

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 16, Issue 17
Pages 1865 - 1980

March 1, 2002

This issue contains documents officially filed through February 8, 2002.

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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
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7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
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10	Health and Human Services	Cosmetic Art Examiners	14
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13	Labor	Electrical Contractors	18
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
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NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

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	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
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17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
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17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

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.

**EXECUTIVE ORDER NO. 17
COMMISSION TO PROMOTE GOVERNMENT
EFFICIENCY AND SAVINGS ON STATE SPENDING**

Elaine F. Marshall
Secretary of State

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

Section 1. Establishment.

There is hereby established a Commission to Promote Government Efficiency and Savings on State Spending ("Commission"). Commission members shall serve at the pleasure of the Governor. The Governor shall also appoint the Chair or Co-Chairs.

Section 2. Purpose.

State and local governments should operate at maximum efficiency and, given current fiscal constraints, must further prioritize and optimize their spending. The Commission will review how governments can reduce spending while maintaining or increasing the quality of service provision and the structure of government to serve its citizens.

The Commission will review current laws, regulations, and practices throughout state and local government in order to recommend necessary changes that will increase efficiency.

In the course of its work, the Commission will take into account research done by study and standing committees of the General Assembly and non-governmental groups, including recommendations by the Government Performance Audit Commission (GPAC) and the Governor's Efficiency and Loophole-Closing Commission.

The Commission will examine with special attention purchasing, technology, personnel practices and areas of service duplication.

Section 3. Duties

The Commission will meet, and its members will communicate, with regularity sufficient to allow it to submit initial recommendations to the Governor prior to the 2002 session of the General Assembly, with final recommendations prior to the 2003 legislative session. Recommendations that do not require action by the General Assembly should be submitted to the Governor as soon as possible.

Section 4. Administration

The Office of the Governor shall provide or secure staff and administrative support services for the Commission.

Done in the Capital City of Raleigh, North Carolina,
this 1st day of February, 2002.

Michael F. Easley
Governor

ATTEST:

**EXECUTIVE ORDER NO. 18
COMMISSION TO MODERNIZE STATE FINANCES**

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

Section 1. Establishment

There is hereby established a Commission to Modernize State Finances ("Commission"). Commission members shall serve at the pleasure of the Governor. The Governor shall also appoint the Chair or Co-Chairs.

Section 2. Purpose

The basic structure of the State's revenue and finance laws was established over seven decades ago. In today's ever-changing economy, it is critical that these laws be simple, even-handed, consistent and fair to the broad spectrum of businesses and individuals who must comply with them. The revenue system must generate sufficient funds to support the necessary functions of efficient and effective state and local government, while maintaining the State's economic competitiveness.

The Commission will review relevant laws, rules, practices and principles of a high-quality tax system in order to formulate recommendations to improve and modernize our state revenue and finance laws.

In the course of its work, the Commission will take into account research done by study and standing committees of the General Assembly and non-governmental groups, including the 2001 Governor's Efficiency and Loophole-Closing Commission.

Section 3. Duties

The Commission will meet, and its members will communicate, with regularity sufficient to allow it to submit initial recommendations to the Governor prior to the 2002 session of the General Assembly, with final recommendations submitted to the 2003 session of the General Assembly.

Section 4. Administration

The Office of the Governor shall provide or secure staff and administrative support services for the Commission.

Done in the Capital City of Raleigh, North Carