, s. 7(15), s. 101(a)(5)(A).

10 NCAC 20C .0304 VOCATIONAL AND OTHER TRAINING

(a) Vocational and other training may be provided only to those clients determined eligible for rehabilitation services or for extended evaluation. These services shall be provided only to extent necessary to achieve the job choice. Training shall be provided in accredited public or private facilities, but the

Division's funding for training expenses shall be as specified in Rule .0205 of this Subchapter.

(b) Vocational and other training may include on-the-job training; training at community rehabilitation programs; supported employment training; and postsecondary training. Postsecondary training may include

- (1) vocational training at business schools, trade schools, community colleges, technical institutes, nonprofit schools, or proprietary schools, or
- (2) college or university training including college parallel programs at community colleges and graduate school.

(c) Vocational and other training services may be provided to clients who require these services in order to become employed and when direct job placement for an individual with transferable work skills is not a suitable option due to disability-related issues. Specific criteria for sponsorship of all types of training include:

- (1) Clients with Prior Work Experience:
 - (A) If the individual's disability creates impediments to performance in the client's current or previous occupation and the client does not possess transferable work skills that will match requirements of a new occupation, the client may be considered for sponsorship of training.
 - (B) If the client's disability is such that it does not interfere with satisfactory performance in the current or previous occupation, the client shall not be considered for sponsorship of training.
- (2) Clients with No Substantial Work Experience:
 - (A) If the client's disability will place the client at a greater disadvantage in securing employment than peers who are not disabled, the client may be considered for sponsorship of training.
 - (B) If the client's disability is expected to prevent the client from holding employment compatible with the client's capabilities, the client may be considered for sponsorship of training.
- (3) Clients with previously acquired academic or vocational skills who are unable to take advantage of these skills vocationally because of the onset or progressive nature of their disability may be considered for further training contingent upon the job choice.
- (4) Based on objective data and input from the client, the Division shall determine that the individual has the capacity to perform the essential functions of the job upon completion of training.

- (5) The client and counselor shall complete an Individualized Plan for Employment (IPE) in which the job choice requires the training.

(d) Postsecondary Training

- (1) In addition to meeting the general requirements for sponsorship of training specified in Paragraph (c) of this Rule, an individual shall meet the following requirements for the Division to sponsor postsecondary training:

(A) The Division shall obtain, analyze, and include in the client record objective data that ensures that the individual is capable of successfully completing the training program. Sources of data shall include, but not be limited to, SAT scores, placement test scores, secondary transcripts for those just out of high school, previous postsecondary transcripts, vocational evaluations and other psychometric assessments.

(B) Attendance Requirements

- (i) The individual shall attend the training program on a full-time basis.
- (ii) If there are factors related to the individual's disability and/or need to work that may interfere with full-time attendance as defined by the training program, part-time attendance may be authorized if the counselor submits appropriate justification and the unit manager approves part-time attendance.
- (iii) The unit manager may approve extension of a community college program from four to five semesters and extension of a college or university program from eight to ten semesters. The unit manager may approve attendance at summer school if such attendance will decrease the number of full-time semesters or quarters necessary to complete the training program. Exceptions regarding attendance beyond the limits set in this Paragraph shall be approved by both the unit manager and the Chief of Operations.
- (iv) Clients attending postsecondary programs other than a college or

- university program shall meet the institution's requirements for full-time attendance or secure approval for an exception from the unit manager.
- (v) If a student drops enough courses to change the courseload from full-time to part-time without prior approval of the Division, sponsorship shall be discontinued after the counselor notifies the student at least one quarter or semester before termination. The student may have one grading period to correct the courseload deficiency.
- (C) The Division may sponsor an individual in a non-degreed curriculum on a limited basis. These courses must be completed as follows:
- (i) The Division may sponsor an individual as a "special student" or a student in a "provisional status" when the individual cannot be accepted into a degreed program and there is strong evidence that such a plan is feasible according to the postsecondary training policy in Paragraph (d) of this Rule. The Division shall limit the sponsorship to 24 semester hours. Semester hours for these courses shall also be considered part of the 10 semesters for postsecondary training that is the Division's maximum limit.
- (ii) The Division may sponsor remedial training courses if the individual is accepted into a degreed curriculum contingent upon completion of these courses or as a part of a comprehensive assessment as outlined in 34 C.F.R. 361.5(b)(6). The Division shall sponsor no more than three remedial courses over a period of two semesters over the life of the case. An exception may be granted if more courses are needed because the individual has a most significant disability and the exception is approved in writing by the Chief of Operations.
- (D) The Division may sponsor individuals enrolled in licensed or accredited distance learning programs when such programs are not available through traditional on-campus programs or when the individual has special disability-related problems that prevent him or her from participating in an on-campus program. The individual's participation in such a program shall be approved in writing by the unit manager. The Division shall not sponsor programs where the entire package or curriculum must be purchased initially. The Division may assist with required software for distance learning but shall purchase computer equipment only as permitted under Rule .0314 of this Section.
- (E) The client shall meet the academic standards imposed by the postsecondary school and demonstrate steady progress toward completion of the training program. If the school does not have specific academic standards for completion of the program, the Division shall require the client to have at a minimum a 2.00 grade point average at entry into the junior year for the agency to continue sponsorship. If the individual is in the community college system, he or she shall have a 2.00 average at the end of the second semester or the average required by the school or particular curriculum in order to graduate from the program. In other programs such as proprietary schools, the client shall meet the requirements of each specified progress period that will enable the student to graduate or achieve the competency-based requirements at regular intervals set by the school. If the client's grades fall below the minimum grade point average or other requirements set in this Paragraph, the counselor shall notify the client of the pending loss of Division assistance at least one quarter or semester before terminating assistance. The client may then have one grading period to improve to an acceptable level.

Failure to maintain the prescribed academic standards shall mean the loss of Division assistance with tuition, fees, books, interpreter services, maintenance, personal attendant services, and other authorized services directly related to the course of study.

- (F) Graduate training may be sponsored for those individuals who require this level of training to reach the job choice. For those individuals who are either in or entering undergraduate school, graduate training shall be included as part of the original or amended IPE and shall be indicated when the client generally declares his or her major in undergraduate school. For those individuals who have an undergraduate degree and require graduate training due to their disability, graduate training may be sponsored subject to the unit manager's approval.

- (2) Counselors shall thoroughly review in-state opportunities and discuss them with the client prior to considering out-of-state vendors. The unit manager shall approve all out-of-state training.

(e) The Division shall not sponsor the following:

- (1) professional improvement courses (including computer certification courses) after a client has completed the level of training for the job outlined in the original or amended Individual Plan for Employment and secured a job that meets the requirements in the IPE;
- (2) training at the preparatory school level;
- (3) training when the individual can not demonstrate that sufficient funds are available from other resources to cover expenses that are not covered by the Division; or
- (4) programs that cannot be sponsored in semester or other increments but must be purchased as a complete program package.

*Authority G.S. 143-545.1; 143.546.1; 34 C.F.R. 361.5(b)(6)
34 C.F.R.; 361.48; 34 C.F.R.; 361.54; P.L. 105-220, s. 103(a).*

10 NCAC 20C .0314 OCCUPATIONAL LICENSES, TOOLS, EQUIPMENT, AND SUPPLIES

(a) Assistance in obtaining occupational licenses, tools, equipment, initial stocks and supplies may be provided to clients determined eligible for rehabilitation services. Occupational licenses, permits, or other forms of written authority required by state, county, city or other government units in order for clients to participate in employment may be included, but privilege licenses shall not be included. Occupational tools or other placement equipment and supplies, including livestock, may be provided to the extent necessary for suitable and practical placement of the client.

(b) The Division may assist in the purchase of computers if assistive technology is required by the client for purposes of augmentative communication, environmental controls, or when voice recognition or equivalent adaptive input devices are required for the individual to complete the IPE/IPIL

(c) The Division shall not purchase upgrades or improved versions of assistive technology unless the progression of the individual's disability requires such an upgrade.

(d) Division assistance with software shall be limited to five hundred dollars (\$500.00) unless the software is required for the purposes outlined in Paragraph (b) of this Rule.

Authority G. S. 143-545.1; 143-546.1; 34 C.F.R.; 361.48.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to adopt the rules cited as 10 NCAC 42B .2701-.2703; 42C .4002-.4004; 42D .2302-.2304. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: May 1, 2002

Public Hearing:

Date: December 7, 2001

Time: 10:00 am

Location: Room 201, Council Building, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: SL 2000-129 modified G.S. 131D-34.1 to require Adult Care Homes, Family Care Homes and DDA's to notify the Department of Health and Human Services of deaths that occur in these facilities. These Rules were adopted to establish the requirements by which deaths – and the information needed for each death - are to be reported.

Comment Procedures: Questions or comments concerning these Rules should be directed to Mark Benton, Rule-making Coordinator, or Doug Barrick, Policy Coordinator, Division of Facilities Services, DHHS, 701 Barbour Drive, 2701 MSC, Raleigh, NC 27699-2701.

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (>\$5,000,000)
- ☒ None

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B – LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .2700 – DEATH REPORTING REQUIREMENTS

10 NCAC 42B .2701 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's

death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.

- (2) "Division" means the Division of Facility Services (DFS).
- (3) "Immediately" means at once, at or near the present time, without delay.
- (4) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring or abusing another person.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42B .2702 SCOPE

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42B .2703 REPORTING REQUIREMENTS

(a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.

(c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.

(d) Written notice may be submitted in person or by telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

- (1) Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;
- (2) Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital;
- (3) Circumstances of death: place and address where resident died, date and time death was

discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and

- (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

- (1) Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
- (2) Submit to the Division of Facility Services, immediately after it becomes available, any information required by this Rule that was previously unavailable; and
- (3) Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

Authority G.S. 131D-2; 131D-34.1.

SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

SECTION .4000 – DEATH REPORTING REQUIREMENTS

10 NCAC 42C .4002 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse

- of equipment, motor vehicle accidents, and natural disasters.
- (2) "Division" means the Division of Facility Services (DFS).
- (3) "Immediately" means at once, at or near the present time, without delay.
- (4) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring or abusing another person.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42C .4003 SCOPE

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42C .4004 REPORTING REQUIREMENTS

- (a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.
- (b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.
- (c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.
- (d) Written notice may be submitted in person or by telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

- (1) Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;
- (2) Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital.
- (3) Circumstances of death: place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a

description of the type of restraint and its usage, and a description of events surrounding the death; and

- (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

- (1) Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
- (2) Submit to the Division of Facility Services, immediately after it becomes available, any information required by this rule that was previously unavailable; and
- (3) Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389;

Authority G.S. 131D-2; 131D-34.1.

SUBCHAPTER 42D – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .2300 – DEATH REPORTING REQUIREMENTS

10 NCAC 42D .2302 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Accident" means an unexpected, unnatural or irregular event contributing to a resident's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.
- (2) "Division" means the Division of Facility Services (DFS).

- (3) "Immediately" means at once, at or near the present time, without delay.
- (4) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring or abusing another person.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42D .2303 SCOPE

For purposes of this Section, facilities licensed in accordance with G.S. 131D-2 shall report resident deaths to the Division of Facility Services.

Authority G.S. 131D-2; 131D-34.1.

10 NCAC 42D .2304 REPORTING REQUIREMENTS

- (a) Upon learning of the death of a resident a facility shall file a report in accordance with G.S. 131D-34.1 and these Rules. A facility shall be deemed to have learned of a death when any facility staff obtains reliable information that the death occurred.
- (b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for a resident death occurring in an adult care home within seven days of the use of a physical restraint or physical hold on the resident or within 24 hours of the resident's transfer from the adult care home to a hospital, if the death occurred within seven days of physical restraint or physical hold of the resident.
- (c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.
- (d) Written notice may be submitted in person or by telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

- (1) Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility administrator and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, and date and time report prepared;
- (2) Resident information: Name, Medicaid number (if applicable), date of birth, age, sex, race, primary admitting diagnoses, and date of most recent admission to an acute care hospital.
- (3) Circumstances of death: place and address where resident died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, and a description of events surrounding the death; and

- (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 131D-34.1(e). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

- (1) Notify the Division of Facility Services immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
- (2) Submit to the Division of Facility Services, immediately after it becomes available, any information required by this rule that was previously unavailable; and
- (3) Provide, upon request by the Division of Facility Services, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any resident death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the Division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389;

Authority G.S. 131D-2; 131D-34.1.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02C .0107, .0112. Notice of Rule-making Proceedings was published in the Register on August 15, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 28, 2001

Time: 7:00 p.m.

Location: Archdale Building, 512 N. Salisbury St., Ground Floor Hearing Rm., Raleigh, NC

Reason for Proposed Action: Pursuant to a mandate by the North Carolina General Assembly, the Environmental Management Commission approved a temporary rule in

response to the passage of Session Law 2001-113 (House Bill 609). The temporary rule was enacted on August 3, 2001 and affects a Paragraph of 15A NCAC 02C .0107. This Rule delineates standards of construction for water supply wells. 15A NCAC 02C .0107(a)(3) specifies horizontal separation distances between water supply wells and certain structures associated with human or animal waste. These distances are to be applied at properties where small lot sizes or other fixed conditions necessitate their use. For other properties where land use or the size of the property allows for greater horizontal separation, the minimum distances between wells and potential sources of groundwater contamination are those contained in 15A NCAC 02C .0107(a)(2). As a follow-up to temporary rulemaking, a 60-day Subject Matter Notice of permanent rulemaking for 15A NCAC 02C .0107 was issued through the North Carolina Register on August 15, 2001. This action was taken as a means of obtaining stakeholder involvement in the rulemaking process for 15A NCAC 02C .0107. Language was shown in the notice proposing that the words "an existing single family dwelling" be reincorporated into a proposed rule that would appear at public hearing, unless comments recommended otherwise. Based on comments received from the 60-day notice for permanent rules, the Groundwater Section has proposed that the permanent rule be the same as the temporary rule. Rulemaking for 15A NCAC 02C .0112 (Well Maintenance: Repair: Groundwater Resources) is necessary as a result of a decision by an Administrative Law Judge in a contested case. On July 12, 2001, the Environmental Management Commission approved a 60-Day Notice of Rulemaking Proceedings for issuance in the North Carolina Register, which was published on August 15, 2001. The Commission also gave approval to publish the rule for hearing. As required by G.S. 150B, this 60-day notice is a subject matter notice that proposed language for the rule change, explained the reasons for changing the rule, and informed the public as to the manner in which comments will be accepted. Based on the response of the public to the 60-Day Notice, the text of the rule in 15A NCAC 02C .0112(d) to be presented to the public at hearing will specify that wells repaired with a liner be grouted within five working days. The text that will appear in this Rule is the same as that which was published in the North Carolina Register on August 15, 2001 in the 60-Day Notice of Rulemaking Proceedings.

Comment Procedures: Interested persons may contact David Hance at (919) 715-6189 for more information. Oral comments may be made during the hearings. All written comments must be submitted by December 3, 2001. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officers. Mail comments to David Hance, DENR-DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, Phone (919) 715-6189; Fax (919) 715-0588; E-Mail Address David.Hance@ncmail.net.

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (>\$5,000,000)
- ☒ None

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02C – WELL CONSTRUCTION STANDARDS

SECTION .0100 – CRITERIA AND STANDARDS APPLICABLE TO WATER – APPLY TO CERTAIN OTHER TYPE WELLS

15A NCAC 02C .0107 STANDARDS OF CONSTRUCTION: WATER-SUPPLY WELLS

(a) Location.

- (1) The well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways;
- (2) The minimum horizontal separation between a well, intended for a single-family residence or other non-public water system, and potential sources of groundwater contamination, which exists at the time the well is constructed, shall be as follows unless otherwise specified:

- (A) Septic tank and drainfield 100 ft.
- (B) Other subsurface ground absorption waste disposal system 100 ft.
- (C) Industrial or municipal sludge-spreading or wastewater-irrigation sites.. 100 ft.
- (D) Water-tight sewage or liquid-waste collection or transfer facility 50 ft.
- (E) Other sewage and liquid-waste collection or transfer facility 100 ft.
- (F) Cesspools and privies..... 100 ft.
- (G) Animal feedlots or manure piles 100 ft.
- (H) Fertilizer, pesticide, herbicide or other chemical storage areas.. 100 ft.
- (I) Non-hazardous waste storage, treatment or disposal lagoons 100 ft.
- (J) Sanitary landfills 500 ft.
- (K) Other non-hazardous solid waste landfills, such as Land Clearing and Inert Debris (LCID) landfills..... 100 ft.
- (L) Animal barns 100 ft.
- (M) Building foundations, excluding the foundation of a structure housing the well head 25 ft.
- (N) Surface water bodies which act as sources of groundwater recharge, such as ponds, lakes and reservoirs. 50 ft.
- (O) All other surface water bodies, such as brooks, creeks, streams, rivers,

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- sounds, bays and tidal estuaries 25 ft.
- (P) Chemical or petroleum fuel underground storage tanks regulated under 15A NCAC 02N:
- (i) with secondary containment 50 ft.
- (ii) without secondary containment 100 ft.
- (Q) Above ground or underground storage tanks which contain petroleum fuels used for heating equipment, boilers or furnaces. 50 ft.
- (R) All other potential sources of groundwater contamination 50 ft.
- (3) For a well serving a single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required separation distances shall be the maximum possible but shall in no case be less than the following:
- (A) Septic tank and drainfield 50 ft.
- (B) Water-tight sewage or liquid-waste collection or transfer facility 25 ft.
- (C) Animal barns..... 50 ft.
- (D) Cesspool or privies..... 50 ft.
- (4) A well or well system, serving more than one single-family dwelling but with a designed capacity of less than 100,000 gpd, must meet the separation requirements specified in Subparagraph (a)(2) of this Rule;
- (5) A well or well system with a designed capacity of 100,000 gpd or greater must be located a sufficient distance from known or anticipated sources of groundwater contamination so as to prevent a violation of applicable groundwater quality standards, resulting from the movement of contaminants, in response to the operation of the well or well system at the proposed rate and schedule of pumping;
- (6) Actual separation distances must conform with the most stringent of applicable federal, state or local requirements;
- (7) Wells drilled for public water supply systems regulated by the Division of Environmental Health shall meet the siting and all other requirements of that Division.
- (b) Source of water.
- (1) The source of water for any well intended for domestic use shall not be from a water bearing zone or aquifer that is known to be contaminated;
- (2) In designated areas described in 15A NCAC 02C .0117 of this Section, the source shall be greater than 35 feet;
- (3) In designated areas described in 15A NCAC 02C .0116 of this Section, the source may be less than 20 feet, but in no case less than 10 feet; and
- (4) In all other areas the source shall be at least 20 feet below land surface.
- (c) Drilling Fluids and Additives. Drilling Fluids and Additives shall not contain organic or toxic substances or include water obtained from surface water bodies or water from a non-potable supply and may be comprised only of:
- (1) the formational material encountered during drilling; or
- (2) materials manufactured specifically for the purpose of borehole conditioning or water well construction.
- (d) Casing.
- (1) If steel casing is used, then:
- (A) The casing shall be new, seamless or electric-resistance welded galvanized or black steel pipe. Galvanizing shall be done in accordance with requirements of ASTM A-120;
- (B) The casing, threads and couplings shall meet or exceed the specifications of ASTM A-53, A-120 or A589;
- (C) The minimum wall thickness for a given diameter shall equal or exceed that specified in Table 1;

TABLE 1: MINIMUM WALL THICKNESS FOR STEEL CASING:

Nominal Diameter (in.)	Wall Thickness (in.)
For 3-1/2" or smaller pipe, schedule 40 is required	
4	0.142
5	0.156

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5-1/2	0.164
6	0.185
8	0.250
10	0.279
12	0.330
14 and larger	0.375

- (D) Stainless steel casing, threads, and couplings shall conform in specifications to the general requirements in ASTM A-530 and also shall conform to the specific requirements in the ASTM standard that best describes the chemical makeup of the stainless steel casing that is intended for use in the construction of the well;
 - (E) Stainless steel casing shall have a minimum wall thickness that is equivalent to standard schedule number 10S; and
 - (F) Steel casing shall be equipped with a drive shoe if the casing is driven in a consolidated rock formation. The drive shoe shall be made of forged, high carbon, tempered seamless steel and shall have a beveled, hardened cutting edge. A drive shoe will not be required for wells in which a cement or concrete grout surrounds and extends the entire length of the casing.
- (2) If Thermoplastic Casing is used, then:
- (A) the casing shall be new;
 - (B) the casing and joints shall meet or exceed all the specifications of ASTM F-480-81, except that the outside diameters will not be restricted to those listed in F-480; and
 - (C) the maximum depth of installation for a given SDR or Schedule number shall not exceed that listed in Table 2 unless the well drilling contractor can provide the Division, upon request, with written documentation from the manufacturer of the casing stating that the casing may safely be used at the depth at which it is to be installed.

TABLE 2: Maximum allowable depths (in feet) of Installation of
Thermoplastic Water Well Casing

Nominal Diameter (in inches)												
Schedule number-	2	2.5	3	3.5	4	5	6	8	10	12	14	16
Schedule 40-	485	635	415	315	253	180	130	85	65	65	50	50
Schedule 80-	1460	1685	1170	920	755	550	495	340	290	270	265	255
All Diameters (in inches)												
SDR Number												
SDR 41	20											
SDR 32.5	50											

SDR 27.5	100
SDR 26	95
SDR 21	185
SDR 17	355
SDR 13.5	735

- | | |
|---|--|
| <p>(D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface.</p> <p>(E) For wells in which the casing will extend into consolidated rock, thermoplastic casing shall be equipped with a coupling, or other device approved by the manufacturer of the casing, that is sufficient to protect the physical integrity of the thermoplastic casing during the processes of seating and grouting the casing and subsequent drilling operations.</p> <p>(F) Thermoplastic casing shall not be driven into consolidated rock.</p> <p>(3) In constructing any well, all water-bearing zones that are known to contain polluted, saline, or other non-potable water shall be adequately cased and cemented off so that pollution of overlying and underlying groundwater zones will not occur.</p> <p>(4) Every well shall be cased so that the bottom of the casing extends to a minimum depth as follows:</p> <p>(A) Wells located within the area described in 15A NCAC 02C .0117 of this Section shall be cased from land surface to a depth of at least 35 feet.</p> <p>(B) Wells located within the area described in 15A NCAC 02C .0116 of this Section shall be cased from land surface to a depth of at least 10 feet.</p> <p>(C) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.</p> <p>(5) The top of the casing shall be terminated by the drilling contractor at least 12 inches above land surface.</p> <p>(6) The casing in wells constructed to obtain water from a consolidated rock formation shall be:</p> | <p>(A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (h) of this Rule; and</p> <p>(B) firmly seated at least five feet into the rock.</p> <p>(7) The casing in wells constructed to obtain water from an unconsolidated rock formation (such as gravel, sand or shells) shall extend at least one foot into the top of the water-bearing formation.</p> <p>(8) Upon completion of the well, the well shall be sufficiently free of obstacles including formation material as necessary to allow for the installation and proper operation of pumps and associated equipment.</p> <p>(e) Grouting.</p> <p>(1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:</p> <p>(A) In those areas designated by the Director to meet the criteria of 15A NCAC 02C .0116 of this Section, grout shall extend to a depth of two feet above the screen or, for open end wells, to the bottom of the casing, but in no case less than 10 feet.</p> <p>(B) In those areas designated in 15A NCAC 02C .0117 of this Section, grout shall extend to a minimum of 35 feet below land surface.</p> <p>(C) The casing shall be grouted as necessary to seal off, from the producing zone(s), all aquifers or zones with water containing organic or other contaminants of such type and quantity as to render water from those aquifers or zones unsafe or harmful or unsuitable for human consumption and general use.</p> <p>(2) For large diameter wells cased with concrete pipe or ceramic tile, the following shall apply:</p> <p>(A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;</p> |
|---|--|

- (B) The annular space around the casing shall be filled with a cement-type grout to a depth of at least 20 feet, excepting those designated areas specified in 15A NCAC 02C .0116 and 15A NCAC 02C .0117 of this Section. The grout shall be placed in accordance with the requirements of this Paragraph.
- (3) Bentonite grout may be used in that portion of the borehole that is at least three feet below land surface. That portion of the borehole above the bentonite grout, up to land surface, shall be filled with a concrete or cement-type grout.
- (4) Grout shall be placed around the casing by one of the following methods:
 - (A) Pressure. Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area around the casing and overflows at the surface; or
 - (B) Pumping. Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout is applied. The grout hose or pipe should remain submerged in grout during the entire application; or
 - (C) Other. Grout may be emplaced in the annular space by gravity flow in such a way to ensure complete filling of the space to a maximum depth of 20 feet below land surface.
- (5) If an outer casing is installed, it shall be grouted by either the pumping or pressure method.
- (6) The liquid and solid components of all grout mixtures shall be thoroughly blended prior to emplacement below land surface.
- (7) The well shall be grouted within five working days after the casing is set.
- (8) No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.
- (9) Where grouting is required by the provisions of this Section, the grout shall extend outward from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater; excepting, however, that large diameter bored wells shall meet the requirements of Subparagraph (e)(2) of this Rule.
- (f) Well Screens.
 - (1) The well, if constructed to obtain water from an unconsolidated rock formation, shall be equipped with a screen that will adequately prevent the entrance of formation material into the well after the well has been developed and completed by the well contractor.
- (2) The well screen be of a design to permit the optimum development of the aquifer with minimum head loss consistent with the intended use of the well. The openings shall be designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging.
- (3) Multi-screen wells shall not connect aquifers or zones which have differences in water quality which would result in contamination of any aquifer or zone.
- (g) Gravel-and Sand-Packed Wells.
 - (1) In constructing a gravel-or sand-packed well:
 - (A) The packing material shall be composed of quartz, granite, or similar mineral or rock material and shall be clean, of uniform size, water-washed and free from clay, silt, or other deleterious material.
 - (B) The size of the packing material shall be determined from a grain size analysis of the formation material and shall be of a size sufficient to prohibit the entrance of formation material into the well in concentrations above those permitted by Paragraph (h) of this Rule.
 - (C) The packing material shall be placed in the annular space around the screens and casing by a fluid circulation method, preferably through a conductor pipe to ensure accurate placement and avoid bridging.
 - (D) The packing material shall be adequately disinfected.
 - (E) Centering guides must be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.
 - (2) The packing material shall not connect aquifers or zones which have differences in water quality that would result in deterioration of the water quality in any aquifer or zone.
- (h) Well Development.
 - (1) All water supply wells shall be properly developed by the well driller;
 - (2) Development shall include removal of formation materials, mud, drilling fluids and additives such that the water contains no more than:
 - (A) five milliliters per liter of settleable solids; and
 - (B) 10 NTUs of turbidity as suspended solids.
 - (3) Development shall not require efforts to reduce or eliminate the presence of dissolved constituents which are indigenous to the ground water quality in that area. Typical dissolved constituents include, but are not

- limited to, aluminum, calcium, chloride, iron, magnesium, manganese, sodium and sulphate.
- (i) Well Head Completion.
- (1) Access Port. Every water supply well and such other wells as may be specified by the Commission shall be equipped with a usable access port or air line. The access port shall be at least one half inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.
- (2) Well Contractor Identification Plate.
- (A) An identification plate, showing the drilling contractor and certification number and the information specified in Part (i)(2)(E) of this Rule, shall be installed on the well within 72 hours after completion of the drilling.
- (B) The identification plate shall be constructed of a durable weatherproof, rustproof metal, or equivalent material approved by the Director.
- (C) The identification plate shall be securely attached to either the aboveground portion of the well casing, surface grout pad or enclosure floor around the casing where it is readily visible.
- (D) The identification plate shall not be removed by any person.
- (E) The identification plate shall be stamped or otherwise imprinted with permanent legible markings to show the:
- (i) total depth of well;
- (ii) casing depth (ft.) and inside diameter (in.);
- (iii) screened intervals of screened wells;
- (iv) packing interval of gravel-or sand-packed wells;
- (v) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm/ft.-dd);
- (vi) static water level and date measured; and
- (vii) date well completed.
- (3) Pump Installer Identification Plate.
- (A) An identification plate, showing the name and registration number of the pump installation contractor, and the information specified in Part (i)(3)(D) of this Rule, shall be securely attached to either the aboveground portion of the well casing, surface grout pad or the enclosure floor if present, within 72 hours after completion of the pump installation;
- (B) The identification plate shall be constructed of a durable waterproof, rustproof metal, or equivalent material approved by the Director;
- (C) The identification plate shall not be removed by any person; and
- (D) The identification plate shall be stamped or otherwise imprinted with permanent legible, markings to show the:
- (i) date the pump was installed;
- (ii) the depth of the pump intake; and
- (iii) the horsepower rating of the pump.
- (4) Valved flow. Every artesian well that flows under natural artesian pressure shall be equipped with a valve so that the flow can be completely stopped. Well owners shall be responsible for the installation, operation and maintenance of the valve.
- (5) Pitless adapters or pitless units shall be allowed as a method of well head completion under the following conditions:
- (A) The pitless device shall be manufactured specifically for the purpose of water well construction;
- (B) Design, installation and performance standards shall be those specified in PAS-1 (Pitless Adapter Standard No. 1) as adopted by the Water System Council's Pitless Adapter Division;
- (C) The pitless device will be compatible with the well casing;
- (D) The top of the pitless device shall extend at least eight inches above land surface;
- (E) The pitless device shall have an access port.
- (6) All openings for piping, wiring, and vents shall enter into the well at least 12 inches above land surface, except where pitless adapters or pitless units are used, and shall be adequately sealed to preclude the entrance of contaminants into the well.

Authority G.S. 87-87; 87-88.

**15A NCAC 02C .0112 WELL MAINTENANCE:
REPAIR: GROUNDWATER RESOURCES**

- (a) Every well shall be maintained by the owner in a condition whereby it will conserve and protect the groundwater resources, and whereby it will not be a source or channel of contamination or pollution to the water supply or any aquifer.
- (b) All materials used in the maintenance, replacement, or repair of any well shall meet the requirements for new installation.
- (c) Broken, punctured or otherwise defective or unserviceable casing, screens, fixtures, seals, or any part of the well head shall be repaired or replaced, or the well shall be properly abandoned.

(d) National Science Foundation (NSF) approved PVC pipe rated at 160 PSI may be used for liner casing. The annular space around the liner casing shall be at least five-eighths inches and shall be completely filled with neat-cement grout. The well liner shall be completely grouted within five working days after the liner has been installed.

Authority G.S. 87-87; 87-88.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03J .0103, 03M .0101, .0501. Notice of Rule-making Proceedings was published in the Register on November 1, 2000.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: December 3, 2001

Time: 7:00 p.m.

Location: Ramada Inn, 1701 S. Virginia Dare Trail, Kill Devil Hills, NC

Reason for Proposed Action:

15A NCAC 03J .0103, 03M .0501 - The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the procedures for management of fisheries in North Carolina. Included were requirements for Fishery Management Plans. Notice of Text was published in 15:22 NCR 1880-1883 by publication of temporary rules. Copies of 15:22 NCR 1880-1883 were mailed to the Marine Fisheries Commission's interested parties list (approximately 750 individuals). Section 6.10 of the Fisheries Reform Act authorizes the Marine Fisheries Commission to adopt rules to implement this act. The Red Drum Fishery Management Plan was approved on March 30, 2001. The change in the attendance line uses landmarks more easily recognized by fishermen and Marine Patrol personnel. The change in the proclamation authority allows for flexibility in management of both recreational and commercial fisheries, deletes a daily trip limit which while in place allowed for an overage in the harvest of the red drum commercial harvest cap and amends the fishing year from a calendar year to one that more accurately reflects when the fishery is prosecuted. Implementation of this Rule is an integral part of implementing the Red Drum Fishery Management Plan.

15A NCAC 03M .0101 - The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the adoption of rules to implement the provisions of this act. The River Herring Fishery Management Plan adopted under the authority of the Fisheries Reform Act of 1997 recommended a creel limit for fish taken by hook-and-line. The fact that river herring and hickory shad are used as bait was overlooked and the effect that the mutilated finfish rules has on the use of any fish with a creel limit imposed on it was not foreseen. The use of herring, alewife and hickory shad as bait is a common practice in several fisheries, particularly striped bass. There was no intent to not allow this practice to continue. Implementation of this Rule is an integral part of implementing the River Herring

Fishery Management Plan. Notice of Text was published in 15:22 NCR 1880-1883 by publication of the temporary rule. Copies of 15:22 NCR 1880-1883 were mailed to the Marine Fisheries Commission's interested parties list (approximately 750 individuals).

Comment Procedures: This public hearing was scheduled for September 11, 2001 and was postponed because of the terrorist attacks on the United States. Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. Oral comments may be presented at the public hearing. The public comment period will end on December 3, 2001. The Marine Fisheries Commission will consider these rules and the public comments at a business session scheduled for December 4-5 at the Ramada Inn, Kill Devil Hills.

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (>\$5,000,000)
- ☒ None

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03J – NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 – NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use a gill net with a mesh length less than 2½ inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length.
- (4) Specify means/methods.
- (5) Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in Paragraph (c) of this Rule, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of

colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net with lead and pound or heart in use;
- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
- (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the following areas:

- (1) Pamlico River, west of a line beginning at a point on Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to a point on Ragged Point at 35° 27.5768' N - 76° 54.3612' W;
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of the line from Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to Ragged Point at 35° 27.5768' N - 76° 54.3612' W and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;
- (3) Pungo River, east of a line beginning at a point on Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 36.9195' W;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the line from Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 35.1594' W, and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;

- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries;
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of a line from the Highway 17 highrise bridge and west of a line beginning at a point on Wilkinson Point at 34° 57.9116' N - 76° 48.2240' W; to a point on Cherry Point at 34° 56.3658' N - 76° 48.7110' W.

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through October 31 in the following internal coastal and joint waters of the state south of a line beginning at a point on Roanoke Marshes Point at 35° 48.3693' N - 75° 43.7232' W; to a point on Eagle Nest Bay at 35° 44.1710' N - 75° 31.0520' W to the South Carolina State Line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no trawl areas described in 15A NCAC 03R .0106 (3), (4), (6), and (7);
- (2) In the area along the Outer Banks, beginning at a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point at 35° 00.2666' N - 76° 12.2000' W; to a point near Beacon "HL" at 35° 01.5833' N - 76° 11.4500' W; to a point near North Rock at 35° 06.4000' N - 76° 04.3333' W; to a point near Nine Foot Shoal Channel at 35° 08.4333' N - 76° 02.5000' W; to a point near the west end of Clark Reef at 35° 09.3000' N - 75° 54.8166' W; to a point south of Legged Lump at 35° 10.9666' N - 75° 49.7166' W; to a point on Legged Lump at 35° 11.4833' N - 75° 51.0833' W; to a point near No. 36 in Rollinson Channel at 35° 15.5000' N - 75° 43.4000' W; to a point near No. 2 in Cape Channel at 35° 19.0333' N - 75° 36.3166' W; to a point near No. 2 in Avon Channel at 35° 22.3000' N - 75° 33.2000' W; to a point on Gull Island at 35° 28.4500' N - 75° 31.3500' W; to a point west of Salvo at 35° 32.6000' N - 75° 31.8500' W; to a point west of Rodanthe Pier at 35° 35.0000' N - 75° 29.8833' W; to a point near No. 2 in Chicamacomico Channel, to a point west of Beach Slough at 35° 40.0000' N - 75° 32.8666' W; to a point west of Pea Island at 35° 45.1833' N - 75° 34.1000' W; to a point at 35° 44.1710' N - 75° 31.0520' ~~31.0833'~~ W. Thence running south along the shoreline across the inlets to the point of beginning;
- (3) In Back and Core sounds, beginning at a point on Shackleford Banks at 34° 39.6601' N - 76° 34.4078' W; to a point at Marker #3 at 34° 41.3166' N - 76° 33.8333' W; to a point at 34° 40.4500' N - 76° 30.6833' W; to a point near Marker "A37" at 34° 43.5833' N - 76° 28.5833' W; to a point at 34° 43.7500' N - 76°

28.6000' W; to a point at 34° 48.1500' N - 76° 24.7833' W; to a point near Drum Inlet at 34° 51.0500' N - 76° 20.3000' W; to a point at 34° 53.4166' N - 76° 17.3500'; to a point at 34° 53.9166' N - 76° 17.1166' W; to a point at 34° 53.5500' N - 76° 16.4166' W; to a point at 34° 56.5500' N - 76° 13.6166' W; to a point at 34° 56.4833' N - 76° 13.2833' W; to a point at 34° 58.1833' N - 76° 12.3000' W; to a point at 34° 58.8000' N - 76° 12.5166' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point on Core Banks at 34° 58.7832' N - 76° 09.8922' W; thence following the shoreline south across Drum and Barden inlets to the point of beginning;

- (4) Within 200 yards of any shoreline, except from October 1 through October 31, south and east of Highway 12 in Carteret County and south of a line from a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to Camp Point at 35° 59.7942' N - 76° 14.6514' W to the South Carolina State Line.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish which is subject to a size or harvest restriction without having head and tail attached. Blueback-herring, hickory shad and alewife shall be exempt from this Rule when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time.

Authority G.S. 113-134; 113-185; 143B-289.52.

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .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.
- (4) Specify means/methods.
- (5) Specify size.

(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 day taken in a commercial fishing operation, regardless of the number of individuals or vessels involved.~~

(e) The annual commercial harvest limit (September through August 31) 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.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to adopt the rule cited as 21 NCAC 12 .0210. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Requests for public hearing may be submitted to Mark D. Selph at the Board's office. The Board's address is PO Box 17187, Raleigh, NC 27619.*

Reason for Proposed Action: *To define "undertakes to bid or construct" under G.S. 87-1 for public jobs.*

Comment Procedures: *Written comments may be submitted to Mark D. Selph, NC Board Licensing Board for General Contractors, PO Box 17187, NC 27619. Any person may file a written submission of comments or arguments up to and including December 4, 2001.*

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (>\$5,000,000)
- ☒ None

SECTION .0200 – LICENSING REQUIREMENTS

21 NCAC 12 .0210 SINGLE-PRIME PUBLIC CONTRACTS

A contractor submitting a bid for public construction under the single-prime contract system pursuant to G.S. 143-128(d) does not have to be licensed as a general contractor at the time of bidding under the following conditions:

- (1) all work totaling thirty thousand dollars (\$30,000) or more which falls within the classifications described in Rule .0202 of this Chapter shall be performed by a licensed general contractor holding the classifications required for the work; and
- (2) the amount of work to be performed by the general contractor shall not exceed 25% of the total amount of the bid.

Authority G.S. 87-1.

CHAPTER 57 – REAL ESTATE APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to adopt the rule cited as 21 NCAC 57A .0409; amend the rules cited as 21 NCAC 57A .0102, .0201-.0204, .0206-.0207, .0209-.0210, .0301, .0303-.0304, .0401-.0407, .0501; 57B .0101-.0103, .0204, .0206-.0211, .0302-.0304, .0306-.0307, .0401, .0403, .0503, .0601-.0608, .0611-.0612; 57C .0101-.0102, .0302 and repeal the rules cited as 21 NCAC 57A .0205, .0408. Notice of Rule-making Proceedings was published in the Register on May 15, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: December 11, 2001

Time: 9:00 a.m.

Location: 3900 Barrett Dr., Raleigh, NC

Reason for Proposed Action: *There has been a change in education requirements for appraisers by the Appraisal Foundation, in accordance with Title XI of the U.S. Code. Technical and clerical changes to the rules are necessary. Legislation enacted in 2001 made changes to fitness for licensure requirements and increased the fee for a temporary practice permit.*

- (1) application for original trainee registration \$150.00;
- (2) application for original residential appraiser license \$150.00;
- (3) application for original residential appraiser certificate. \$150.00;
- (4) application for original general appraiser certificate. \$150.00;

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

Authority G. S. 93E-1-6(a); 93E-1-10.

SECTION .0200 – TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION, APPRAISER LICENSURE AND CERTIFICATION

(a) Applicants for trainee registration, licensure as a state-licensed residential real estate appraiser and for certification as a state-certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in Subparagraphs (a)(1), (a)(2), (a)(3), (a)(4) and (a)(5) of this Rule, provided however that registration as a trainee or licensure as a state-licensed residential real estate appraiser is not prerequisite for certification as a state-certified residential or general real estate appraiser:

- (1) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education in the areas of Introduction to Real Estate Appraisal, Valuation Principles and Practices, Applied

Comment Procedures: *Written comments should be submitted to Mel Black, Executive Director, North Carolina Appraisal Board, PO Box 20500, Raleigh, NC 27619. Comments will be received through December 11, 2001.*

Fiscal Impact

- ☐ State
- ☐ Local
- ☐ Substantive (>\$5,000,000)
- ☒ None

SUBCHAPTER 57A - REGISTRATION, LICENSING, CERTIFICATION AND PRACTICE

SECTION .0100 - APPLICATION FOR REAL ESTATE APPRAISER LICENSE OR CERTIFICATE

21 NCAC 57A .0102 FILING AND FEES

(a) Each application for registration, licensure or certification must be filed in the proper form and must be accompanied by the required application fee. An additional fee may be charged to defray the cost of any competency examination administered by a private testing service. The Board may reject and return to the applicant any application which is incomplete, not in proper form, or not accompanied by the required fee or fees. Application fees accompanying complete applications submitted in proper form are not refundable.

(b) The following fees shall be charged:

- (1) Residential Property Valuation, and the Uniform Standards of Professional Appraisal Practice (USPAP) or appraisal education found by the Board to be equivalent to such courses.
- (2) Applicants for licensure as a state-licensed residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in Subparagraph (a)(1) of this Rule, and have at least 2,000 hours of appraisal experience.
- (3) Applicants for certification as a state-certified residential real estate appraiser shall have completed those courses required for registration as a trainee or licensure as a state-licensed residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, a course in Introduction to Income Property Appraisal consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,500 hours of appraisal experience acquired over a minimum period of two calendar years.

- (4) Applicants for certification as a state-certified general real estate appraiser shall have completed those courses required for certification as a state-certified residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 3,000 hours of appraisal experience acquired over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate.
- (5) The Board may utilize a system that allots points to each type of appraisal assignment in lieu of counting the actual clock hours of appraisal experience.

(b) Applicants for licensure or certification may be required to provide to the Board copies of appraisal reports in support of experience credit. All appraisals submitted in support of experience credit must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and, in the Board's discretion, with any applicable state statutes or rules.

(c) When a trainee becomes a state-licensed or state-certified real estate appraiser or when a state-licensed real estate appraiser becomes certified as a state-certified real estate appraiser, his registration or licensure shall be immediately canceled by the Board. When a state-certified residential real estate appraiser becomes certified as a state-certified general real estate appraiser, his certification as a state-certified residential real estate appraiser shall be immediately canceled by the Board.

Authority G. S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0202 FITNESS FOR REGISTRATION, LICENSURE OR CERTIFICATION

(a) The Appraisal Board shall consider the fitness for registration, licensure or certification of each applicant who has passed the appropriate examination. When the fitness of an applicant is in question, action by the Board will be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his fitness for registration, licensure or certification at a hearing before the Board.

(c) The inquiry into fitness for registration, licensure or certification may include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, or whether the applicant has committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification, or whether the applicant has been convicted of or pleaded guilty to any criminal act.

(d) Notice to the applicant that his or her fitness for registration, licensure or certification 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 Board. Failure to request a hearing within this time shall constitute a waiver of the applicant's right to a hearing on his application for trainee registration, licensing or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration, licensure or certification.

Authority G. S. 93E-1-10.

21 NCAC 57A .0203 REGISTRATION, LICENSE AND CERTIFICATE RENEWAL

(a) All registrations, licenses and certificates expire on June 30 of each year unless renewed before that time.

(b) A holder of a trainee registration, an appraiser license or certificate desiring the renewal of such registration, license or certificate shall, at a time determined by the Board, apply for same in writing upon the form approved by the Board and shall forward the required fee of two-hundred dollars (\$200.00). Forms are available upon request to the Board.

(c) All trainees, licensees and certificate holders, either active or inactive, resident or non-resident, who are required by G.S. 93E-1-7 to complete continuing education as a condition of renewal, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(d) An applicant applying for renewal of a registration, license or certificate obtained by reciprocity must submit with the renewal application a current license history from the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal registration, license or certificate was granted showing that the applicant is currently registered, licensed or certified in good standing. Submission of false or misleading information to the Board in connection with registration, license or certificate renewal shall constitute grounds for disciplinary action.

(e) Any person who acts or holds himself out as a registered trainee, state-licensed or state-certified real estate appraiser while his trainee registration, appraiser license or certificate is expired will be subject to disciplinary action and penalties as prescribed in G.S. 93E.

Authority G. S. 93 E-1-7(a),(b); 93E-1-10.

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All real estate appraiser licensees and certificate holders shall, upon the second renewal of their license or certificate following their initial licensure or certification by the Board, and upon each subsequent renewal, and all registered trainees shall, upon the third successive renewal of their registration following their initial registration by the Board, present evidence satisfactory to the Board of having obtained continuing education as required by this section.

(b) Within the immediately preceding licensing/certification period (July 1 - June 30), continuing education consisting of at least 14 classroom hours of instruction must be taken. Additional hours of approved instruction may be carried forward and recognized for purposes of meeting the continuing education

requirement only as provided in Paragraph (c) of this Rule. Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education prior to June 30, 2005 and prior to June 30 of every odd numbered year thereafter. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; and similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must complete the seven hour Uniform Standards of Professional Appraisal Practice (USPAP) update course, as required by the Appraiser Qualification Board of the Appraisal Foundation, or its equivalent, prior to June 30, 2005 and prior to June 30 of every odd numbered year thereafter.

(e) A licensee who elects to take approved continuing education courses in excess of the minimum requirement may not carry over into the subsequent years any continuing education credit. No credit may be applied to the prior certification period.

(f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 30 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having fully satisfied the continuing education requirement is not provided, the registration, license or certificate will expire and the trainee, licensee or certificate holder will be subject to the provisions of Rules .0203(d) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is

not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request on a form prescribed by the Board and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course will be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Board. Licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit will be deemed to have taken an equivalent course and will not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course.

(h) A trainee, state-licensed or state-certified residential real estate appraiser may fully satisfy the continuing education requirement by taking any of the residential Board-approved prelicensing courses or precertification courses or their approved equivalents. The prelicensing courses cannot be used for both continuing education credit and for credit for licensing purposes. Trainees, licensees and certificate holders who wish to use a prelicensing course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Board that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the trainee, licensee or certificate holder will be permitted to renew or reinstate, as appropriate, his registration, license or certificate for that period of time for which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Board.

Authority G. S. 93E-1-7(a),(b); 93E-1-8(a); 93E-1-10.

21 NCAC 57A .0205 INACTIVE STATUS ~~(a) A trainee, licensee or certificate holder shall be assigned by the Board to inactive status upon written request to the Board.~~

Authority G. S. 93E-1-7; 93E-1-10.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the two-hundred dollar (\$200.00) renewal fee plus a late filing fee of five dollars (\$5.00)

per month for each month or part thereof that such registration, license or certificate is lapsed, and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If the registration, license or certificate has been expired for more than 12 months, a request for reinstatement will be treated as an original application. In order to be considered for reinstatement, the applicant must pay the one-hundred fifty dollar (\$150.00) original registration, license or certificate fee and include in the application a detailed description of the applicant's appraisal education and experience during the period of registration, licensure or certification and during the time of expiration. Such applications will be reviewed by the Board to determine whether an examination, additional real estate appraisal education or additional appraisal experience will be required. In addition, the Board may, in its discretion, consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for registration, licensure or certification before granting the request for reinstatement.

(c) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

Authority G. S. 93E-1-6(b); 93E-1-7; 93E-1-10.

21 NCAC 57A .0207 PAYMENT OF REGISTRATION, LICENSE AND CERTIFICATE FEES

Checks given the Board in payment of registration, license and certificate fees which are returned unpaid shall be cause for registration, license or certificate denial, suspension or revocation.

Authority G. S. 93E-1-10; 93E-1-12(a)(9).

21 NCAC 57A .0209 NATIONAL APPRAISER REGISTRY

Licensees and certificate holders who are qualified for enrollment in the national roster or registry of state-licensed and state-certified real estate appraisers may apply for enrollment or for the renewal or reinstatement of such enrollment in writing upon a form approved by the Board. The application form must be accompanied by a fee of twenty dollars (\$20.00) plus any additional fee that may be required by the appropriate federal agency or instrumentality.

Authority G.S. 93E-1-10; 93E-1-11(d).

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this State by filing with the Board a notarized application on a form prescribed or approved by the Board for such purpose.

(b) Upon filing a properly completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to

perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in 21 NCAC 57A .0202(c).

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or state-licensed or state-certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Paragraphs (a), (b) and (c) in this Rule shall apply. The supervising appraiser for the trainee must be a North Carolina state-licensed or state-certified appraiser. If not, the supervising appraiser must be licensed or certified as a real state appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser.

Authority G.S. 93E-1-9(c),(d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0300 – APPRAISER EXAMINATIONS

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have met the education and experience requirements shall be issued an examination approval form by the Appraisal Board in order to take the examination. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee registrations, appraiser licenses and certificates will be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants will be scheduled for examination based on their successful completion of appraiser qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be grounds for denial, suspension or revocation of a license or certificate.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for a trainee registration, or appraiser license or certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved

private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than three times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the third attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled. If the application is cancelled, the applicant must reapply for registration, licensure or certification and must meet all the qualification requirements for original approval.

Authority G.S. 93E-1-6(b),(c); 93E-1-10.

21 NCAC 57A .0304 CHEATING AND RELATED MISCONDUCT

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a trainee registration, appraiser license or certificate, as well as for disciplinary action if the applicant holds a trainee registration, an appraiser license or certificate.

Authority G.S. 93E-1-6(c); 93E-1-10.

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0401 USE OF TITLES

(a) A trainee shall utilize the term "registered trainee" when performing an appraisal of real estate or any interest therein, and when referring to himself as a trainee.

(b) A state-licensed residential real estate appraiser shall utilize the term "state-licensed residential real estate appraiser" and a state-certified residential real estate appraiser shall utilize the term "state-certified residential real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as an appraiser. A state-certified general real estate appraiser shall utilize either the term "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein, and when referring to himself as an appraiser.

(c) Trainee registration, licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a trainee, state-licensed or state-certified real estate appraiser.

Authority G.S. 93E-1-10.

21 NCAC 57A .0402 DISPLAY OF REGISTRATIONS, LICENSES AND CERTIFICATES

(a) The original or a copy of the trainee registration, real estate appraiser license or certificate of a trainee, state-licensed or state-certified real estate appraiser shall be prominently displayed at each of the trainee's or appraiser's places of business. (b) The annual registration, license or certificate

renewal pocket card issued by the Board to each trainee, state-licensed or state-certified real estate appraiser shall be retained by the trainee, licensee or certificate holder as evidence of registration, licensure or certification.

Authority G.S. 93E-1-10.

21 NCAC 57A .0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a trainee or real estate appraiser, a trainee shall identify himself as a "registered trainee", a state-licensed residential real estate appraiser shall identify himself as a "state-licensed residential real estate appraiser", a state-certified residential real estate appraiser shall identify himself as a "state-certified residential real estate appraiser", and a state-certified general real estate appraiser shall identify himself as either a "state-certified general real estate appraiser" or a "state-certified residential/general real estate appraiser".

(b) A registered trainee, state-licensed or state-certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is registered, licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any trainee, licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the trainee, licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with the office of the county register of deeds in compliance with G.S. 66-68.

Authority G.S. 93E-1-10.

21 NCAC 57A .0404 CHANGE OF NAME OR ADDRESS

All trainees, licensees and certificate holders shall notify the Board in writing of each change of business address, residence address, or trade name within ten days of said change. The address shall be sufficiently descriptive to enable the Board to correspond with and physically locate the trainee, licensee or certificate holder.

Authority G.S. 93E-1-10.

21 NCAC 57A .0405 APPRAISAL REPORTS

(a) Each written appraisal report prepared by or under the supervision of a state-licensed or state-certified real estate appraiser shall bear the signature of the state-licensed or state-certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state-certified residential real estate appraiser", or the designation "state-certified general real estate appraiser", or "state-certified residential/general real estate appraiser", as applicable. Each such appraisal report shall also indicate whether or not the state-licensed or state-certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every state-licensed and state-certified real estate appraiser shall affix or stamp to all appraisal reports a seal of a design authorized by the Board which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "state-licensed residential real estate appraiser", a "state-certified residential real estate appraiser", or as a "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser", as applicable. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A state-licensed or state-certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be fully responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

(e) Each trainee and appraiser who signs an appraisal report shall maintain an exact copy of the appraisal report as sent to the client, including the trainee's signature or appraiser's signature and seal, and all photographs and addenda. Persons providing significant professional assistance in the preparation of the report must also keep a complete copy of the report.

Authority G.S. 93E-1-10.

21 NCAC 57A .0406 BUSINESS PRACTICES

Each trainee or appraiser who has an ownership interest in an appraisal firm must assure:

- (1) that proper notification is given to the Board 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; and
- (2) the proper conduct of advertising of appraisal services by or in the name of the firm.

Authority G.S. 93E-1-3(b); 93E-1-10.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A state-licensed or state-certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the state-licensed or state-certified real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than two trainees working under his or her supervision at any one time, either as employees or as subcontractors. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee;
- (3) actively and personally supervises the trainee. The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments performed after the effective date of this Rule for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the inspections without the presence

of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business address. If the subject property is more than 50 miles from the supervisor's business address, the supervisor must accompany the trainee on all inspections;

- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report on a form prescribed by the Board describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal. In addition, the supervisor must provide a copy of every appraisal report to the trainee where the trainee performs more than 75% of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action includes an active suspension or a revocation.

(b) The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the name of the supervisor for that appraisal, the supervisor's license or certificate number and whether the supervisor accompanied the trainee on the inspection of the subject property.

(c) The Appraisal Board may require a license or certificate holder who wishes to supervise a trainee to attend an education program prescribed by the Board before such supervision may begin.

Authority G.S. 93E-1-3(b); 93E-1-10.

21 NCAC 57A .0408 SUPERVISION OF LICENSED AND CERTIFIED RESIDENTIAL APPRAISERS

Authority G.S. 93E-1-10.

21 NCAC 57A .0409 REPORTING REQUIRED ACTIONS

Whenever any of the actions outlined in G.S. 93E-1-12(b)(1), (2),(4),(5),(6) are taken against a trainee, licensee or certificate holder, those actions must be reported to the Board within 60 days of the final judgment or final order on a form prescribed by the Board.

Authority G.S. 93E-10; 93E-1-12(b)(7).

SECTION .0500 – STANDARDS OF APPRAISAL PRACTICE

21 NCAC 57A .0501 APPRAISAL STANDARDS

(a) Every registered trainee, state-licensed and state-certified real estate appraiser shall, in performing the acts and services of a state-registered trainee, state-licensed or state-certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards, including subsequent amendments and editions of those standards which may from time to time be approved, are hereby adopted by reference in accordance with G.S. 150B-21.6. For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" are the Definitions, Preamble, Ethics Rule, Competency Rule, Departure Rule, Jurisdictional Exception Rule, Supplemental Standards Rule, Statements on Appraisal Standards, and Standards 1, 2, and 3.

(b) A copy of the portions of the "Uniform Standards of Professional Appraisal Practice" specified in Paragraph (a) of this Rule is included in the Board's Information and Application booklet available free of charge.

Authority G.S. 93E-1-10.

**SUBCHAPTER 57B – REAL ESTATE APPRAISAL
EDUCATION**

**SECTION .0100 - COURSES REQUIRED FOR
REGISTRATION LICENSURE OR CERTIFICATION**

**21 NCAC 57B .0101 REGISTERED TRAINEE, AND
LICENSED RESIDENTIAL REAL ESTATE APPRAISER
COURSE REQUIREMENTS**

Each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete 90 hours of precursing education, consisting of the following: (1)

- A minimum of 30 hours in Introduction to Real Estate Appraisal (R-1);
- (2) A minimum of 30 hours in Valuation Principles and Procedures (R-2);
- (3) A minimum of 15 hours in Applied Residential Property Valuation (R-3); and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP) (R-4).

Credit for these courses must be earned from a Board-approved course sponsor or school and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter. These courses must be commenced and completed sequentially in the order listed and within the five-year period immediately preceding the date of application for registration, licensure or certification is made to the Board.

Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10.

**21 NCAC 57B .0102 CERTIFIED RESIDENTIAL
REAL ESTATE APPRAISER COURSE REQUIREMENTS**

(a) In addition to the courses specified in Rule .0101 of this Section, an applicant for certification as a state-certified residential real estate appraiser is required to complete the following precertification course involving a minimum of 30

classroom hours: Introduction to Income Property Appraisal (G-1). This course must be taken after the applicant's successful completion of the precursing courses specified in Rule .0101 of this Section. Credit for this course must be earned from a Board-approved course sponsor or school, and all courses must be completed sequentially in the order listed.

(b) An applicant who is not a trainee or a state-licensed residential real estate appraiser must have completed all required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a trainee or state-licensed residential real estate appraiser must have completed the required 30 classroom hour course in Introduction to Income Property Appraisal (G-1) within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10.

**21 NCAC 57B .0103 CERTIFIED GENERAL REAL
ESTATE APPRAISER COURSE REQUIREMENTS**

(a) In addition to the courses specified in Rules .0101 and .0102 of this Section, an application for certification as a state-certified general real estate appraiser is required to complete the following precertification courses, each involving a minimum of 30 classroom hours:

- (1) Advanced Income Capitalization (G-2); and
- (2) Applied Income Property Valuation (G-3).

These courses must be commenced and completed sequentially in the order listed after the applicant's successful completion of the courses specified in Rules .0101 and .0102 of this Section. Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is not a trainee or a state-licensed or state-certified residential real estate appraiser must have completed all the required courses within the five-year period immediately preceding the date application is made to the Board.

(c) An applicant who is a trainee or state-licensed or state-certified residential real estate appraiser must have commenced and completed all courses required beyond those required for his current licensure or certification within the five-year period immediately preceding the date application is made to the Board.

Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10.

**SECTION .0200 – COURSE SPONSOR STANDARDS FOR
RELICENSING AND PRECERTIFICATION
EDUCATION**

21 NCAC 57B .0204 FACILITIES AND EQUIPMENT

(a) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have adequate light, heat, cooling and ventilation and shall be free of distractions which would disrupt class sessions.

(b) Classrooms shall contain a student desk or a worktable for each student that contains sufficient space for each student.

(c) Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection

reports from appropriate local building, health and fire inspectors upon the request of the Board.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0206 ADMISSIONS POLICY AND PRACTICE

Schools and course sponsors shall not discriminate in their admissions policy, practice or general operations against any person on the basis of age, sex, race, color, creed, national origin, religious preference or handicap. A statement to this effect shall be included in all bulletins, catalogues or similar official publications.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0207 ADMINISTRATION

(a) One person must be designated as the Director for each approved school or course sponsor and shall be responsible for administrative matters such as program development, scheduling of classes, advertising, maintenance of facilities and equipment, record keeping and general supervision of the instruction program. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The Director must possess a good character and reputation and must also meet the fitness standards for applicants for trainee registration, licensure or certification.

(b) The Director shall:

- (1) have a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full time experience within the past 10 years as an instructor or school administrator; or
- (3) possess qualifications which are found by the Board to be substantially equivalent to Paragraph (a) or (b) of this Rule.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, revoke or deny renewal of approval of a real estate school or course sponsor to conduct appraiser prelicensing and precertification courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0209 CERTIFICATION OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate in a format prescribed by the Board. Certificates of course completion must be on an official document bearing the letterhead or insignia of

the school or course sponsor and must have the original signature or signature stamp, which must be in an ink color other than black, of the school or course sponsor director.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0210 COURSE RECORDS

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;
- (3) within 15 days of course completion, but not later than June 30 of each year, submit to the Board a roster of all North Carolina trainees and state-licensed and state-certified appraisers who satisfactorily completed the course; and
- (4) participate in the Board's course and instructor evaluation program.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0211 PROGRAM CHANGES

Approved schools and course sponsors must obtain advance approval from the Board for any changes to be made with respect to course content, course completion standards, instructors, school director or textbooks as prescribed in Section .0300 of this Subchapter. Requests for approval of such changes must be in writing.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 – COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION

21 NCAC 57B .0302 COURSE CONTENT

(a) All courses shall consist of instruction in the subject areas and at the competency and instructional levels prescribed in the Board's course syllabi. Copies of the syllabi are available free of charge upon request to the Board.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Board; however, any such course must provide additional class time above the minimum requirement of 30 classroom hours for R-1 and R-2, and the minimum requirement of 15 hours for R-3 and USPAP for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees for any particular real estate appraiser, appraisal firm or appraisal trade organization.

Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements must include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Final course examinations are subject to review and approval by the Board. Take-home or open-book final course examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course however any make up examination must be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup examination must be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may, in his or her discretion, offer additional hours of instruction so that students can make up lost hours of instruction.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0304 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools and course sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0303(c) of this Section.

(b) Courses may be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given day; however credit for courses will be limited to 30 classroom hours per seven-day period.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

(d) Instruction must be given for a minimum of 30 classroom hours for R-1 and R-2, and a minimum of 15 hours for R-3 and USPAP. Instructors may not accumulate unused break time to end the class early. The time for the final examination is not included in the credit hours.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses deemed equivalent by the Board must be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and

experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements must be met on a continuing basis. The minimum qualifications are as follows:

(1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be either state-certified residential or state-certified general real estate appraisers.

(2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with a reasonable amount of such experience being in income property appraising. Instructors must also be state-certified general real estate appraisers.

(3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area he is teaching.

(c) Instructors shall conduct themselves in a professional and courteous manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates a thorough knowledge of the subject matter being taught and mastery of the following basic teaching skills:

(1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary.

(2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;

(3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques.

(4) The ability to effectively utilize instructional aids to enhance learning;

(5) The ability to effectively maintain an effective learning environment and effective control of a class;

- (6) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied students backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format prescribed by the Board which depicts the instructor teaching portions of a prelicensing course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.

(e) The inquiry into fitness will include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act.

(f) Instructors may not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this section, disciplinary action includes a reprimand, suspension (whether active or inactive) or a revocation.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION

(a) Entities other than approved schools and course sponsors seeking recognition of their appraiser prelicensing or precertification courses as equivalent to the North Carolina appraisal prelicensing or precertification courses required by G.S. 93E-1-6 and specified in Rules .0101, .0102 and .0103 of this Subchapter must make written application to the Board on a form prescribed by the Board.

(b) Courses must be conducted in accordance with the minimum course standards prescribed in this Section, provided that the following exceptions to those standards shall apply:

- (1) Courses may be structured differently from those course content requirements prescribed in the Board's course syllabi; however, appropriate prerequisites for advanced courses must be established and each course for which Board recognition is sought must consist of a minimum of 15 classroom hours and require the passing of a comprehensive examination.
- (2) Various combinations of courses may be recognized as equivalent to single North Carolina appraisal prelicensing and precertification courses; however, equivalent credit will only be granted in increments of 30 classroom hours.

(c) The 15 hour USPAP course must be the 15-hour National USPAP Course approved by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent.

(d) The finding of equivalency is entirely within the discretion of the Board.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0400 – COURSE SPONSOR FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0401 APPLICABILITY

This Section applies to all appraisal trade organizations and to all other course sponsors other than private real estate appraisal schools, North Carolina colleges, universities, junior colleges, community or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

Authority G.S. 93E-1-8(a), (b); 93E-1-10.

21 NCAC 57B .0403 FEE FOR RENEWAL OF COURSE APPROVAL

(a) Board approval of courses expires on the next June 30 following the date of issuance. In order to assure continuous approval of courses, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. All applications for renewal of course approval received on or before June 30 which are incomplete as of that date, as well as all applications for renewal of course approval submitted after June 30, shall be treated as original course approval applications.

(b) The annual fee for renewal of Board approval shall be fifty dollars (\$50.00) for each course for which renewal of Board approval is requested. The fee is non-refundable.

Authority G.S. 93E-1-8(a), (b); 93E-1-10.

SECTION .0500 – PRIVATE REAL ESTATE APPRAISAL SCHOOL FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0503 FEE FOR RENEWAL OF COURSE APPROVAL

(a) Approval of private school courses expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of course approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. All applications for renewal of course approval received on or before June 30 which are incomplete as of that date, as well as all applications for renewal of course approval submitted after June 30, shall be treated as original course approval applications.

(b) The course renewal fee shall be twenty dollars (\$20.00) for each previously approved appraisal prelicensing or precertification course for which the applicant requests continuing approval. The fee is non-refundable.

Authority G.S. 93E-1-8(a), (b); 93E-1-10.

SECTION .0600 – CONTINUING EDUCATION COURSES

21 NCAC 57B .0601 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for appraisal continuing education courses authorized by G.S. 93E-1-8 (c) and required by Rule .0204 of Subchapter 57A. These standards must be satisfied in order for course sponsors to obtain and

maintain approval of their courses for appraiser continuing education credit. Except as provided in Rule .0602(a) of this Section, any school, organization, agency, individual, or other entity is eligible to become a continuing education course sponsor. Course sponsors must obtain course approval from the Board prior to conducting the course for continuing education credit and prior to advertising or otherwise representing that a course is or may be approved for continuing education credit in North Carolina. To request credit for a continuing education course which has not been approved by the Board, a trainee, licensee or certificate holder must follow the procedure set forth in 21 NCAC 57A .0204(f).

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0602 APPLICATION AND FEE

(a) Course sponsors seeking approval of their courses as appraisal continuing education courses must make written application to the Board on a form prescribed by the board. A course sponsor must be the owner of the proprietary rights to the course for which approval is sought or must have the permission of the course owner to seek course approval. If the course for which approval is sought is one that may be offered outside North Carolina, and the course owner wants the Board to approve such course when it is conducted outside North Carolina, application must be made by the course owner. After receipt of a properly completed application the Board will review the application and notify the sponsor of its decision. Decisions to approve or withhold approval lie within the sole discretion of the Board.

(b) The original application fee shall be one hundred dollars (\$100.00) for each course for which approval is sought, provided that no fee is required if the course sponsor is an accredited North Carolina college, university, junior college, or community or technical college, or if the course sponsor is an agency of the federal, state or local government. The fee is non-refundable. A course sponsor may offer approved courses as frequently as is desired during the period for which approval is granted without paying additional fees.

Authority G.S. 93E-1-8(c),(d).

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.

(3) The course instructor(s) must possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification and either two years' full-time experience that is directly related to the subject matter to be taught, or a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught, or two years' full-time experience teaching the subject matter to be taught, or an equivalent combination of such education and experience. If two or more instructors will be utilized to teach a course during the approval period and the course will be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness will include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.

(4) The course must be one involving a qualified instructor who, except as noted in Subparagraph .0603(5) of this Rule, will be physically present in the classroom at all times and who will personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons may not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with 21 NCAC 57B.0306(c). Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.

(5) Effective for courses attended on or after the effective date of this Rule, a trainee or appraiser may receive up to seven hours of credit per renewal period for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and, must make available, at a date and time satisfactory to the Board and at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date

and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and/or other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (6) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, or similar activities.
- (7) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0604 PRELICENSING AND PRECERTIFICATION COURSES

(a) Appraisal prelicensing or precertification courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina prelicensing and precertification courses may be separately approved as appraisal continuing education courses. Trainees, state-licensed and state-certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A.

(Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.)

(b) It is presumed that any person taking any of the prelicensing or precertification courses is doing so for registration, licensure or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she must

request such credit on a form prescribed by the Board and must send the original course completion certificate with the request.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0605 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor will include the number of hours of continuing education credit that will be awarded for the course. The minimum number of continuing education credit hours awarded for a course will be three and one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, will be thirty hours. Continuing education credit hours may not be carried forward into subsequent licensing periods.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of 10 minutes per hour must be scheduled and taken at reasonable times.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or worktable for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and

- federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
- (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format prescribed by the Board which depicts the instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in 21 NCAC 57B .0306(c).
- (9) Upon the request of the Board, course sponsors will provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.
- (10) Course sponsors must participate in the Board's course and instructor evaluation program.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0607 CERTIFICATION OF COURSE COMPLETION

Course sponsors must issue a certificate of course completion within 15 days of completion of the course to all students who

satisfactorily complete an approved course. If the course sponsor is located in North Carolina, the certificate, which the student must retain for a period of five years, must be on a form or in a format prescribed by the Board and must bear the original signature or signature stamp which must be in a color of ink other than black of a person designated by the course sponsor to sign such certificate. The North Carolina-based course sponsor must notify the Board in advance of the person(s) designated to sign certificates of course completion for courses conducted in North Carolina. If the course sponsor is not located in North Carolina, the certificate provided for submission to the Board must show the name of the course sponsor, the name of the course, the number of classroom hours, the course dates, the state or city where the course was conducted, and the full name of the student.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0608 SPONSOR REPORTING OF CONTINUING EDUCATION CREDIT

On a form prescribed by the Board, course sponsors must, within 15 days of course completion but no later than June 30 of each year, submit to the Board a roster of all North Carolina registered trainees, state-licensed and state-certified appraisers who satisfactorily completed the course.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0611 RENEWAL OF APPROVAL AND FEES

(a) Board approval of appraisal continuing education courses expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before June 1. All applications for renewal of course approval received on or before June 30 which are incomplete as of that date, as well as all applications for renewal of course approval submitted after June 30, shall be treated as original applications for approval of continuing education courses.

(b) The annual fee for renewal of Board approval shall be fifty dollars (\$50.00) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0602(b) of this Section. The fee is non-refundable.

Authority G.S. 93E-1-8(c), (d); 93E-1-10.

21 NCAC 57B .0612 WITHDRAWAL OR DENIAL OF APPROVAL

The Board may deny or withdraw approval of any course upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course approval or renewal of course approval;
- (2) the course sponsor has refused or failed to comply with any of the provisions of this Section;
- (3) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;

- (4) the instruction provided in a course is of unsatisfactory quality; or
- (5) the instructor failed to demonstrate effective teaching skills.

Authority G.S. 93E-1-8(c); 93E-1-10.

**SUBCHAPTER 57C – ADMINISTRATIVE LAW
PROCEDURES**

SECTION .0100 – APPRAISAL BOARD HEARINGS

**21 NCAC 57C .0101 FORM OF COMPLAINTS AND
OTHER PLEADINGS**

- (a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent trainee or licensed or certified appraiser and shall reasonably apprise the Board of the facts which form the basis of the complaint.
- (b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint. (c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.
- (d) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.
- (e) Hearings in contested cases before the Board shall be governed by the provisions of G.S. 150B, Article 3A.

Authority G.S. 93E-1-10.

21 NCAC 57C .0102 PRESIDING OFFICER

(a) The Appraisal Board may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Board shall preside, or, in his 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 Board.

(b) The Chairman of the Board may allow the Board's Executive Director to grant the first request for a continuance of a hearing. Any subsequent requests for continuance may be granted only by a majority of the Board. The granting of a continuance is wholly discretionary.

Authority G.S. 93E-1-10.

SECTION .0300 – RULE MAKING

21 NCAC 57C .0302 PRESIDING OFFICER

The presiding officer at any rule-making hearing shall have complete control of the proceedings, including: recognition of speakers, time allotments for presentations, the right to question speakers, direction of the discussion, and management of the hearing.

Authority G.S. 93E-1-10.

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 02C .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 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

Rule-making Agency: *North Carolina Pesticide Board*

Rule Citation: *02 NCAC 09L .1303, .1305-.1306*

Effective Date: *November 1, 2001*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *G.S. 143-437; 143-440; 143-466*

Reason for Proposed Action: *To prevent unauthorized persons from gaining access to restricted use pesticides, and to provide for records of restricted use pesticide sales.*

Comment Procedures: *Written comments may be submitted to James W. Burnette, Jr., Secretary, North Carolina Pesticide Board, c/o Food and Drug Protection Division, Pesticide Section, North Carolina Department of Agriculture and Consumer Services, PO Box 27647, Raleigh, NC 27611.*

**CHAPTER 09 – FOOD AND DRUG PROTECTION
DIVISION**

SUBCHAPTER 09L – PESTICIDE SECTION

**SECTION .1300 - AVAILABILITY OF RESTRICTED USE
PESTICIDES**

02 NCAC 09L .1303 EXEMPTIONS

- (a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators and provided further that said employee is 16 years of age or older.
- (b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.
- (c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his name and list the certification number of employer under whose direction and supervision the employee is acting.

History Note: Authority G.S. 143-437; 143-440; 143-466; Eff. August 26, 1977; Amended Eff. November 1, 1988; February 5, 1978; Temporary Amendment Eff. November 1, 2001.

**02 NCAC 09L .1305 RECORD KEEPING
REQUIREMENTS**

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as defined in 02 NCAC 09L .1302 or employees as defined in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as defined in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

History Note: Authority G.S. 143-437; 143-440; 143-466; Temporary Adoption Eff. November 1, 2001.

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer must verify the identity of the recipient.

History Note: Authority G.S. 143-437; 143-440; 143-466; Temporary Adoption Eff. November 1, 2001.

TITLE 13 – DEPARTMENT OF LABOR

Rule-making Agency: *North Carolina Department of Labor*

Rule Citation: *13 NCAC 07A .0302*

Effective Date: *December 1, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 95-126; 95-131*

Reason for Proposed Action: *Effective December 1, 2001, the North Carolina Department of Labor proposes to raise prices for copies available through its Division of Occupational Safety and Health. These costs are effectively pass through costs and reflect charges to the Department for making them available. Since the rule was last revised, costs to the Department have*

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increased substantially and currently are resulting in a financial shortfall to the Department. In light of the current budget crisis, it is imperative that the Department recoup these costs as soon as possible. In an effort to provide ample notice to the public, the North Carolina Department of Labor plans to publish proposed changes on its website no later than October 15, 2001, which may be found at <http://www.dol.state.nc.us/>.

Comment Procedures: Written comments may be submitted to Barbara A. Jackson at North Carolina Department of Labor, 4 West Edenton St., Raleigh, NC 27601.

CHAPTER 07 – OSHA

SUBCHAPTER 07A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 – PROCEDURES

13 NCAC 07A .0302 COPIES AVAILABLE

Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this Chapter are available for public inspection by contacting the North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:

Referenced Materials	Available for Purchase From	Cost
29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$1/page requested
29 CFR 1910	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$27.00 each
29 CFR 1915; 29 CFR 1917	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
29 CFR 1926	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$22.00 each
29 CFR 1928	Division of Occupational Safety & Health http://www.dol.state.nc.us/	\$2.50 each
The above CFR Parts and other CFR Parts	U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 http://www.gpo.gov/	\$34.00/Part
ANSI/NFPA 101-1991	National Fire Protection Association 1 Battery arch Park Quincy, Massachusetts 02269 (617) 770-3000 http://www.nfpa.org/	From \$28.00 to \$74.00 per part. Contact source for specific cost information.
ANSI standards	American National Standards Institute 11 West 42 nd Street New York, New York 10036 (212) 642-4900 http://www.ansi.org/	Contact source for specific cost information.
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L'Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 http://www.gsa.gov/fssintro.htm	Contact source for specific cost information.
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health http://www.msha.gov/	Contact source for specific cost information.
Institute of Makers of Explosives (IME) Publications	1120 Nineteenth St. NW, Suite 310 Washington, DC 20036 (202) 429-9280 http://www.ime.org	No. 17 \$15.00 No. 20 \$10.00 Contact source for specific cost information.

*History Note: Authority G.S. 95-133; 150B-21.6;
Eff. August 2, 1993;
Amended Eff. July 1, 1998; June 1, 1994;
Codifier determined that agency's findings of need did not meet criteria for temporary rule on March 20, 2000;
Temporary Amendment Eff. March 20, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. December 1, 2001.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02H .1301-.1305*

Effective Date: *October 22, 2001*

Findings reviewed and Statement does not meet criteria for Temporary Rule: *Agency filed over objection*

Authority for the rulemaking: *G.S. 143.214.1; 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c)*

Reason for Proposed Action: *In May 2001, the North Carolina Environmental Management Commission unanimously confirmed that the existing wetland standards (15A NCAC 02B .0231) were intended to protect isolated wetlands. Therefore, without effective temporary rules under which the State may permit prudent utilizations of these resources, property owners proposing development activities in isolated wetlands are prohibited from conducting such activity.*

Comment Procedures: *Comments may be submitted in writing to Mr. John Dorney, DWQ Wetlands Unit, Parkview Building, 2321 Crabtree Blvd., Raleigh, NC 27604 or by email to John.Dorney@ncmail.net.*

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Rule shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Rule, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.

(b) These Rules outline the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters. If the US Army Corps of Engineers or Natural Resources Conservation Service determine that a particular water is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water shall be covered by these Rules (15A NCAC 02H .1301 - .1305). For the purpose of this Rule during field determinations made by the Division, isolated wetlands are those waters which are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and under normal circumstances have no visible surface water connection to downstream waters of the state. Visible surface water connection may include but is not limited to a connection to other surface water via:

- (1) continuous wetlands;
- (2) intermittent or perennial streams; and
- (3) ditches with intermittent or perennial flow. Isolated classified surface waters are those which have been listed in 15A NCAC 02B .0300.

(c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit;

- (1) Individual Permits are issued on a case-by-case basis and the procedures outlined in the following rules are required for each Individual Permit. These Individual Permits do not require approval by the U.S. Environmental Protection Agency.
- (2) Certificates of Coverage for General Permits may be issued for specific types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency.
- (3) Individual Permits and Certificates of Coverage for General Permits shall be issued for no more than five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).

(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to these procedures shall not be considered to remove existing uses of the isolated wetland or isolated surface waters or an extension is granted as described in 15A NCAC 02H .1304(e).

- (e) The following are exempt from this Rule;
- (1) Activities that are described in 15A NCAC 02B .0230;
 - (2) Discharges to isolated farm or stock ponds or isolated irrigation ditches constructed in hydric soil as long as the original surface elevation is re-established for those isolated ponds and ditches;
 - (3) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits;
 - (4) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67); and
 - (5) A discharge resulting from an activity if;
 - (A) The discharge resulting from an activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;
 - (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or,
 - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina zoning law prior to the effective date of this Rule.
 - (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;
 - (4) the nature of the discharge including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
 - (5) whether the discharge has occurred or is proposed;
 - (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
 - (7) description of the type of waste treatment facilities if applicable;
 - (8) an application fee as required by G.S. 143-215.3D(e) with a check or money order to be made payable to the North Carolina Division of Water Quality. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and
 - (9) the information requested in Subparagraphs (1) through (8) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001.

15A NCAC 02H .1302 APPLICATION PROCESS

(a) Application for a Permit. Any person, as defined in G.S. 143, Article 21, desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water Quality (Director), an original and six copies of an application for a Permit. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;

(b) Maps. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters including wetlands within the boundaries of said lands.

(c) Request For Additional Information. The Director may request, in writing within 60 days of receipt of an application and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications will be returned to the applicant.

(d) Omissions From Applications. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding omissions of information shall be made by the Division of Water Quality.

(e) Investigations. The staff of the Department of Environment and Natural Resources (Department) shall conduct such investigation as the Director deems necessary and applicant shall

cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) **Who Must Sign Applications.** The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.

(h) Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a) and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division of Water Quality for review under this Permit.

History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001.

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) Notice by Publication:

- (1) Individual Permit. Notice of the Director's intent to issue or deny a complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. Publication shall be made at least 30 days prior to proposed final action by the Director on the application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid. A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.
- (2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.

(b) **Contents of Notice.** The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director on the application. The notice shall also state where additional information is on file with the Department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department. Any person who desires a public hearing on an Individual or General Permit application shall so request in writing to the Director within 30 days following the publication of the notice of intent.

(c) **Notice of Hearing.** If the Director determines that there is significant public interest in holding a hearing, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(d) **Wetland Permit Mailing List.** Any person may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a Wetland Permit Mailing List and shall mail copies of notices to all persons on the list.

(e) If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any public hearing held for this Rule may be coordinated with those hearings.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001.

15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) Not later than 60 days following the publication of the notice of intent or within 90 days following a public hearing, the Director shall issue, issue with modifications, or deny the complete Permit application or complete application for Certificate of Coverage.

(b) **Conditions of Permit.** Any Permit or Certificate of Coverage issued pursuant to this Rule may contain such conditions as the Director shall deem necessary to insure compliance with this Rule including written post-discharge notification to the Division.

(c) **Modification or Revocation of Permit or Certificate of Coverage:**

- (1) Any Permit or Certificate of Coverage issued pursuant to this Rule may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and

- (2) Any Permit or Certificate of Coverage issued pursuant to this Rule may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge is having or may have an adverse effect on water quality.

(d) Notification of Unapproved Application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to be approved.

(e) Permit or Certificate of Coverage renewals shall require a new application and payment of a fee to the Division of Water Quality unless the applicant requests an extension in writing which may be granted for a time period not to exceed one additional year provided that the construction has commenced or is under contract to commence.

(f) Contested Case Hearing for Applicant. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable conditions, shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) by filing a petition under G.S. 150B-23 within 30 days after the Director notifies the applicant or permittee of its decision in writing.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001.

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those significant existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b) Discharges from activities Deemed to be Permitted: Discharges resulting from activities in isolated wetlands or waters that are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as they fully comply with conditions listed below and may

proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. The Director however may determine on a case-by-case basis that a discharge resulting from an activity should not be deemed permitted in accordance with this Rule and would then be required to obtain an Individual Permit or Certificate of Coverage under a General Permit. This determination will be made based on existing or projected environmental impacts. Conditions which must be met for projects deemed to be permitted:

- (1) Appropriate erosion and sediment control practices that equal or exceed those required by the N.C. Division of Land Resources or their local delegated program for the Sedimentation Pollution Control Act shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
- (2) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Land Resources or local delegated program determines that the land disturbance project is completed and the file is closed out;
- (3) Live or fresh concrete shall not come into contact with surface water until the concrete has hardened; and,
- (4) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.

(c) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:

- (1) has no practical alternative under the criteria outlined in Paragraph (e) of this Rule;
- (2) will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;
- (3) does not result in the violation of groundwater standards, or water quality standards in the remaining surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future discharges to that water, that cause or will cause a violation of downstream water quality standards;
- (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and

- (6) provides for replacement of existing uses through mitigation with the following provisions:
 - (A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;
 - (B) Mitigation shall be at a 2:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;
 - (C) Mitigation for impacts to waters rule shall be conducted within the same river basin and physiographic province when practical; and,
 - (D) In-kind mitigation is preferred unless other forms of mitigation provide greater water quality or aquatic life benefit.
- (d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that sufficient existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:
 - (1) has no practical alternative as described in Paragraph (e) of this Rule;
 - (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;
 - (3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;
 - (4) does not result in cumulative impacts, based upon past or reasonably anticipated future discharges to that water, that cause or will cause a violation of downstream water quality standards;
 - (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and,
 - (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.
- (e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.
- (f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:
 - (1) The spatial and dimensional requirements of the project; or
 - (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
 - (3) The purpose of the project and how the purpose relates to placement, configuration or density.
- (g) Replacement or mitigation of unavoidable losses of existing uses in isolated wetlands shall be reviewed in accordance with the following guidelines:
 - (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.
 - (2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.
 - (3) Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.
 - (4) Acceptable methods of wetlands mitigation are listed below in the order of preference:
 - (A) Restoration: Re-establishment of hydrology to the natural or reference condition in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition.
 - (B) Creation: Construction of wetlands in an area where wetlands did not exist in the recent past.
 - (C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
 - (D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
 - (5) Restoration is the preferred method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
 - (6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEM

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of 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 normal 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. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with both the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule.

acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the above ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios.

- (7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.
- (8) Mitigation for impacts to isolated wetlands designated in Paragraph (b) of this Rule shall be conducted within the same river basin and physiographic province when practical.
- (9) In-kind mitigation is preferred unless other forms of mitigation provide greater water quality or aquatic life benefit.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001.

Rule-making Agency: *Coastal Resources Commission*

Rule Citation: *15A NCAC 07H .0209*

Effective Date: *October 15, 2001*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124*

Reason for Proposed Action: *The proposed amendment would establish criteria for exceptions to the regulatory requirement, effective as of August 1, 2000, of a 30-foot development setback along public trust and estuarine waters. The proposed amendment would allow for a limited variety of common uses and the construction of residences on previously platted undeveloped lots that are located in intensively developed areas that would otherwise be prohibited under rules adopted by the CRC pursuant to G.S. 113A, Article 7.*

Comment Procedures: *Written comments should be sent to Mike Lopazanski, 1638 Mail Service Center, Raleigh, NC 27699-1638. 919-733-2293.*

These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

- (1) All development projects, proposals, and designs shall 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 may 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 feasible.
- (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 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 and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require 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 that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural 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 AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall 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 shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six

feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

- (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
- (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
- (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters, and
- (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible.

(e) Exceptions to the 30-foot buffer requirement set forth in Subparagraph (d)(10) of this Rule. Development shall be exempted from the buffer requirement set out in paragraph (d) of this Rule under the following circumstances:

- (1) ~~Ø~~ Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph .0209(d)(10) of this Rule, providing the following criteria are met:

- (A) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
- (B) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules 07J .0201 and 07J .0211 of this Chapter.

- (2) ~~Ø~~Where application of the buffer requirement would preclude placement of a residential structure on undeveloped lots platted prior to June 1, 1999, that are 5,000 square feet or less that do not require onsite septic systems, or

lots that are 7,500 square feet or less that require onsite septic systems, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met;(A)

The lot is located in an intensely developed area and where existing waterfront residential structures are present on lots on both sides immediately adjacent to the proposed residential structure;(B)

Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer;(C) ~~Ø~~Placement of the residential structure and associated pervious decking (e.g. slatted wood) may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

- (D) The first one and one-half inch of rainfall from all impervious surfaces on the lot shall be collected and contained on site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
- (E) The lot must not be adjacent to waters designated by the Division of Environmental Health, Shellfish Sanitation, as approved or conditionally approved shellfish waters.

(f) The buffer requirements in Subparagraph (d)(10)of this Rule will not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(g) Specific Use Standards for Outstanding Resource Waters (ORW)Coastal Shorelines.

- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent 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 normal high water line or normal water line;
- (C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:

- (A) the development has a CAMA permit application in process, or
- (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement;

- (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (g)(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 nominated subsequent to June 1, 1989, the effective date in Paragraph (g)(2) of this Rule shall be the dates of nomination by the EMC.

(h) Urban Waterfronts.

- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category 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
- (B) 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, in an effort to minimize 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) The buffer requirement pursuant to this Rule [07H .0209 (d) (10)] is not 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 designed by an individual 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 may 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 feasible.

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| <p>(iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission.</p> | <p>(V) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;</p> |
| <p>(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.</p> | <p>(VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;</p> |
| <p>(i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.</p> | <p>(VII) 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</p> |
| <p>(ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.</p> | |
| <p>(iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and must meet the following criteria:</p> | |
| <p>(I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;</p> | |
| <p>(II) 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;</p> | |
| <p>(III) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;</p> | |
| <p>(IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;</p> | |

- the NC Marine Fisheries Commission; and
(XII) Structures shall not pose a threat to navigation.
- (VIII) the minimum setback and submit it to the permitting agency prior to initiating any development;
Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by
- History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. October 1, 1989; May 1, 1990; December 1, 1991; August 3, 1992; August 1, 2000; April 1, 2001; Temporary Amendment Eff. October 15, 2001.*
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- TITLE 19A – DEPARTMENT OF TRANSPORTATION**
- Editor's Note:** *This publication will serve as Notice of Rulemaking Proceedings for permanent rulemaking and as Notice of Proposed Temporary Ruling as required by G.S. 150B-21.1(a8).*
- Rule-making Agency:** *North Carolina Department of Transportation – Division of Highways*
- Rule Citation:** *19A NCAC 02D .0601, .0607*
- Authority for the rulemaking:** *G.S. 20-119; 136-18(5)*
- Statement of Subject Matter:** *Rules set conditions for the issuance of permits of oversize and overweight vehicles to travel on North Carolina highways.*
- Reason for Proposed Action:** *The proposed changes to these Rules are necessary as a result of recent legislative action which clarifies the difference in units that qualify for permits under house moving laws (found in G.S. 20-356) and other oversize vehicle laws (G.S. 20-119). The amended rules will eliminate the current height restrictions for 16' wide mobile/modular homes. Currently, there are no height restrictions that exist for other types of commodities. The amended rules will allow the DOT Central Permit Office to review and approve routes for overheight 16' mobile/modular homes to provide safe and orderly movement on North Carolina highways.*
- Public Hearing:** *A public hearing is scheduled for November 19, 2001 at 2:00 p.m. in Room 150 of the Highway Building, 1 South Wilmington Street, Raleigh, NC 27611, as required by S.L. 2001-424.*
- Comment Procedures:** *Any interested person may submit written comments on the proposed rule changes by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by January 2, 2002.*
- CHAPTER 02 – DIVISION OF HIGHWAYS**
- SUBCHAPTER 02D – HIGHWAY OPERATIONS**
- SECTION .0600 - OVERSIZE-OVERWEIGHT PERMITS**

Note: Previous temporary amendments which were approved May 17, 2001 by RRC appear in bold print.

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The State Highway Administrator or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a **law enforcement officer with jurisdiction;**
- (2) if directed by an official traffic control device to follow a route to a weighing device.
- (3) if the specified route on the permit is **detoured by an officially erected highway sign, traffic control devices, or law enforcement officer,** the driver of the permitted vehicle shall contact the **Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.**

(b) **Prior to application for an oversize, overweight, or oversize/overweight permit, the vehicle/vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight.** Application for permits with the exception of house move permits shall be made to the **Central Permit Office in writing** on forms approved by the Department of Transportation or **via telephone.** Written applications are required for over heights in excess of 14'. Applications for permits shall be submitted in writing to the **Central Permit Office for consideration of approval for moves exceeding:**

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least 10 working days prior to the anticipated date of movement; or
- (2) a width of 15' with documentation for variances at least 10 working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement.

Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures shall be required for **overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.**

(c) The North Carolina licensed mobile/modular home retail dealer shall maintain records of all mobile/modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be readily available for inspection and audit by officers of the

Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a form designed and furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina Oversize/Overweight permit privileges.

(d) Officers of the Division of Motor Vehicles may perform on-site inspections of mobile/modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with G.S. 20, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.

(e) The penalties provided in this Rule are in addition to the penalties provided for in G.S. 20.(f) Permits may be declared void by the State Highway Administrator or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.

(g) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

Authority G.S. 20-119; 136-18(5).

Note: Previous temporary amendments which were approved April 19, 2001 and May 17, 2001, by RRC appear in bold print.

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14 ' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to **reduce the width or height** may be hauled with the equipment without being considered a divisible load except as provided in this Rule. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12 " of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4", which is required to be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black

diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6' to 8' above the road surface with a 5" amber flashing beacon mounted on the top of each extender. **Authorization** to move **commodities** wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall **not** be issued vehicle specific to exceed a width in excess of 15 feet for all movements unless authorized by the Central Permit Office or the **State Maintenance and Equipment Engineer after analysis of the proposed load and evaluation of the proposed route of travel.** **Exception:** A mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual oversize/overweight permit may be issued valid for unlimited movement without an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations transporting general commodities which has a minimum extreme wheelbase of 51 feet and which does not exceed width of 12 feet; height of 13 feet, 6 inches; length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed width of 10 feet; height of 13 feet, 6 inches; length of 45 feet with front and rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet 6 inches; and a weight as set forth in G.S. 20-118(b)(3). Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12". These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be co-issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for

delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 lbs.
Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.

3 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration

5 axle single vehicle may have a maximum gross weight up to 94,5000 lbs. based on an analysis of weight distribution and axle configuration

5 axle vehicle combination may have a maximum gross weight up to 112,000 lbs. based on the extreme axle measurement

6 axle single vehicle may have a maximum gross weight up to 108,000 lbs. based on an analysis of weight distribution and axle configuration

6 axle vehicle combination may have a maximum gross weight up to 120,000 lbs. based on the extreme axle measurement

7 axle single vehicle may have a maximum gross weight up to 122,000 lbs. based on an analysis of weight distribution and axle configuration

7 axle vehicle combination may have a maximum gross weight up to 132,000 lbs. based on the extreme axle measurement

7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle	37,000 pounds
Tandem axle	50,000 pounds

2 axle single vehicle may have a maximum gross weight up to 70,000 lbs. based on an analysis of weight distribution and axle configuration

3 axle single vehicle may have a maximum gross weight up to 80,000 lbs. based on an analysis of weight distribution and axle configuration

4 axle single vehicle may have a maximum gross weight up to 90,000 lbs. based on an analysis of weight distribution and axle configuration.

- (3) **A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:**

- (A) **Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;**
- (B) **Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;**
- (C) **Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;**
- (D) **Is a vehicle combination with at least five axles;**
- (E) **Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.**

(e) **Overlength permits shall be limited as follows:**

- (1) **Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.**
- (2) **Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.**
- (3) **Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.**

(f) **An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical**

clearances shall be checked by the permittee prior to movement underneath.

(g) **The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday.**

Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2" by 12" to be displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24" from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8" in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

(h) **The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.**

(i) **Additional safety measures are as follows:**

- (1) **A yellow banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ----ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the**

exception of length to extend the entire width of the bumpers;(2) Red flags measuring 18" square shall be displayed on all sides at the widest point of load for all loads in excess of 8' 6" wide but the flags shall be so mounted as to not increase the overall width of the load;

- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(j) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(k) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(l) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(m) The Department of Transportation may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978.

Editor's Note: This publication will serve as Notice of Rulemaking Proceeding for permanent rulemaking and as

Notice of Proposed Temporary Ruling as required by G.S. 150B-21.1(a8).

Rule-making Agency: North Carolina Department of Transportation – Division of Highways

Rule Citation: 19A NCAC 02F .0101-.0103

Statement of Subject Matter: These Rules which are proposed for adoption codify the Department of Transportation's minimum criteria, which are a list of projects determined to have no significant impact to the environment and for which no environmental documentation is required to G.S. 113A-11.

Authority for the rulemaking: G.S. 113A-9; 113A-11; 143B-10(j)

Reason for Proposed Action: The Department of Transportation has proposed these Rules for adoption pursuant to the authority granted by the North Carolina General Assembly in Section 27.22 of Session Law 2001-424.

Public Hearing: Public hearings are scheduled for November 20, 2001 at 2:00 p.m. and 7:00 p.m. in the Highway Building Auditorium, 1 South Wilmington Street, Raleigh, NC 27611, as required by S.L. 2001-424.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by January 2, 2002.

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02F – DEPARTMENT OF TRANSPORTATION'S MINIMUM CRITERIA

SECTION .0100 – MINIMUM CRITERIA

19A NCAC 02F.0101 PURPOSE

This Section establishes minimum criteria to be used in determining when the preparation of environmental documents pursuant to the North Carolina Environmental Policy Act (NCEPA) is not required.

Authority G.S. 113A-11; G.S. 143B-10.

19A NCAC 02F .0102 MINIMUM CRITERIA

The following minimum criteria are established as an indicator of the types and classes of thresholds of non-major activities at and below which environmental documentation under the NCEPA is not required:

- (1) Approval of:
 - (a) installation of utilities along or across a transportation facility;
 - (b) grade separated crossings of highways by railroads or highway; or
 - (c) grading, commercial driveways, and other encroachments on the highway right-of-way;
- (2) Construction of bicycle and pedestrian lanes, paths, and facilities;

TEMPORARY RULES

- (3) Construction of safety projects such as guardrails, grooving, glare screen, safety barriers, and energy attenuators;
- (4) Installation of noise barriers or alterations to existing public buildings to provide for noise reduction;
- (5) Landscaping of highway and rest area projects;
- (6) Installation of fencing, signs, pavement markings, small passenger shelters, lighting, traffic signals, and railroad warning devices;
- (7) Repair, rehabilitation, or replacement of a highway facility in general conformance with the original design and alignment, which is commenced immediately after the occurrence of a natural disaster or catastrophic failure, to restore the highway for the health, welfare, and safety of the public;
- (8) Highway modernization by means of the following activities, which involves less than 10 cumulative acres of ground surface previously undisturbed by highway construction:
 - (a) resurfacing, restoration, or reconstruction;
 - (b) adding lanes for travel, parking, weaving, turning, or climbing;
 - (c) correcting substandard curves and intersections; or
 - (d) adding shoulders or minor widening;
- (9) Reconstruction of existing crossroad or railroad separations and existing stream crossings;
- (10) Approval of oversized and overweight permits;
- (11) Approval of outdoor advertising permits;
- (12) Maintenance of the state highway system to include work such as:
 - (a) Grading and stabilizing unpaved roads;
 - (b) Maintaining unpaved shoulders;
 - (c) Cleaning ditches and culverts;
 - (d) Patching paved surfaces;
 - (e) Maintaining bridges;
 - (f) Removing snow and ice;
 - (g) Controlling erosion and vegetation growth;
 - (h) Manufacturing and stockpiling material; and
 - (i) Paving secondary roads.
- (13) Assumption of maintenance of roads constructed by others.
- (14) Making capital improvements constructed at an existing DOT facility that:
 - (a) Require less than one acre of exposed, erodible ground surface; and
 - (b) Require the use of structures which do not involve handling or storing hazardous materials which exceed the threshold planning limits of Title 3 of the Superfund Amendments and Reauthorization Act of 1986;
- (15) Construction of a new two-lane highway in accordance with accepted design practices and DOT standards and specifications involving less than 25 cumulative acres of ground surface;
- (16) Reconstructing, rehabilitating, resurfacing, or maintaining existing runways, taxiways, aircraft aprons, access roads, and automobile parking lots;
- (17) Constructing, reconstructing, rehabilitating, or upgrading of runway, taxiway, and apron edge lights; visual approach aids; instrument approach aids; wind indicators; rotating beacons; obstruction lights; area lights; security lights; and the electrical distribution systems and control systems for such facilities;
- (18) Construction of terminal buildings, maintenance buildings, and hangars involving less than five acres of previously undisturbed ground;
- (19) Acquiring property to meet Federal or State standards, requirements, or recommendations directly relating to aviation safety;
- (20) Acquiring 10 acres or less of property for future airport development;
- (21) Construction on existing airport property which has previously been disturbed by clearing, grubbing, or grading on land involving less than 10 acres of exposed, erodible ground surface;
- (22) Planning airport projects to include master plans, noise and compatibility plans, preliminary construction project plans, and special planning studies such as economic impact studies;
- (23) Rehabilitating, maintaining, and improving airport drainage systems on airport property to include landscaping and erosion control facilities involving less than five acres of previously undisturbed ground;
- (24) Reconstructing or rehabilitating rail lines on existing alignment;
- (25) Purchasing vehicles for mass transportation purposes;
- (26) Maintaining and improving railroad track and bed in the existing right of way; and
- (27) Implementation of any project which qualifies as a "categorical exclusion" under the National Environmental Policy Act by one of the Agencies of the U.S. Department of Transportation.

Authority G.S. 113A-9; 113A-11; 143B-10(j).

19A NCAC 02F .0103 EXCEPTIONS TO MINIMUM CRITERIA

Any activity falling within the parameters of the minimum criteria set out in Rule .0102 of this Section shall not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of Transportation may determine that environmental documents are required in any

case where one of the following findings applies to a proposed activity:

- (1) The proposed activity may have significant adverse effects on wetlands, parklands, prime or unique agricultural lands, or areas of recognized scenic, recreational, archaeological, or historical value; or would threaten a species identified on the Department of Interior's threatened and endangered species list.
- (2) The proposed activity could cause significant changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, air quality, or ground water impacts; or have a significant adverse effect on long-term recreational benefits or shellfish, wildlife, or their natural habitats.
- (3) The secondary or cumulative impacts of the proposed activity, which are not generally covered in the approval process, may result in a significant adverse impact to human health or the environment.
- (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

Authority G.S. 113A-9; 113A-11; 143B-10(j).

TITLE 21 – OCCUPATIONAL LICENSING BOARD

CHAPTER 04 – COMMISSION FOR AUCTIONEERS

Rule-making Agency: *NC Auctioneers Commission*

Rule Citation: *21 NCAC 04B .0801 - .0802, .0804*

Effective Date: *October 12, 2001*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 85B-3.1(c),(d); 85B-3.2(g); 85B-4(e1)*

Reason for Proposed Action: *Effective June 13, 2001, the General Assembly amended G.S. 85B, the enabling legislation for the North Carolina Auctioneers Commission. The amendments included three major changes requiring the adoption of administrative rules: collection of fees required by the Department of Justice associated with conducting the criminal history record check; establishment of continuing education requirements; and authority to acquire real property and obtain liability insurance.*

Comment Procedures: *Written comments concerning this rule-making action should be submitted to Robert A. Hamilton,*

Executive Director, NC Auctioneer Licensing Board, 1001 Navaho Drive, Suite 105, Raleigh, NC 27609-7318.

SUBCHAPTER 04B - AUCTIONEER LICENSING BOARD

SECTION .0800 – CONTINUING EDUCATION

21 NCAC 04B .0801 CONTINUING EDUCATION COURSE

(a) To renew a license on active status, an auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall complete a Board approved course(s) consisting of the hours of instruction as established as in Paragraph (d) of this Rule and shall provide documentation of completion of the above Board approved course(s) within one year preceding license expiration.

- (1) "Within one year preceding license expiration time period" shall be defined as from May 16 to the following May 15 in the year that the license expires.
- (2) An auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall provide documentation on required continuing education courses to the Board by the May 15 deadline of the current renewal period.
- (3) If the required documentation is not received by the Board by the established deadline as set forth in Subparagraph (2) of this Rule, the licensee shall automatically be assessed a late fee as set forth in Subparagraph .0202(b)(10) of this Subchapter.
- (4) The renewal shall not be processed until compliance is achieved and the required fees are received as set forth in Subparagraph .0402(b) of this Subchapter.

(b) The Board shall approve courses that shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the course sponsor subject to Paragraph (h) of this Rule. The course sponsor shall produce or acquire instructor and student materials. The course must be conducted as prescribed by the rules in this Section. At the beginning of the course, sponsors must provide licensees participating in their classes a copy of the student materials developed by the sponsor.

(c) The sponsor may conduct the course at any location as frequently as is desired during the approval period. Approval of a sponsor to conduct a course authorizes the sponsor to conduct the course using an instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

(d) The minimum classroom hours of instruction for each year shall be six unless the Board establishes at its April monthly Board meeting fewer hours for the upcoming year pursuant to G.S. 85B-4(e1). In determining whether fewer hours may be established, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that a reduction in hours is justified.

(e) An auctioneer, an apprentice auctioneer, or a designated person(s) in an auction firm shall complete the continuing education requirements for each renewal period that their license was lapsed or suspended.

- (f) Credit hours applied to the current renewal of a license shall not be used for future renewals.
- (g) Excess continuing education hours may be carried forward as credits for a maximum of one renewal year.
- (h) The Board may mandate the topic(s) for all or part of an approved course as a continuing education requirement pursuant to G.S. 85B-4(e1). In determining whether to mandate the topic for all or part of an approved course as a continuing education requirement, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that mandating the topic for all or part of a course is justified.
- (i) No part of any precursing course curriculum shall count as continuing education credit hours.
- (j) Continuing education shall not be required until the second renewal after initial licensing pursuant to G.S. 85B-4(e).

*History Note: Authority G.S. 85B-4.(e1);
Eff. July 1, 1999;
Amended Eff. April 1, 2001; January 1, 2000;
Temporary Amendment Eff. October 12, 2001.*

21 NCAC 04B .0802 APPLICATION FOR ORIGINAL APPROVAL

- (a) An entity seeking original approval to sponsor a course must make application on a form prescribed by the Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.
- (b) Approval to sponsor a course shall be granted to an applicant upon showing to the satisfaction of the Board that:
- (1) The applicant has submitted all information required by the Board;
 - (2) The applicant satisfies all of the requirements of Rule .0805 of this Section relating to qualifications or eligibility of course sponsors;
 - (3) The applicant required by Rule .0805(e) must be truthful, honest and of high integrity as referenced in 21 NCAC 04B .0404(a)(15). In this regard, the Board may consider the reputation and character of any owner, officer or director of any corporation, association or organization applying for sponsor approval; and
 - (4) The applicant has at least one proposed instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

*History Note: Authority G.S. 85B-4(e1);
Eff. July 1, 1999;
Amended Eff. April 1, 2001; January 1, 2000;
Temporary Amendment Eff. October 12, 2001.*

21 NCAC 04B .0804 APPROVAL OF CONTINUING EDUCATION INSTRUCTORS

- (a) Approval of course instructors shall be accomplished at the time of the approval of the course sponsor. Approval of a course instructor authorizes the instructor to teach the course only for the approved course sponsor. An approved course instructor

may not independently conduct a course unless the instructor has also obtained approval as a course sponsor.

- (b) An entity seeking original approval as a course sponsor must provide the name, address, and qualifications of the instructors for the course on the application form prescribed by the Board. No additional application fee is required. All required information regarding the instructor's qualifications must be submitted.

(c) The instructor(s) must be truthful, honest and of high integrity as referenced in 21 NCAC 04B .0404(a)(15).

(d) The instructor(s) must be qualified under one or more of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of marketing, finance, or business administration.
- (2) Possession of a current North Carolina auctioneer or auction firm license, three years active full-time experience in auctioneering within the previous 10 years, and 30 classroom hours of auction education, excluding precursing education, within the past three years, such education covering topics which are acceptable under Board rules for continuing education credit.
- (3) Possession of a current North Carolina real estate broker license, three years active full-time experience in the real estate business within the previous 10 years, and experience teaching real estate precursing and continuing education courses.
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years.
- (5) Possession of qualifications found by the Board to be equivalent to one or more of the standards set forth in this Rule.

(e) The Board may deny or withdraw approval of any course instructor upon finding that:

- (1) The course sponsor or the instructor has made any false statements or presented false information in connection with an application for approval;
- (2) The instructor has failed to meet the criteria for approval described in Paragraph (d) of this Rule or has refused or failed to comply with any other provisions of this Subchapter;
- (3) The instructor has failed to demonstrate, during the teaching of courses, those effective teaching skills described in Subsection .0815 of this Section; or
- (4) The instructor has provided false or incorrect information in connection with any reports a course sponsor is required to submit to the Board.

(f) If a licensee who is an approved course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

(g) Upon the written request of the Board, an approved course instructor must submit to the Board a videotape depicting the

instructor teaching the course. The videotape must have been made within 12 months of the date of submission, must be in VHS format, must include a label which clearly identifies the instructor and the date of the videotaped presentation.

(h) An approved instructor who is a licensee of the Board shall receive continuing education credit hours for instruction at a rate of one hour for every one-half hour of approved course taught.

History Note: Authority G.S. 85B-4(e1);
Eff. July 1, 1999;
Temporary Adoption Eff. October 12, 2001.

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Rule-making Agency: NC State Board of Cosmetic Art Examiners

Rule Citation: 21 NCAC 14B .0603

Effective Date: December 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 88-B

Reason for Proposed Action: Need to establish this postage/handling fee increase immediately, thus enabling us to apply the fee to business licenses renewing for 2002 and to new businesses initiating a license.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Dee Williams, Rule-making Coordinator, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609.

SUBCHAPTER 14B – RULE-MAKING PROCEDURES

SECTION .0600 – FEES

21 NCAC 14B .0603 POSTAGE AND HANDLING

There will be a five dollar (\$5.00) charge for Postage and Handling for all mailings.

History Note: Authority G.S. 12-3.1; 150B-11(1);
Eff. December 1, 1990;
Temporary Amendment Eff. December 1, 2001.

CHAPTER 36 – BOARD OF NURSING

Rule-making Agency: NC Board of Nursing

Rule Citation: 21 NCAC 36 .0301-.0302, .0310, .0315, .0321-.0322, .0325

Effective Date: October 11, 2001

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: G.S. 90-171.23(b)(8)(9)(10); 90-171.38, .39, .40, .42(b)

Reason for Proposed Action: The Board has been evaluating all of its regulatory activities and making changes to become more cost efficient in carrying out our responsibilities. Because the Board's statutory authority does not require Board approval of clinical agencies for use by nursing education programs, an estimated \$100,000.00+ in annual savings would be recognized as a result of the proposed changes to these rules.

Comment Procedures: Written comments should be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, North Carolina 27602-2129.

SECTION .0300 – APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0301 APPROVAL BODY

The North Carolina Board of Nursing is designated as the legal approval body for nursing programs. The Board is required to evaluate periodically each program in light of requirements of the Law and Standards set forth by the Board. To fulfill this responsibility, the Board's designated representative(s) visit and survey nursing programs. The Board or its designated representatives reviews the report of survey and other records relating to the program and determines whether the program complies with the Law and Standards as required by the Board. The Board expects programs to be in compliance with Law and Standards at all times. If it comes to the attention of the Board or its designated representatives, that a program is not complying with Law and Standards, further action shall be taken according to Rules and Statutes.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.23(b)(9); 90-171.23(b)(10); 90-171.38; 90-171.39; 90-171.40;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984;
Temporary Amendment Eff. October 11, 2001.

21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

(a) At least 12 months prior to the proposed enrollment of students in a nursing program, the administrative officer of the parent institution considering establishing a nursing program shall submit a feasibility study documenting the following:

- (1) approval of the program by the governing body of the parent institution or written evidence that the approval is in process;
- (2) evidence of an educational need which cannot be met by existing nursing programs or extensions of those programs;
- (3) proposed student population;
- (4) projected student enrollment;
- (5) potential employment opportunities for graduates;

- (6) available clinical resources and maximum numbers of students that can be accommodated in clinical areas;
 - (7) evidence from existing nursing programs of the potential impact of the proposed program on clinical resources; and
 - (8) a plan with a specified time frame for availability of:
 - (A) qualified faculty as specified in Standards;
 - (B) adequate financial resources;
 - (C) adequate physical facilities to house the program; and
 - (D) support services available to the program from the institution.
- (b) The feasibility study will be presented at the next regular Education Committee meeting. If the Education Committee determines there is a need for the program and the plan includes the availability of the necessary resources to establish a program, the Education Committee will recommend to the Board that the institution be approved to proceed with the development of the program. The recommendation to proceed will be contingent upon approval by the governing body.
- (c) If the Board determines that a program is approved for development, a minimum of six months prior to the proposed starting date, the institution shall employ a qualified program director and nurse faculty member(s) to develop the proposed program.
- (d) The director and faculty shall prepare an application to establish a nursing program, which shall include:
- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution;
 - (2) a general overview of the proposed total curriculum that includes:
 - (A) program philosophy, purposes, and objectives;
 - (B) master plan of curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
 - (C) course descriptions and course objectives for all courses; and
 - (D) course syllabi as specified in 21 NCAC 36 .0321(h) for all first-year nursing courses;
 - (3) student policies consistent with Standards for admission, progression, and graduation of students;
 - (4) curriculum vitae for employed nursing faculty members whose numbers and qualifications are consistent with assigned responsibilities in the development of the program; and
 - (5) proposed agreements with clinical agencies, including types of units available and number of students that can be accommodated in each area at one time.
- (e) The completed application shall be submitted to the Board not less than 90 days prior to a regular meeting of the Board to allow for:
- (1) survey of the proposed program;
 - (2) preparation of the report of the survey;
 - (3) response to the survey report by persons from the proposed program; and
 - (4) review by the Education Committee of the Board for recommendations to the Board.
- (f) The Board shall consider all evidence, including the application, survey report, and recommendations of the Education Committee. Representatives of the petitioning institution may speak at the meeting. The Board shall act upon the data available at the meeting.
- (g) If the Board finds, from the evidence presented, that the resources and plans meet all Standards and requirements for establishing a new nursing program and that the petitioning institution is able and willing to maintain support and resources essential to meet the Standards of the Board, and if the first class of students is enrolled within one year after this finding, the Board shall grant initial approval. If the Board determines that a proposed program does not comply with all Standards, initial approval will be denied. Following the Initial Approval, if the first class of students is not enrolled within one year, the approval will be rescinded. The period of time a program may retain initial approval status shall be influenced by the length of time necessary for full implementation of the program. A program shall be considered eligible for removal from Initial Approval status and placement on Full Approval status following a survey during the final term of total curriculum implementation.
- (h) Programs with initial approval shall be surveyed as follows:
- (1) annually during the specified period of initial approval;
 - (2) during the final term of complete implementation of the program; and
 - (3) as directed by the Board when a decision has been made that the program is not complying with Law or Standards.
- (i) Following any survey the Board will act upon data from the following:
- (1) a report of the survey;
 - (2) response from the program representatives to the survey report; and
 - (3) recommendations from the Education Committee.
- (j) If at any time it comes to the attention of the Board or its designated representative(s) that the program is not complying with all Standards or the Law, the program shall correct the area of noncompliance and submit written evidence or submit a written plan for correction to the Board for review and action. Failure to respond shall result in further Board action.
- (k) Upon finding by the Board that the program complies with the Law and Standards, the Board shall direct that the program remain on the Initial Approval status. If, following the survey during the final term for total curriculum implementation, the Board finds that the program is complying with the Law and all Standards, the Board shall direct that the program be placed on Full Approval status and resurveyed within three years. Upon a request for deferral of the resurvey, the Board or its designated representative may extend the approval period.
- (l) Upon finding by the Board that the program does not comply with the Law or all Standards by the final academic term of initial approval, the Board shall:

- (1) provide the program with written notice of the Board's decision;
- (2) upon written request from the program submitted within 10 business days of the Board's written notice, schedule a hearing. Such hearing will be held not less than 20 business days from the date on which the request was received.

(m) Following the hearing and consideration of all evidence provided, the Board shall assign the program Full Approval status or shall enter an Order removing the Initial Approval status, which shall constitute discontinuance of the program.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. June 1, 1992; January 1, 1989; November 1, 1984; May 1, 1982; Temporary Amendment Eff. October 11, 2001.

21 NCAC 36 .0310 AGENCY APPROVAL PROCESS - INITIAL SURVEY

~~(a) At least 30 days prior to planned use, a program or agency representative shall submit an Application for a New Clinical Resource to the designated representative of the Board. The application shall include:~~

- ~~(1) Organizational Chart;~~
- ~~(2) Position descriptions for nursing personnel;~~
- ~~(3) Census and staffing report;~~
- ~~(4) Impact statement(s); and~~
- ~~(5) Contractual agreement, if appropriate.~~

~~(b) A survey of the agency is conducted. The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified in 21 NCAC 36 .0315.~~

~~(c) At its meeting, the Board shall consider all evidence, including the survey report, response from the agency and recommendations of the Education Committee.~~

~~(d) If the Board finds that the agency complies with the Law and Standards, the Board shall assign the agency Full Approval status and approve for student use.~~

~~(e) If the Board finds that the agency substantially complies with Law and Standards, the Board shall assign the agency Approval with Stipulations status and approve for student use.~~

History Note: Authority G.S. 90-171.39; Eff. June 1, 1992; Temporary Repeal Eff. October 11, 2001.

21 NCAC 36 .0315 FULL APPROVAL/APPROVAL WITH STIPULATIONS

~~(a) Designated representatives of the Board will survey approved agencies at least every five years. Surveys may be conducted at shorter intervals upon the Board's direction or upon request from the agency.~~

~~(b) The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified in Rule .0303(3)(A)(B) of this Section.~~

~~(c) If the Board through its designated representative determines that an agency has complied with the Law and all Standards, the agency shall be continued on Full Approval status.~~

~~(d) If the Education Committee determines from consideration of all evidence, that an agency has substantially complied with the Law and all Standards, the Education Committee shall make a recommendation to the Board that the agency be Approved with Stipulations. The Board shall specify stipulations which shall be met by the agency within a designated period of time, which shall not exceed 12 months and shall direct that the agency be assigned Approval with Stipulations status.~~

History Note: Authority G.S. 90-171.39; Eff. June 1, 1992; Temporary Repeal Eff. October 11, 2001.

21 NCAC 36 .0321 CURRICULUM

(a) The curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives; and
- (3) be consistent with the Law and administrative rules governing the practice of nursing.

(b) The curriculum shall include, but not necessarily be limited to, instruction in:

- (1) biological, physical, and social science principles;
- (2) components of basic nursing practice as legally defined for the licensure level; and
- (3) utilization of the nursing process in the care of individuals and families throughout the life cycle including the following areas:
 - (A) maternal and child health;
 - (B) common medical and surgical conditions; and
 - (C) aging populations. Instruction in nursing care in all areas named shall include both theory and clinical learning experiences.

(c) The curriculum for a nursing program designed to prepare persons for registered nurse licensure shall also include instruction in the nursing care of persons with mental, emotional, or psychiatric disorders. Instruction shall include both theory and clinical learning experiences.

(d) The curriculum for a baccalaureate nursing program shall also include public health nursing. Instruction shall include both theory and clinical learning experiences.

(e) The curriculum for a nursing program designed to prepare persons for practical nurse licensure shall include basic mental health principles and therapeutic communication.

(f) Learning opportunities shall be planned in logical sequence so that prerequisite knowledge is provided prior to the experience to which that knowledge is basic. Corequisites must be placed concurrently with the experience(s) [course(s)] to which they relate.

(g) Objectives for each course shall indicate the knowledge and skills expected of the students. These objectives shall be stated to:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical laboratory experience;

- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

(h) Student course syllabi shall include, in addition to the objectives described in Paragraph (g) of this Rule, a description and outline of content, learning environments and activities, course placement, allocation of time, and methods of evaluation of student performance, including clinical evaluation tools.

(i) There shall be evidence that each course is implemented in accordance with the student course syllabus.

(j) Nurse faculty shall demonstrate that they have authority and responsibility for:

- (1) teaching and evaluating all classroom and clinical experiences, including precepted experiences;
- (2) planning and implementing learning experiences so that objectives for each course are met; and
- (3) providing placement and logical sequencing of clinical learning experiences to support application of theory and attainment of knowledge and skills.

(k) There shall be a written plan for total program evaluation and documentation of ongoing implementation of the plan. The evaluation components shall include administration, faculty, students, curriculum, facilities, and records and reports. The process of evaluation shall include faculty, student, and graduate involvement.

(l) Requests for approval of changes in, or expansion of, the program accompanied by all required documentation shall be submitted at least 30 days prior to implementation for approval by the Board through its designated representatives. Approval is required for:

- (1) increase in enrollment which may exceed the maximum approved by the Board. Requests for expansion are considered only for programs with Full Approval status;
- (2) major changes in curriculum related to philosophy, purpose, or focus of the program; and
- (3) alternative or additional program schedules.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984; Temporary Amendment Eff. October 11, 2001.

21 NCAC 36 .0322 FACILITIES

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

- (1) Classrooms, practice laboratories, audio and video tutorial laboratories, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable.
- (2) Office and conference space for nursing program faculty members shall be appropriate

and available for uninterrupted work and privacy including conferences with students.

(3) The library facilities shall be readily accessible to students and faculty, and must offer adequate resources and services.

- (A) Active library services shall include a librarian and a system of cataloging.
- (B) A system of acquisition and deletion shall exist that ensures currency and appropriateness of holdings including audio and video tutorial resources that support implementation of the nursing curriculum.
- (C) Library space for use by students and faculty shall be adequate to accommodate the program.
- (D) Library hours shall meet the needs of the students in the program.

(b) Clinical facilities shall support the program curriculum as outlined in 21 NCAC 36 .0321.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. January 1, 1996; June 1, 1992; January 1, 1989; May 1, 1988; Temporary Amendment Eff. October 11, 2001.

21 NCAC 36. 0325 REMOVAL OF APPROVAL

~~(a) Upon notification of practice(s) inconsistent with nursing laws and standards in board approved facilities, the Board of Nursing shall conduct an investigation to substantiate complaint(s).~~

~~(b) Once a complaint is substantiated, the Board shall:~~

- ~~(1) notify the facility of the violations in writing;~~
- ~~(2) specify time frame for correction of violation(s);~~
- ~~(3) specify actions necessary by the facility to verify compliance;~~
- ~~(4) provide written notice to all appropriate agencies and approved programs utilizing the facility for nurse or unlicensed personnel educational experiences of the non compliance; and~~
- ~~(5) conduct a survey with a minimum of two consultants, one of whom shall be an education consultant, to verify nursing is consistent with law and standards.~~

~~(c) If findings at the time of the survey are that nursing care is consistent with law and standards, the approval status of the facility shall remain unchanged. The facility and all agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive written notice that the facility is in compliance with law and standards.~~

~~(d) If findings following the survey are that nursing care is in continuing non compliance with law and standards, the Executive Director shall summarily suspend approval status for student use. The facility shall be notified in writing of the findings and all appropriate agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive~~

~~written notice of the facility's non-compliance with law and standards and loss of approval.~~

~~(e) Facilities desiring re-approval for student use shall:~~

- ~~(1) provide written documentation or present substantial evidence to demonstrate compliance with law and standards; and~~
- ~~(2) request a survey revisit by the Board of Nursing.~~

History Note: Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40; 90-171.42(b);
Eff. October 1, 1992;
Temporary Repeal Eff. October 11, 2001.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Rule-making Agency: *NC State Board of Community Colleges*

Rule Citation: 23 NCAC 02D .0319, .0326; 02E .0101

Effective Date: *October 4, 2001*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 115D-5; S.L. 2001, c. 424, s. 30.3(b),(c),(d),(e)*

Reason for Proposed Action:

23 NCAC 02D .0319 - Pursuant to these provisions, the State Board of Community Colleges was required to change the operation of the Human Resources Development Program and is authorized to waive tuition and fees for students participating in this program who meet one of the conditions specified in the rule.

History Note: Authority G.S. 115D-5;
S.L. 2001, c. 424, s. 30.3(b), (e);
Eff. February 1, 1976;
Amended Eff. August 17, 1981;
Temporary Amendment Eff. October 4, 2001.

23 NCAC 02D .0326 BUDGET FTE FUNDING

(a) All student membership hours generated by the college for a given class shall be counted for budget FTE purposes provided 100 percent of the instructional cost is paid from college funds (funds budgeted through the college's budget including State Current, County Current, or College Funds). These provisions apply to all instructional contracts which generate budget FTE including Basic Skills classes. For purpose of this Rule, instructional cost includes the salary of the instructor(s) as well as fringe benefits, supplies, materials, travel, etc. paid from college funds. College-sponsored instruction shall not supplant existing training which may take place without the college's involvement. Following are Rule applications:

23 NCAC 02D .0326 – Pursuant to these provisions, student membership hours generated from Human Resource Development courses earn budget FTE and become subject to the requirements of Paragraphs (a), (b), and (e) of this Rule. Paragraph (d) of this Rule is being eliminated because of obsolescence.

23 NCAC 02E .0101 – Pursuant to these provisions, the State Board of community Colleges was required to revise and restructure the Human Resources Development Program.

Comment Procedures: *Written comments may be sent to Clay T. Hines, North Carolina Community College System Office, 5004 Mail Service Center, Raleigh, NC 27699-5004.*

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02D – COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0300 – BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

23 NCAC 02D .0319 FEE WAIVERS FOR THE HUMAN RESOURCES DEVELOPMENT PROGRAM

(a) Tuition and fees for enrollment in courses coded in the Master Course List as Human Resources Development shall be waived if the student enrolling meets at least one of the following criteria:

- (1) Is unemployed;
- (2) Has received notification of a pending layoff;
- (3) Is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or
- (4) Is working and earning wages at or below two hundred percent (200%) of the federal poverty guidelines.

(b) Students for whom tuition and fees are waived shall sign a form adopted by the State Board of Community Colleges verifying that they meet one of these criteria.

- (1) A company or entity may reimburse the college for a given class up to 50 percent of the instructional cost and the student hours in membership generated in the class may be reported for budget FTE. If the college is reimbursed for more than 50 percent of the instructional cost for a given class, student hours in membership reported for the class shall be prorated in the same proportion as the college funding. If the college is reimbursed for 100 percent of the instructional cost, the class would be gratis [see Paragraph (b) of this Rule] and no budget FTE would be generated.
- (2) In cases where a company or entity donates funds to a college with no expectation for instruction in return, these funds shall be treated as college funds and may be used to generate budget FTE.
- (3) The community college shall not contract with a company/entity to provide training to its current employees except as provided by provisions set forth in 23 NCAC 02E .0402.

Note: Contracted training does not have to be defined as in-plant in order for 23 NCAC 02E .0402(c) to apply for reimbursement purposes.

(b) Any class for which the instructor's services are provided at no cost or for which the instructional cost is paid totally and directly by an external agency is a "gratis" class. In this situation, the class is reported as self-supporting, and does not generate budget/FTE. If a portion of the class is gratis, student hours shall be prorated accordingly.

(c) Categorical state allotments to colleges (except literacy and Human Resources Development) such as Small Business, Focused Industrial Training, Community Service Block Grants, etc., do not earn budget/FTE and are not subject to the provisions of this Rule.

~~(d) Student class hours for class size projects in which instructional salaries are funded by Title II of the Job Training Partnership Act (JTPA) shall not receive full FTE funding, but shall receive administrative cost reimbursement.~~

History Note: Filed as a Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Filed as a Temporary Amendment Eff. October 15, 1992 for a period of 180 days to expire on April 15, 1993; Authority G.S. 115D-5; 115D-31; 115D-58.5; S.L. 2001, c. 424, s. 30.3(b),(e); Eff. September 1, 1988; Amended Eff. June 1, 1994; September 1, 1993; Temporary Amendment Eff. October 4, 2001.

23 NCAC 02E .0101 PROGRAM CLASSIFICATION

The following criteria are used for classifying the programs offered in the North Carolina Community College System.

(1) Curriculum Programs:

(a) A curriculum program is an organized sequence of courses leading to an associate degree, a diploma, or a certificate. All curriculum programs are designed to provide education, training, or retraining for the work force.

(i) Associate degree programs are planned programs of study culminating in an associate in applied science, associate in arts, associate in fine arts, associate in science, or associate in general education degree.

(A) The associate in applied science degree programs are designed to prepare individuals for employment. These programs involve the application of scientific principles in research, design, development,

production, distribution, or service.

(B) The associate in arts, associate in science, and associate in fine arts degree programs are designed to prepare students for transfer at the junior level to institutions offering baccalaureate degrees.

(C) The associate in general education degree programs are designed for students who desire a general liberal arts education.

(ii) The diploma programs are designed to provide entry-level employment training. A diploma program may be a stand-alone curriculum program title, or a college may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved program of study and structured so that a student may complete additional non-duplicative coursework to receive an associate in applied science degree.

(iii) The certificate programs are designed to lead to employment or to provide skills upgrading or retraining for individuals already in the workforce. A certificate program may be a stand-alone curriculum program title, or a college may award a certificate under an approved degree or diploma curriculum program for a series of courses taken from the approved program of study.

(b) Developmental Education programs consist of courses and support services which include diagnostic assessment and placement, tutoring, advising, and writing assistance. These programs are designed to

- address academic preparedness, workforce retraining, development of general and discipline-specific learning strategies, and affective barriers to learning. Developmental courses do not earn credit toward a degree, diploma, or certificate.
- (2) Continuing Education Programs:
- (a) Occupational Extension courses consist of single courses, each complete in itself, designed for the specific purposes of training an individual for full- or part-time employment, upgrading the skills of persons presently employed, and retraining others for new employment in occupational fields.
- (b) Community Service:
- (i) Community Service courses consist of single courses, each complete in itself, that focus on an individual's personal or leisure needs rather than occupational or professional employment.
- (ii) The cultural and civic, and visiting artist component of this program meets community needs through lecture and concert series, art shows, the use of college facilities by community groups, providing speakers to community organizations, and providing visiting artist activities for college communities. Visiting artists may be provided an opportunity to work as artists in residence to enhance local arts resources and promote the various visual, performing and literary arts in communities throughout North Carolina.
- (c) Self-Supporting Programs:
- (i) A self-supporting course is not reported to the state for budget FTE since the cost of conducting the course is paid by students enrolled.
- (ii) Recreational programs are self-supporting courses which the college may provide at the request of the community but for which the college receives no budgetary credit. Funds appropriated as operating expenses for allocation to the colleges shall not be used to support recreation courses. The financing of these courses by a college shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students for use in budget-funding formulas at the state level.
- (d) Basic Skills Programs. The State Board and the community college system shall encourage persons to complete high school rather than seek testing for the High School Diploma Equivalency.
- (i) High School Equivalency programs consist of classroom instruction, learning laboratory courses, or a combination of activities designed to qualify a student for an adult high school diploma. An Agreement of Affiliation with a local public school system is required for minors sixteen or seventeen years old. No agreement is required for adults eighteen years old and older.
- (ii) General Educational Development (GED) testing programs consist of classroom instruction, or learning laboratory courses, or a combination of both designed to qualify a student to demonstrate competency on the General Educational Development (GED) tests and to receive a High School Diploma equivalency from the State Board. The State Board is responsible for the administration of the General Educational Development testing program in cooperation with the Office on Educational Credit of the American Council on Education. The procedures regulating the GED Testing Program set forth in the GED Examiner's Manual published by the General Educational Development Testing Service of the American Council on Education are

- hereby incorporated by reference. A copy of this manual is available for inspection in the Office of the System President, Department of Community Colleges, 200 W. Jones Street, Raleigh NC 27603-1379. A copy of this manual may be obtained at a cost of ten dollars (\$10.00) from the GED Testing Service of the American Council on Education, One Dupont Circle NW, Washington, DC 20036-1163.
- (iii) The Adult Basic Education (ABE) program is designed for adults who are functioning at or below the eighth grade educational level. The major objectives of the program are to enable adults to acquire the basic educational skills necessary to be fully competent in our society, to improve their ability to benefit from occupational training and to have greater opportunities for more productive and profitable employment, and to meet their own objectives for enrolling in the program. Classes are offered and focus on fundamental skills such as reading, writing, speaking, computing, critical thinking, and problem solving.
 - (iv) The English as a Second Language (ESL) program offers classes which accommodate the varied needs of the immigrant and refugee populations. Attention is given to both the cultural and linguistic needs as instruction is focused upon the formation of accurate, appropriate communication skills and upon the student's ability to function in the adult American community. Classes are offered at the beginning through the advanced levels of ESL. The curriculum is designed to develop the basic language skills of reading, writing, speaking, and listening. Instruction integrates the English language with topics that prepare students for everyday life, employment, and citizenship.
 - (v) The Compensatory Education (CED) program is designed for adults with mental retardation. The program is highly individualized and fosters a maximum level of independent living commensurate with personal ability. Instruction is offered in math, language, social science, health, community living, consumer education and vocational education.
 - (e) Business and Industrial Training.
 - (i) The Focused Industrial Training program addresses critical skills in existing industries. Based on assessments of need, these customized classes typically combine on-the-job training with classroom instruction to up-grade or train incumbent employees of manufacturing industries.
 - (ii) The New and Expanding Industry Training program offers customized, job-specific training to new or expanding companies creating new jobs in the state.
 - (iii) The Small Business Center program provides training, counseling and referral services especially designed in content and delivery modes for small businesses, both existing and prospective.
 - (f) : The Human Resources Development (HRD) program provides skill assessment services, employability skills training, and career development counseling to unemployed and underemployed adults. These courses shall address six core components as follows: assessment of an individual's assets and limitations;
 - (i) development of a positive self-concept;

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- (ii) development of employability skills;
 - (iii) development of communication skills;
 - (iv) development of problem-solving skills; and
 - (v) awareness of the impact of information technology in the workplace.
- (g) The Learning Laboratory programs consist of self-instruction using programmed texts, audio visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the lab.

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 66-58(c); 115D-20(12); S.L. 2001, c. 368*

Reason for Proposed Action: *Pursuant to this provision, the State Board of Community Colleges was required to adopt a rule to regulate conditions under which community colleges would be permitted to allow private business use of college facilities or personnel for the purposes stated in the law. This rule needs to take effect immediately so that community colleges may provide greater assistance with economic development.*

Comment Procedures: *Written comments may be sent to Clay T. Hines, North Carolina Community College System Office, 5004 Mail Service Center, Raleigh, North Carolina 27699-5004.*

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02E – EDUCATIONAL PROGRAMS

SECTION .0400 – INDUSTRIAL SERVICES

23 NCAC 02E .0404 ASSISTANCE FOR ECONOMIC DEVELOPMENT

- (a) A board of trustees that permits a private business enterprise to use college facilities or personnel pursuant to G.S. 66-58(c) and G.S. 115D-20(12) shall enter into a written agreement with the private business enterprise prior to providing any services. The agreement shall state the terms and conditions including costs for using college facilities and personnel.
- (b) Access to a college's small business incubator shall be limited to 24 months for private business enterprises.
- (c) Videoconferencing services may be provided to the public for occasional use.
- (d) The board of trustees shall evaluate its services for small business incubators, product testing or teleconferencing services on an annual basis.

*History Note: G.S. 66-58(c); 115D-20(12);
Temporary Adoption Eff. October 10, 2001.*

*History Note: Authority G.S. 115D-1; 115D-2; 115D-5;
S.L. 1995, c. 625; S.L. 2001, c. 424, s. 30.3(b),(e);
Eff. February 1, 1976;
Readopted Eff. January 24, 1978;
Amended Eff. September 1, 1993; September 1, 1982; August 17, 1981;
Temporary Amendment Eff. June 1, 1997;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. October 4, 2001.*

Rule-making Agency: *NC State Board of Community Colleges*

Rule Citation: *23 NCAC 02E .0404*

Effective Date: *October 10, 2001*

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, November 15, 2001, 10:00 a.m. at 1307 Glenwood Avenue, 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, November 9, 2001 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

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

November 15, 2001
December 20, 2001

January 17, 2002
February 21, 2002

RULES REVIEW COMMISSION

**October 18, 2001
MINUTES**

The Rules Review Commission met on Thursday morning, October 18, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, David Twiddy, Laura Devan, George Robinson, John Arrowood, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Marjorie Morris	Division of Medical Assistance
William Service	NC Division of Public Health
Joy Mayo	Womble Carlyle
E.L. Oxley	Attorney General's Office
Jim Hayes	DENR-Environment Health
Portia Rochelle	Division of Medical Assistance
Heather Burkhardt	Division of Aging
Amy Yonowitz	Attorney General's Office
Jim Kuszaj	Manufacturers & Chemical Industry Council
Thomas Allen	DENR-DAQ
Marc Bernstein	Attorney General's Office
Charles Case	Hunton & Williams
Grady McCallie	NC Conservation Network
Scott Perry	Dept. of Justice
Emily Lee	NC Dept. of Transportation
Brook Nicholson	DENR
Dedra Alston	DENR
J. Gulick	Attorney General's Office
A. Watkins	DENR
Sandy Sands	Womble Carlyle

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the September 20, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

7 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.

10 NCAC 22L .0101, .0102: DHHS – The Commission, at the request of the agency, reconsidered its previous approval of 22L .0101, the Scope rule. It then objected to the original rule on the basis of ambiguity. There was no definition for the term “agency,” a term that was undefined in 22L .0102. The Commission approved a rewritten rule 22L .0101 submitted by the agency. It then approved 22L .0102 as originally submitted, since the term was no longer ambiguous.

10 NCAC 45H .0203, .0204: Commission for Mental Health - No action was taken. Mr. DeLuca indicated that he had met with Pender McElroy, a Mental Health Commission member as well as other agency staff to discuss these rules and the RRC objection. As a result of that discussion the agency has indicated that it will have rewritten rules at the November meeting.

12 NCAC 9A .0103: Criminal Justice Education and Training Standards – The Commission approved the rewritten rule submitted by the agency.

12 NCAC 9G .0102, .0204, .0304, .0306, .0309, .0311, .0316, .0402, .0403, .0404, .0408, .0409, .0415, .0416: Criminal Justice Education & Training Standards Commission – The Commission approved the rewritten rules submitted by the agency.

12 NCAC 9G .0305: Criminal Justice Education & Training Standards Commission – The Commission approved the original rule submitted by the agency.

12 NCAC 9G 0307: Criminal Justice Education & Training Standards Commission –Commission Gray made a motion to reconsider objection and Commission Twiddy seconded that motion. The motion failed with Commissioners Gray and Twiddy voting in the affirmative. No further action was taken.

12 NCAC 9G .0401: Criminal Justice Education & Training Standards Commission – The Commission objected the rewritten rule due to lack of statutory authority. In (b), there is no authority cited for setting occupational requirements for school directors. There is such authority for instructors but not directors.

12 NCAC 9G .0405: Criminal Justice Education & Training Standards Commission – The Commission objected to the rewritten rule due to lack of statutory authority. There is no authority cited for the Commission to certify or set certification standards for school directors.

12 NCAC 9G .0406: Criminal Justice Education & Training Standards Commission – The Commission objected to the rewritten rule due to lack of statutory authority. Because the Commission has cited no authority to certify school directors, there is also none cited to renew the certification.

12 NCAC 9G .0407: Criminal Justice Education & Training Standards Commission – No action was taken.

15A NCAC 2D .1412, .1415, .1416, .1417, .1421: DENR/ Environmental Management Commission - The Commission approved the rewritten rules submitted by the agency. Mr. Sands argued against approving the rewritten .1421.

15A NCAC 2D .1420: DENR/Environmental Management Commission – The Commission approved the written rule submitted by the agency. Upon Mr. Sands’ pointing out what appeared to be a reference to the “inspection and maintenance program,” something the RRC had objected to last month in a different rule, the Commission voted to reconsider approval based on staff’s recommendation to object to the rule based on ambiguity as to language in (b). Although it appears that a sentence fragment was left in the middle of otherwise deleted language and arguably is simply surplusage and could be corrected by a technical change, the Commission did object to the fragment as ambiguous. It approved a rewritten rule with the fragment removed contingent on receiving it by end of business day. The rewritten rule would set out (b) as in paragraph one of the draft submitted and delete all remaining language in (b). It would include (c) on the last page of draft rule. The agency is free not to submit a rewritten rule but to return next month. The change was received by the close of the business day. However the RRC subsequently received a letter from the agency’s attorney requesting that the RRC refrain from filing the rule with OAH. The agency intends to bring the rule back before the EMC and then return it to the RRC.

19A NCAC 3J .0201, .0202, .0501, .0502, .0801, .0901, .0902, .0903, .0904, .0906: NC Department of Transportation – The Commission approved the rewritten rules submitted by the agency.

The Commission adjourned for a short break at 11:49 a.m. The meeting reconvened at 11: 58 a.m.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

1 NCAC 17 .0701, .0702, .0703, .0704, .0705, .0706, .0707, .0708, .0709, .0710, .0711, .0712, .0713: Department of Administration – The rules were withdrawn by the agency.

10 NCAC 50B .0101: DHHS/Division of Medical Assistance - The Commission objected to the rule due to ambiguity. Item (2) does not seem to make sense. Item (1) says individuals who meet the requirements of 42 U.S.C. 1396u-1 are eligible for Medicaid. Item (2) says certain of those eligible under item (1) but don’t receive a cash payment are eligible. It seems this has to be a sub-set of items (1).

15A NCAC 2B .0311: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. In (m)(1) and (2), it is not clear what is meant by “HQW@”. There is no such classification.

15A NCAC 18A .1311: DENR/Commission for Health Services – The Commission objected to this rule based on lack of authority and ambiguity. The rule in (e) places restrictions on smoking. In this context it appears that the rule becomes a standard reflecting health considerations, not sanitation. The effort to segregate smokers from non-smokers or smoking areas from smoke-free areas does

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not appear to be based on sanitation issues as much as health concerns. As such it appears to exceed the statutory authority cited, that is, "adopt rules to establish sanitation requirements." It is also unclear how to determine what would constitute an area "not used by non-smokers." Would designating a room or an area as a "smoking area only" mean that it could not or would not be used by non-smokers? Commissioner Devan voted against the motion to object.

15A NCAC 18A .1321: DENR/Commission for Health Services – The Commission objected to the rule based on ambiguity. It is unclear whether food brought from home in (b) is required to be in compliance with (a). If compliance is required it is unclear whether it is the employee, visitor, or institution that is required to comply or how it is to be monitored.

At the close of the review on the Commission for Health Services rules Chairman Powell informed Ms. Oxley that she could address the rules Review Commission at the meeting next month and request reconsideration of 15A NCAC 18A .1311 and present her argument as to why there is authority for this rule. The Commission was unaware that Ms. Oxley was prepared to defend the rule. Mr. Hayes, who represented the agency on these rules, had not mentioned that legal counsel was present.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The next meeting will be on Thursday, November 15, 2001.

The meeting adjourned at 12:26 p.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #181)

September 20, 2001 through October 22, 2001

DHHS/DIVISION OF FACILITY SERVICES

Definitions	10 NCAC 03R .1613	Amend
Required Performance Standards	10 NCAC 03R .1615	Amend
Required Support Services	10 NCAC 03R .1616	Amend
Definitions	10 NCAC 03R .2502	Amend
Definitions	10 NCAC 03R .2713	Amend
Required Performance Standards	10 NCAC 03R .2715	Amend
Definitions	10 NCAC 03R .3701	Amend
Required Performance Standards	10 NCAC 03R .3703	Amend
Applicability of Rules Related to the 2001 State	10 NCAC 03R .6301	Adopt
Certificate of Need Review Schedule	10 NCAC 03R .6302	Adopt
Multi-County Groupings	10 NCAC 03R .6303	Adopt
Service Areas and Planning Areas	10 NCAC 03R .6304	Adopt
Reallocations and Adjustments	10 NCAC 03R .6305	Adopt
Acute Care Bed Need Determination	10 NCAC 03R .6306	Adopt
Rehabilitation Bed Need Determination	10 NCAC 03R .6307	Adopt
Ambulatory Surgical Facilities Need Determination	10 NCAC 03R .6308	Repeal
Open Heart Surgery Services Need Determinations	10 NCAC 03R .6309	Adopt
Heart-Lung Bypass Machines Need Determination	10 NCAC 03R .6310	Adopt
Fixed Cardiac Catheterization Equipment and Fixed	10 NCAC 03R .6311	Adopt
Shared Fixed Cardiac Catheterization Equipment	10 NCAC 03R .6312	Adopt
Burn Intensive Care Services Need Determination	10 NCAC 03R .6313	Adopt
Positron Emission Tomography Scanners Need Determi	10 NCAC 03R .6314	Adopt
Bone Marrow Transplantation Need Determination	10 NCAC 03R .6315	Adopt
Solid Organ Transplantation Services Need Determin	10 NCAC 03R .6316	Adopt
Gamma Knife Unit Need Determination	10 NCAC 03R .6317	Adopt
Lithotripter Need Determination	10 NCAC 03R .6318	Adopt
Radiation Oncology Treatment Centers Need Determin	10 NCAC 03R .6319	Adopt
Magnetic Resonance Imaging Scanners Need Determina	10 NCAC 30R .6320	Adopt
Magnetic Resonance Imaging Scanners Need Determin	10 NCAC 03R .6321	Adopt
Nursing Care Bed Need Determination	10 NCAC 03R .6322	Adopt
Medicare-Certified Home Health Agency Office Need	10 NCAC 03R .6323	Adopt
Dialysis Station Need Determination Methodology	10 NCAC 03R .6324	Adopt
Dialysis Station Need Determination Methodology	10 NCAC 03R .6325	Adopt

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Hospice Home Care Need Determination	10 NCAC 03R .6326	Adopt
Hospice Inpatient Facility Bed Need Determination	10 NCAC 03R .6327	Adopt
Psychiatric bed Need Determination	10 NCAC 03R .6328	Adopt
Psychiatric Bed Need Determination	10 NCAC 03R .6328	Adopt
Chemical Dependency (Substance Abuse) Treatment	10 NCAC 03R .6329	Adopt
Chemical Dependency (Substance Abuse) Adult	10 NCAC 03R .6330	Adopt
Intermediate Care Beds for the Mentally Retarded	10 NCAC 03R .6331	Adopt
Policies for General Acute Care Hospitals	10 NCAC 03R .6332	Adopt
Policies for Cardiac Catheterization Equipment	10 NCAC 03R .6333	Adopt
Policies for Transplantation Services	10 NCAC 03R .6334	Adopt
Policy for MRI Scanners	10 NCAC 03R .6335	Adopt
Policy for Provision of Hospital-Based Long-Term	10 NCAC 03R .6336	Adopt
Policy for Plan Exemption for Continuing Care Ret	10 NCAC 03R .6337	Adopt
Policy for Determination of Need for Additional Nu	10 NCAC 03R .6338	Adopt
Policy for Relocation of Certain Nursing Facility	10 NCAC 03R .6339	Adopt
Policy for Transfer of Beds from State Psychiatric	10 NCAC 03R .6340	Adopt
Policy for Relocation of Nursing Facility Beds	10 NCAC 03R .6341	Adopt
Policy for Medicare-Certified Home Health Services	10 NCAC 03R .6342	Adopt
Policy for Relocation of Dialysis Stations	10 NCAC 03R .6343	Adopt
Policies for Psychiatric In Patient Facilities	10 NCAC 03R .6344	Adopt
Policy for Chemical Dependency Treatment Facilities	10 NCAC 03R .6345	Adopt
Policy for Intermediate Care Facilities for the Me	10 NCAC 03R .6346	Adopt
DHHS		
Least Restrictive Alternative and Prohibited	10 NCAC 14J .0201	Amend
Indications For Use of Seclusion and Isolation	10 NCAC 14J .0204	Amend
Indications For Use of Physical Restraints	10 NCAC 14J .0205	Amend
Protective Devices	10 NCAC 14J .0207	Amend
Definitions	10 NCAC 14P .0102	Amend
Informed Consent	10 NCAC 14Q .0303	Amend
Least Restrictive Alternative	10 NCAC 14R .0101	Amend
Protective Devices	10 NCAC 14R .0105	Amend
Client Services	10 NCAC 14V .0208	Amend
Facility Design and Equipment	10 NCAC 14V .0304	Amend
Scope	10 NCAC 14V .0801	Adopt
Definitions	10 NCAC 14V .0802	Adopt
Reporting Requirements	10 NCAC 14V .0803	Adopt
Staff	10 NCAC 14V .6002	Amend
DHHS/COMMISSION FOR MH/DD/SAS		
Schedule IV	10 NCAC 45H .0205	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Heavy Duty Diesel Engine Requirements	15 NCAC 02D .1008	Adopt
Activities Exempted from Permit Requirements	15 NCAC 02Q .0102	Amend
DENR/COASTAL RESOURCES COMMISSION		
Coastal Shorelines	15 NCAC 07H .0209	Amend
Oceanfront Setback Exceptions	15 NCAC 07H .0309	Amend
Accessory Building Definitions	15 NCAC 07K .0209	Adopt
High Hazard Flood AEC	15 NCAC 07K .0213	Adopt
EDUCATION, STATE BOARD OF		
State Graduation Requirements	16 NCAC 06D .0503	Amend
STATE BOARDS/N C BOARD OF REGISTRATION FOR FORESTERS		
Code of Ethics	21 NCAC 20 .0115	Amend
STATE BOARDS/N C BOARD OF NURSING		
Selection and Qualifications of Nurse Members	21 NCAC 36 .0109	Amend
Revocation, Suspension, or Denial of License	21 NCAC 36 .0217	Amend
Exceptions to Health Care Practitioners Identification	21 NCAC 36 .0231	Adopt
STATE BOARDS/N C BOARD OF PHARMACY		
Determination of Election Results	21 NCAC 46 .2108	Amend
Responsibilities of Pharmacist-Manager	21 NCAC 46 .2502	Amend
STATE BOARDS/N C EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS		
Certified Technicians	21 NCAC 64 .0210	Adopt

AGENDA
RULES REVIEW COMMISSION
November 15, 2001

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Cultural Resources – 7 NCAC 4S .0104 Objection on 12/21/00 (DeLuca)
 - B. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
 - C. DENR/Division of Medical Assistance– 10 NCAC 50B .0101 Objection 10/18/01 (Bryan)
 - D. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0307; .0407 Objection on 9/20/01 (Bryan)
 - E. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0401; .0405; .0406 Objection on 10/18/01 (Bryan)
 - F. DENR/Environmental Management Commission – 15A NCAC 2B .0311 Objection 9/20/01, 10/18/01 (Bryan)
 - G. DENR/Environmental Management Commission – 15A 2D .1420 Objection on 10/18/01 (DeLuca)
 - H. DENR/Commission for Health Services – 15A NCAC 18A .1311; .1321 Objection on 10/18/01 (DeLuca)
- IV. Review of rules (Log Report #181)
- V. Commission Business
- VI. Next meeting: Thursday, December 20, 2001

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.ncoah.com/hearings>.

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
Beryl E. Wade
A.B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
<u>Child Support Enforcement Section</u>				
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01	
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01	
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01	
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01	
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01	
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01	
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01	
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01	
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01	
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01	
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01	
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01	

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Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Hugh Williams Jr v. Department of Health & Human Services	00 CSE 1753	Morrison	10/02/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
Terry Jacobs v. Department of Health & Human Services	00 CSE 2004	Lassiter	10/11/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01
Toni M Rash v. Department of Health & Human Services	01 CSE 0040	Wade	10/02/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Harlie J Turner v. Department of Health & Human Services	01 CSE 0095	Morrison	09/26/01
Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
Carlton Griffin Jr. v. Department of Health & Human Services	01 CSE 0211	Lassiter	08/20/01
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01
Carey Austin Spencer v. Department of Health & Human Services	01 CSE 0277	Conner	07/09/01
Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
Craig Darrell McLeod v. Department of Health & Human Services	01 CSE 0301	Gray	07/31/01
Nathaniel Gunter v. Department of Health & Human Services	01 CSE 0333	Morrison	06/25/01
Cantabile Jones v. Department of Health & Human Services	01 CSE 0357	Chess	07/06/01
Arlene Locklear v. Department of Health & Human Services	01 CSE 0358	Conner	07/20/01
Nolan D Schrader v. Department of Health & Human Services	01 CSE 0362	Elkins	08/07/01
Harvey L Hughes Sr. v. Department of Health & Human Services	01 CSE 0366	Gray	06/29/01
Denise Renee Nunn v. Department of Health & Human Services	01 CSE 0368	Morrison	06/05/01
Myhammad Ali Sabakada v. Department of Health & Human Services	01 CSE 0378	Elkins	09/13/01
Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01
Johnny Caldwell v. Department of Health & Human Services	01 CSE 0415	Conner	07/09/01
Timothy Ray Ledford v. Department of Health & Human Services	01 CSE 0416	Elkins	06/29/01
Leon B Feathersen v. Department of Health & Human Services	01 CSE 0423	Wade	08/10/01
Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01
Kimberly L Shull v. Department of Health & Human Services	01 CSE 0431	Gray	09/27/01
Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
Luther W Covington v. Department of Health & Human Services	01 CSE 0438	Conner	07/20/01
Carl Franklin Slemp v. Department of Health & Human Services	01 CSE 0449	Morrison	07/12/01
Tennis Lee Perry v. Department of Health & Human Services	01 CSE 0450	Chess	07/06/01
Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01

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Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
Armenous Dobson III v. Department of Health & Human Services	01 CSE 0519	Morrison	09/06/01
George Foster Still v. Department of Health & Human Services	01 CSE 0526	Elkins	09/13/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Raymond A McDonald v. Department of Health & Human Services	01 CSE 0592	Gray	07/18/01
Carson C Clark Jr. v. Department of Health & Human Services	01 CSE 0600	Morrison	07/19/01
Paul Williams v. Department of Health & Human Services	01 CSE 0606	Lassiter	07/19/01
Thomas J Lipppa v. Department of Health & Human Services	01 CSE 0609	Elkins	06/27/01
Boyd H Tucker v. NC Child Support Centralized Collection	01 CSE 0618	Wade	05/31/01
Joseph E Rudd Jr. v. Department of Health & Human Services	01 CSE 0621	Gray	05/29/01
Shirley W Pendergrass v. Department of Health & Human Services	01 CSE 0622	Mann	09/11/01
Manuel Lee Thomas v. Department of Health & Human Services	01 CSE 0623	Morrison	07/19/01
Kirk M White v. Department of Health & Human Services	01 CSE 0625	Lassiter	06/05/01
Walter L Sloan Jr. v. Department of Health & Human Services	01 CSE 0626	Wade	08/03/01
Kevin R Ross v. Department of Health & Human Services	01 CSE 0631	Elkins	06/05/01
Kelvin R Leonard v. Department of Health & Human Services	01 CSE 0633	Elkins	06/05/01
Steven Rodger Malysz v. Department of Health & Human Services	01 CSE 0649	Gray	06/05/01
Forrest W Crutchfield v. Department of Health & Human Services	01 CSE 0651	Morrison	08/02/01
Raul Villanueva v. Department of Health & Human Services	01 CSE 0652	Morrison	08/02/01
Allen Getzinger v. Department of Health & Human Services	01 CSE 0654	Lassiter	08/08/01
Robert Lee Scott Jr. v. Department of Health & Human Services	01 CSE 0656	Conner	07/20/01
Randy L Wade v. Department of Health & Human Services	01 CSE 0664	Elkins	10/02/01
Christopher R Miller v. Department of Health & Human Services	01 CSE 0678	Lassiter	07/19/01
Larry O Anthony v. Department of Health & Human Services	01 CSE 0681	Lassiter	07/30/01
Dennis Green v. Department of Health & Human Services	01 CSE 0682	Gray	08/02/01
Tony Eugene Johnson v. Department of Health & Human Services	01 CSE 0684	Mann	09/11/01
Lynn S Jowers v. Department of Health & Human Services	01 CSE 0688	Elkins	06/25/01
Charles John DaBella v. Department of Health & Human Services	01 CSE 0690	Conner	07/20/01
Kou Yang v. Department of Health & Human Services	01 CSE 0692	Gray	08/02/01
George D Moore v. Department of Health & Human Services	01 CSE 0693	Wade	08/03/01
Anthony C Lambert v. Department of Health & Human Services	01 CSE 0696	Morrison	07/11/01
Benjamin R Norris v. Department of Health & Human Services	01 CSE 0698	Lassiter	07/30/01
Jerlean Artis v. Department of Health & Human Services	01 CSE 0704	Mann	09/11/01
Clayton E Reeves v. Department of Health & Human Services	01 CSE 0705 ²	Elkins	08/16/01
James Balmer v. Department of Health & Human Services	01 CSE 0735	Elkins	08/16/01
Roger Dale Weaver v. Department of Health & Human Services	01 CSE 0739	Wade	09/18/01
Joshua V Harris v. Department of Health & Human Services	01 CSE 0757	Morrison	07/30/01
Nehemiah Patrick Holliday, Jr. v. Department of Health & Human Services	01 CSE 0764	Morrison	08/16/01
Ronald Rozzelle Mitchell v. Department of Health & Human Services	01 CSE 0765	Elkins	08/16/01
Steven G Adelman v. Department of Health & Human Services	01 CSE 0766	Wade	09/28/01
Jeffery D Bolton v. Department of Health & Human Services	01 CSE 0777	Gray	06/29/01
Leonard A Warren v. Department of Health & Human Services	01 CSE 0817	Morrison	07/13/01
Willie Lee Midgett Jr. v. Department of Health & Human Services	01 CSE 0822	Lassiter	08/20/01
Dennis D Miller v. Department of Health & Human Services	01 CSE 0824	Elkins	07/31/01
William A Bell v. Department of Health & Human Services	01 CSE 0828	Wade	09/21/01
James D Wright Jr. v. Department of Health & Human Services	01 CSE 0834	Conner	08/30/01
Michelle Dalton Painter v. Department of Health & Human Services	01 CSE 0838	Chess	07/09/01
James D Jackson Jr. v. Department of Health & Human Services	01 CSE 0839	Gray	07/31/01
Henry Joseph v. Department of Health & Human Services	01 CSE 0843	Morrison	08/20/01
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Arthur Jackson v. Department of Health & Human Services	01 CSE 0872	Chess	07/25/01
Calvin Laverne Johnson v. Department of Health & Human Services	01 CSE 0886	Lassiter	07/26/01
Terronie T Purnell v. Department of Health & Human Services	01 CSE 0896	Mann	09/13/01
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Thomas E Mitchell v. Department of Health & Human Services	01 CSE 0901	Elkins	08/07/01
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Bryan Keith Berry v. Department of Health & Human Services	01 CSE 0912	Conner	10/04/01
Matilda Thompson v. Department of Health & Human Services	01 CSE 0914	Gray	09/06/01
Sheraton Vincent Walker v. Department of Health & Human Services	01 CSE 0918	Morrison	09/06/01
Ronald Carl Ray v. Department of Health & Human Services	01 CSE 0927	Morrison	09/06/01
Larry Mims v. Department of Health & Human Services	01 CSE 0928	Elkins	09/06/01
Jeffrey T Daye v. Department of Health & Human Services	01 CSE 0969	Conner	09/17/01
Charles Baron Camp v. Department of Health & Human Services	01 CSE 0979 ⁴	Morrison	09/13/01
Charles Baron Camp v. Department of Health & Human Services	01 CSE 0987	Morrison	09/13/01
Joseph L Garland v. Department of Health & Human Services	01 CSE 0991	Wade	08/10/01
Sydell LeMay v. Department of Health & Human Services	01 CSE 1003	Lassiter	09/17/01
Anthony J Edwards v. Department of Health & Human Services	01 CSE 1005	Gray	09/11/01
Pierette Lynn Van Horn v. Department of Health & Human Services	01 CSE 1007	Morrison	09/20/01
Stephen Lee Pendleton v. Department of Health & Human Services	01 CSE 1009	Gray	08/21/01
Daren L Keyes v. Department of Health & Human Services	01 CSE 1017	Elkins	09/27/01
James W Quick v. Department of Health & Human Services	01 CSE 1044	Conner	08/07/01
Elijah Saunders v. Department of Health & Human Services	01 CSE 1052	Gray	08/02/01
Leonard Campbell v. Department of Health & Human Services	01 CSE 1062	Morrison	10/10/01
Franklyn A Barrera v. Department of Health & Human Services	01 CSE 1070	Lassiter	10/09/01
Michael W Campbell v. Department of Health & Human Services	01 CSE 1077	Mann	10/09/01
Richard W Spencer v. Department of Health & Human Services	01 CSE 1085	Elkins	10/05/01

3 Combined Cases

2 Combined Cases

4 Combined Cases

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Bobby D Cooper v. Department of Health & Human Services	01 CSE 1087	Wade	08/10/01
Christopher T Middleton v. Department of Health & Human Services	01 CSE 1131	Gray	09/06/01
Gary G Walker v. Department of Health & Human Services	01 CSE 1136	Morrison	10/10/01
Calvin D Alston v. Department of Health & Human Services	01 CSE 1143	Lassiter	10/09/01
Petre Capraru v. Department of Health & Human Services	01 CSE 1145	Morrison	08/28/01
David Diaz v. Department of Health & Human Services	01 CSE 1150	Elkins	09/13/01
Michael K Seaman v. Department of Health & Human Services	01 CSE 1157	Wade	08/29/01

Cassandra Parrish v. Department of Health & Human Services	01 DCS 0701	Chess	10/03/01
Constance Drye v. Department of Health & Human Services	01 DCS 0707	Wade	06/25/01
Linda Warren v. Department of Health & Human Services	01 DCS 0803	Conner	08/17/01
LaVonya Ann Goods v. Department of Health & Human Services	01 DCS 0819	Lassiter	07/12/01
Kechia Bonita Howell v. Department of Health & Human Services	01 DCS 0848	Elkins	09/13/01
Faye D Brown v. Department of Health & Human Services	01 DCS 0923	Lassiter	07/19/01
Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01

CULTURAL RESOURCES

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	Wade	08/16/01
Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01
Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
Renita Lewis-Walters v. (ADATC), Dept. of Health & Human Services	01 DHR 0286	Morrison	06/08/01
Thomas M Poole v. Dept. of Health & Human Services	01 DHR 0335	Lassiter	07/26/01
Terry Westmoreland v. John Umstead Hospital	01 DHR 0392	Elkins	08/15/01
Duane E McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Eunice L Walden v. NC DHHS	01 DHR 0589	Gray	09/11/01
Robert W Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Mable Barnes, CNA v. DHHS	01 DHR 0714	Conner	09/14/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Helen Yoo, Happy Hill Garden v. NC Dept. of Public Health & Human Svcs.	01 DHR 0781	Conner	09/18/01
Margaret Rinkel Sanderlin v. NC Dept. of Health & Human Services	01 DHR 0831	Conner	09/12/01
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STATE OF NORTH CAROLINA
COUNTY OF FRANKLIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 DHR 0330

TABITHA PERRY
Petitioner,

vs.

STATE OF NC DEPT OF HEALTH AND HUMAN
SERVICES, DIVISION OF FACILITY SERVICES
Respondent.

DECISION

This contested case was heard before the undersigned Chief Administrative Law Judge on July 23 and 24, 2001, at the Office of Administrative Hearings in Raleigh, Wake County, North Carolina.

APPEARANCES

For Petitioner Tabitha Perry, *pro se*
 36 Red Hill Lane
 Louisburg, NC 27549

For Respondent: June S. Ferrell
 Assistant Attorney General
 NC Department of Justice
 PO Box 629
 Raleigh, NC 27602-0629

ISSUE

Whether Respondent prejudiced Petitioner's rights and/or exceeded its authority or jurisdiction when Respondent entered a finding of abuse of a resident against Petitioner in the Health Care Personnel Registry as stated in a letter to Petitioner dated January 30, 2001.

EXHIBITS

For Petitioner: **Petitioner's Exhibits 1, 2, 3 and 4.**

For Respondent: Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

STIPULATIONS

Both Petitioner and Respondent filed handwritten submissions on final pretrial conference. Stipulations are contained in the record.

Based upon the stipulations of record and a preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is a certified nursing assistant who is a resident of Louisburg, Franklin County, North Carolina. Petitioner is 32 years old and a mother of two children. Petitioner is a high school graduate with one year of community college credits at Vance Community College in prenursing and psychology; Petitioner is a certified paralegal; Petitioner also is a medical technician, having completed the medical technician credential administered by the Division of Facility Services.

2. Respondent is an agency of the State of North Carolina.

3. Petitioner has been a certified nursing assistant for 10 consecutive years.
4. Petitioner is presently employed at Springmoor and Oakleaf Village of Raleigh where she continues offering services as a CNA.
5. Between the years 1998 and 2000 Petitioner was employed by CareFocus of Louisburg, North Carolina. She performed services as a home health nurse for CareFocus.
6. In June of 2000, Petitioner offered home health services for B.B. (abbreviation per stipulation in the record).
7. B.B. suffered from neurovascular multiple sclerosis and she was diabetic. B.B., although immobile from the waist down, could use her arms, mouth, eyes and upper body. She had the use of her hands and could grasp and touch her face, as well as other parts of her body. She could move her arms and she was able to minimally hold onto and grasp objects; B.B.'s fingers would open enough so that she could put a cup in her hand or place a ball in her hand (to strengthen her grip); she had limited or no use of her fingers; she was communicative; she could not feed herself and took nutrition by a feeding tube, mainly because it was difficult for her to swallow. B.B. had the ability to remove her glasses and throw them down.
8. Petitioner's primary responsibilities for B.B. were services as a CNA and general caregiver, and more specifically in tube feeding, bathing and assisting B.B. in moving from bed into a wheelchair; Petitioner would push B.B.'s wheelchair into the living room and B.B. would watch television with her father.
9. Petitioner offered services to B.B. for a period of about 10 months, during every week day and occasionally on the weekends, primarily from 8:00 a.m. to 4:00 p.m.
10. Petitioner's relationship with B.B. was good; occasionally B.B. told Petitioner that she loved her and Petitioner reciprocated.
11. On June 22, 2000 between 2:00 and 3:00 p.m. B.B. was inquiring of Petitioner about her mother. B.B.'s mother died on or about May 10th or 11th, 2000, but Petitioner was instructed not to inform B.B. or to discuss this with her. B.B.'s Aunt Laura told B.B. (at or near the time of the events of June 22, 2000) that her mother had died. This communication was made without permission, approval and at the displeasure of Mr. Murphy, B.B.'s father. (Respondent's Exhibit #1) In Respondent's Exhibit #2, Petitioner states the following: "I know she is going through a lot mentally and I am not there to add on to her problems." Mr. Murphy said B.B. has spells of talking a lot and she was going through one of those spells now." (Respondent's Exhibit #7)
12. B.B. became emotionally upset and become vocally loud. Mr. Murphy, entered the room and when she did not respond to him, Mr. Murphy told her "Shut the hell up" and left the room. He slammed the door on the way out and then left the premises.
13. After Mr. Murphy departed, Petitioner noticed that B.B.'s suction tube needed to be cleared. There is an extra hole in the suctioning tube. Tape is used to repair it. B.B. asked Petitioner for a piece of tape. Petitioner gave her a piece of hospital tape approximately 1 1/2 to 2 inches long. Petitioner had torn off this piece of tape and it was too small to utilize on the tube or for possible dressing for her ankle. This piece of tape was too small and she gave it to B.B. at her request.
14. "She asked me for a piece of tape. She's always asked me for things, like tissue, a ball to squeeze because she would try to exercise her grip. She's asked me for her cup, anything that she can hold. She asked for the tape. I told her, 'B.B., I cannot ... what are you going to do with the tape?' And she told me she was going to do nothing with it, she was just going to, you know, play with it because she was playing with her dress and everything else. So I -- I gave her the tape." (Tp 31)
15. B.B. inquired of Petitioner as to why her father had told her to shut up. Petitioner informed BB. that she was not certain. B. B. took off her glasses and slung them on the floor. B.B. then placed the tape on her mouth cattycorner on her top lip. B.B. informed Petitioner "I want to tape my mouth." (Tp 33)
16. During the time, B.B. was still able to communicate with the tape in place over her mouth. B.B. had placed the tape on her mouth at an angle.
17. B.B.'s tape was on the side of her mouth in a diagonal direction extending from below her nose to her jaw. It was a small piece of tape.
18. Petitioner attempted to remove the tape but B.B., through her action, would not permit her to do so. The tape stayed on the corner of B.B.'s mouth. Mr. Murphy returned and entered the room at Petitioner's beckoning and motioning. When he saw the tape on B.B., he said: "I don't want to see this any damn more." (Tpp 33 and 34)

19. Petitioner explained to Mr. Murphy as follows: "So I went to him and asked him ... I said, 'Mr. Murphy' I said, 'I did not put tape on B.B.'s mouth, and previous to that she'd throw her glasses on the floor.' He laughed about it and said, 'She gets that way sometimes.'" (Tp 34) Mr. Murphy then removed the tape from B.B.'s lip. The tape had been on B.B.'s lip for less than five minutes.

20. The following statement is attributed to B.B. "Do you remember white tape being placed over your mouth? B.B.'s response: I remember tape on mouth. Somebody else put it on. It stung when tape was pulled off." Question: Did you put the tape on your mouth? B.B.'s response: "No." In this statement B.B. was given every opportunity to identify Tabitha Perry as the one that put the tape on her mouth, but she did not. Again in Respondent's Exhibit #10 dated 7/18/01 in a statement attributed to B.B. in response to the question if she remembered who placed the tape on her mouth, B.B. responded: "No."

21. In Respondent's Exhibit #6, this statement is attributed to Mr. Murphy: "He states it was the tape that the RN using (sic) on her bandages. He states he asked the NA 'Why did she have tape on her mouth?' He then told me that he said to the NA, 'I think you're getting out of hand.' Father states NA did not reply immediately but then in approximately 1-2 min., NA stated 'B did it.' Father states he took the tape off his daughter's mouth himself." Petitioner specifically denies the statement attributed to her by Mr. Murphy that she had placed tape over B.B.'s mouth. Petitioner's account of the way the tape was placed on B.B.'s mouth is not consistent with Mr. Murphy's statement.

22. Statements attributed to B.B., admitted as hearsay, indicated that B.B. did not believe that Petitioner threatened her in any way but indicated that tape had been placed over her mouth.

23. In an interview conducted by Sharon Leonard, B.B. stated she could not remember who placed the tape over her mouth. [But see Respondent's Exhibit #5, as this statement is attributed to B.B.: "I asked B.B. the question, Did Tabitha put tape on your mouth and B.B. said Yes."] Ms. Leonard conducted a test on the date of the interview to determine, in her mind as an investigator, as whether or not B.B. had the ability to put tape to her mouth and, on this date based upon the test, that she gave a piece of paper to B.B. Ms. Leonard concluded that B.B. was not able to perform this task.

24. MS is a progressively degenerative disease. The interview conducted by Ms. Leonard occurred approximately 5 months from the date of the accusations.

25. On the date of the interview with Ms. Leonard her cognitive abilities were clear. No account or explanation is placed in this record as to why B.B. did not explain who put the tape over her mouth.

26. In Respondent's Exhibit #4, this statement is attributed to B.B.: "I like Tabitha. I do not want to cause any problems."

27. Respondent's Exhibit #1 contains Petitioner's handwritten statement: "She (B.B.) doesn't understand why no one comes to see her much anymore. Her reaction is to try to get up and leave by (throwing) the sheets off of her, (throwing) her glasses on the floor or constantly talk to herself.... Mr. Murphy waited until Mrs. Murphy was on her dying bed before he took any time with her."... I know that clients and their families get a little stressed especially when death is near. I try to stick it out because I know that the clients need me. I care about people and that's why this was a good career choice for me. I have never hurt any of my clients in any way or even thought about it. I have seen Mr. Murphy throw B. to one side, snatch things from her and curse at her.... He told me himself that B. (throws) fits like that sometimes even hurting herself."

28. In Respondent's Exhibit #1 Petitioner states, in her own handwriting, how the incident occurred: "What happened with the tape incident was this; B.B. was once again, like she does always, began talking to herself. Every so often she would get loud. Mr. Murphy heard her and told her to be quiet. A few minutes later, because she kept talking, he walked out and slammed the door. A moment later she (threw) down her glasses and asked me to give her a piece of tape. Every time she asks me for something, I give it to her and he knows this. It is never something sharp or something she could hurt herself with. Unfortunately, he wasn't there when I gave her the tape. She layed the tape across her top lip and would not answer me when I asked her why. I proceeded to remove the tape, but she pushed me away and told me she would get it. I didn't think to tell her that her father would be mad because he knows that she gets like this sometimes. I let it stay so he would know what was going on. Once he returned and saw the tape, he asked me about it. I told him I didn't (word omitted) why she was doing it but I gave it to her because she asked for it. He told me he didn't want to see it any damn more. He yanked it off of her mouth and left out cursing at me. Thinking that he must have thought I did it, I told him that B did this herself and threw down her glasses. He told me that she gets like that sometimes. We both laughed and didn't think anymore of it."

29. In Respondent's Exhibit #5 this statement is attributed to Shannon Loveless, who is listed as B.B.'s daughter: "B.B.'s daughter, Shannon Loveless, said she did not believe it happened."

30. In Respondent's Exhibit #9 the following statement is attributed to the Petitioner: "BB's father had just lost his wife and everybody was upset about it. When BB learned her mother had died BB started being agitated. BB and me play little games like clapping hands and I would give her things to hold in her hands. BB got more agitated and was crying more and got louder. I was

changing BB's suction tube and BB asked for a piece of tape. BB held her hand out and I showed her the tape and said do you want the tape and BB said yes. I gave BB the tape. It was paper tape and it was about an inch wide. At first BB looked at the tape and it calmed her down. BB stopped yelling and she was quiet and focused on the tape. I tried to take the tape off her mouth. When I tried to remove the tape, BB would yell louder. I waited until Mr. Murphy got back in the house. Mr. Murphy came back into the house within a minute of the tape being on BB's mouth. Mr. Murphy said 'What in the hell it going on?' I told him BB got more agitated when he left the house. BB asked for the tape and it seemed to calm her down so I let BB play with it. Mr. Murphy said, 'I don't want to see this any damn more.' Mr. Murphy tore the tape off BB's mouth and walked out of the room. I tried to explain to Mr. Murphy why the tape was on BB's mouth but he did not want to listen. The tape was on BB's mouth not even five minutes."

31. B.B. is approximately 40 to 50 years old and no one in the household informed her as to her mother's death. Her mother had lived with her in the household for a period of time prior to her death from cancer.

32. Mr. Murphy had requested of Petitioner that Petitioner assist B.B.'s mother while she was there for the purpose of caring for B.B. Petitioner declined this request and Petitioner believes there was some resentment residing with Mr. Murphy for Petitioner declining this request. The events of June 22, 2000, which are the subject of this contested case, occurred just a short time after Mr. Murphy had lost his wife in a longstanding marriage. Petitioner believes that both Mr. Murphy and his wife prior to her death were angry with her about her refusal. Mr. Murphy had tried to convince Petitioner to assist his wife as other aides that had come into the house would do. In Respondent's Exhibit #2, Petitioner made this statement: "Mr. Murphy wanted me to do things for his wife who was dying with cancer. I told him I could not do things for his wife due to CareFocus' policy and Medicaid' policy. Ms. Murphy would call out and ask me to help her when Mr. Murphy was not in the house. I could not go into her room. I was told by CareFocus not to help another patient on another patient's Medicaid. I had to yell out, 'I'm not able to help you.' Ms. Murphy would say that other girls did it. A niece heard me yell it out and she got upset and told Mr. Murphy that I yelled at Ms. Murphy. Ms. Murphy's granddaughter told me that that Mr. Murphy did not like me yelling out to Ms. Murphy."

33. The incident occurred on Thursday. Petitioner returned to work on Friday, nothing was said to her on that date.

34. Petitioner took it upon herself to make sure that B.B.'s suctioning tube was changed but she did not routinely clean it.

35. Virginia Dillon is the Executive Director at Oakleaf Village. Petitioner first began to work at Oakleaf at the end of November, 2000. During the period of time of November through the day of the hearing, Ms. Dillon was not aware of any complaints about Petitioner concerning resident care. Petitioner works in the Alzheimer's unit on third shift with patients with varying degrees of dementia. Petitioner's evaluations received at Oakleaf were always good to excellent. Petitioner reports to work in a timely fashion and her quality of work has been excellent. Ms. Dillon has known Petitioner to be truthful, and she had been forthright with Ms. Dillon with the allegations which are the subject of this contested case hearing.

36. Petitioner's Exhibit #2 contains a statement by Lynne Ball, RW, who had an opportunity to personally observe the interaction between Petitioner and B.B. and observed that B.B.'s "surroundings were always immaculate." She (B.B.) responded to Tabitha (Petitioner) appropriately and it was my impression Tabitha and B.B. had a good relationship."

37. Petitioner's Exhibit #3 contains a statement by Sharon Yadow, Petitioner's shift manager at Springmoor: "Tabitha Perry has worked at Springmoor full time as well as part-time. I have been the shift manager during the time she had been employed here. Tabitha is very reliable and is excellent with her residents. She gives very good care and is kind and caring with our people." (Original statement typed in capital letters.)

38. No other complaint was lodged against Petitioner as a caregiver while she was employed by CareFocus.

39. Mr. Murphy is B.B.'s father and is the person who has the primary responsibility as caregiver for B.B and is her closest living relative.

40. In Respondent's Exhibit #10, this statement is attributed to Mr. Murphy: "Mr. Murphy explained that he would not be able to attend the hearing. " (See also Tp 195)

41. Mr. Murphy did not see Ms. Perry put the tape on B.B.'s mouth. (Respondent's Exhibit #11)

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.

2. As a nurse aide, Petitioner is subject to Article 15 of Chapter 131E of the North Carolina General Statutes. Petitioner falls within the statutory definition of "health care personnel" and is subject to the provisions of N.C. Gen. Stat. 131E-256.

3. "Abuse" is defined by 42 CFR, Part 488 subpart E, which is incorporated by reference, including subsequent amendments 10 NCAC 3B.1001(1). Abuse is defined in 42 CFR 488.301 as follows: "Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish."

4. Petitioner's actions did not constitute abuse under the statute. There is no direct evidence that this was anything more than a "game" that Petitioner and her ward played from time to time and that Petitioner's construction of the events of that day are credible based upon observation of witness demeanor. The statements attributed to others who were not eyewitnesses cannot refute the direct testimony of a credible witness who is present and subject to cross-examination and to the questions of the presiding administrative law judge. In documentary evidence, admitted as hearsay, B.B. reportedly denied knowing who put the tape over her mouth, except for one exception. Further, the rudimentary, and sometimes contradictory, statements attributed to B.B. to the contrary are not reliable given her medical condition, her possible motive to exonerate herself from her own action, and her great dependence upon her caregivers, particularly her father. B.B.'s hearsay statements are not fully developed, probative or comprehensive as to the events of June 22, 2000. Mr. Murphy's hearsay statement as to the events of June 22, 2000 were partially discredited by his statements and conduct toward B.B. and Petitioner at the time, his possible antagonism against Petitioner for her proper refusal to assist his wife as a patient in the home, his emotional state of mind at a time when he had just lost his wife, and Petitioner's testimony (supported by her written statement) that he "laughed" at the incident.

5. Respondent erred in substantiating the finding of abuse against Petitioner with respect to resident B.B. as Petitioner's conduct did not arise to the level of abuse as defined by regulation.

6. The undersigned has found Petitioner credible based upon a number of factors including observation of witness demeanor. Petitioner was the only witness at the hearing that was present on June 22, 2000. Her account of the events, with minor discrepancies, remained consistent. The undersigned cannot judge the credibility of witnesses who are not present at the hearing. The preponderance of the credible evidence supports Petitioner's account of the events of June 22, 2000.

7. The right to confront and cross-examine an adverse witness is fundamental to civil and administrative law.¹ Petitioner was neither given the opportunity to confront nor cross-examine Mr. Murphy. Mr. Murphy, without explanation, indicated in Respondent's Exhibit #10 that he would be unavailable for the hearing and remained so although he resided a fairly short distance from the hearing location and was subject to appearance through subpoena.

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

DECISION

The Respondent's decision to place a finding of abuse ("on or about 6/21/00, Tabitha Perry, Health Care Personnel, abused a resident (B.B.) by placing tape on the resident's mouth") by placing Petitioner's name in the Nurse Aide Registry and Health Care Personnel Registry be reversed as unsupported by the preponderance of the evidence.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. 150B-36(a).

The agency is required by N.C. Gen. Stat. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

¹ "One of the most jealously guarded rights in the administration of justice is that of cross-examining an adversary's witnesses ... cross-examination may be made to serve three general purposes: (1) to elicit further details of the story related on direct examination, in the hope of presenting a complete picture which will be less unfavorable to the cross-examiner's case; (2) to bring out new and different facts relevant to the whole case; (3) to impeach the witness, or cast doubt upon his credibility." [Justice Dan K Moore in *Barnes v. Highway Commission*, 250 NC 378, 394 (1959) (quoting Stansbury)]. Justice Brennan, writing for the majority, in *Goldberg v. Kelly*, 397 US 254 (1970) writes in the landmark administrative law U.S. Supreme Court decision, the following: "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses ..."

CONTESTED CASE DECISIONS

The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Facility Services.

This the 1st day of October, 2001.

Julian Mann, III
Chief Administrative Law Judge

8. Petitioner testified that there were several open clerical positions for which he believed he was qualified but did not apply because Superintendent Smith told him there were no jobs for him. (T, pp. 53-61; R. Exh. 26) Don Rouse, Respondent's Chief of Employee Relations, testified that Petitioner did not have the experience required for such clerical jobs (T, pp. 71-73)

9. On August 1, 2000, Petitioner submitted a note from Michael K. Nunn, D.O., asking that Petitioner be excused from work through the month of August because of medical problems arising from his stabbing injury. (R. Exh. 12) On August 29, 2000, Petitioner submitted a second note from Dr. Nunn asking that Petitioner's leave be extended through the month of September. (R. Exh. 13)

10. Petitioner was approved for twelve weeks of family and medical leave effective August 1, 2000. (R. Exh. 21, 2nd page; T, p. 239) On September 26, 2000, Petitioner exhausted his paid sick and vacation leave and was placed on leave without pay, except that Respondent continued to pay his medical insurance as part of his workers' compensation benefits. (R. Exh. 21, 2nd page; T, pp. 240-241)

11. By letter dated September 25, 2000, Respondent notified Petitioner that it was recommending that he be separated from employment due to unavailability. (R. Exh. 14)

12. On October 5, 2000, Petitioner was separated from employment due to unavailability. The letter of separation stated the specific reason for the separation (inability to perform all the essential job functions of a Correctional Officer) and set forth Petitioner's internal appeal rights. (R. Exh. 16)

13. On October 19, 2000, Respondent's Personnel Office received Petitioner's application for short-term disability benefits, which included a certification by Dr. Nunn that Petitioner was disabled to perform his regular job because of post-traumatic stress disorder. (R. Exh. 15, 1st and 2nd pages) On December 11, 2000, Respondent's Personnel Office received a medical report from Dr. Nunn indicating that Petitioner was totally and permanently disabled to perform his usual occupation. (R. Exh. 15, 3rd page) On January 26, 2001, Petitioner was approved to receive short-term disability benefits, retroactive from September 30, 2000 to September 29, 2001, to be offset by his workers' compensation benefits. (R. Exh. 17)

14. By letter dated December 12, 2000, Respondent denied Petitioner's internal appeal of his separation and set forth his right to appeal to the Office of Administrative Hearings. (Documents Constituting Agency Action)

15. On December June 4, 2001, Respondent settled Petitioner's remaining workers' compensation claims for a lump sum payment of \$35,000, inclusive of attorney's fees. (R. Exh. 20)

16. According to the Office of State Personnel, an agency is not required to exhaust an employee's family and medical leave or workers' compensation leave before separating the employee due to unavailability if the employee receives workers' compensation benefits after separation. (R. Exh. 30, 2nd page)

17. Respondent does not consider short-term or long-term disability benefits, which are benefits administered by the State Retirement System, as benefits that must be exhausted before an employee can be separated due to unavailability. (T, pp. 92-93, 105-106, 148, 233-237) Disability benefits are not included in the "Employee Benefits" section of the regulations of the Office of State Personnel. (R. Exh. 33) In the State Personnel Manual, they are included in the Table of Contents under the heading "Other Benefits (not administered by the Office of State Personnel)

18. Petitioner was a good employee during his tenure with Respondent and he completed mandatory training requirements during the two years after his injury.

CONCLUSIONS OF LAW

1. Under regulations of the Office of State Personnel, an employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. 25 NCAC 1D.0519(a).

2. On appeal, the burden is on the agency to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his or her unavailability and was unable to make the proposed accommodations or other reasonable accommodations. 25 NCAC 1D.0519(c).

3. Because Petitioner had not exhausted his workers' compensation and short-term disability benefits at the time of his termination, Respondent did not meet its burden of showing that Petitioner was unavailable for work as a Correctional Officer after exhausting all applicable leave credits and benefits. Even had he exhausted these benefits before such action, Respondent could have granted him leave without pay for a year or more prior to separation.

4. Respondent did not convince me that it had exhausted all efforts to continue the employment of a career State employee assaulted and injured in the line of duty. It is noted in this respect that the OSP regulation provides only that such employees “may”, not “shall”, be separated due to unavailability after exhausting all leave and benefits, which I interpret to mean as a last resort.

5. G. S. 126-35(c) provides: “For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action.” Petitioner was involuntarily separated by the Respondent, so this section applies to his separation. Treating his separation as a disciplinary action, it is concluded that Respondent failed to show it had just cause to terminate his employment.

DECISION

Respondent’s separation of Petitioner due to unavailability should be reversed.

NOTICE

The agency making the final decision in this case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to the agency. N.C.G.S. § 150B-36(a). The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties or their attorneys of record and to the Office of Administrative Hearings.

This the 4th day of October, 2001.

Fred G. Morrison Jr.
Senior Administrative Law Judge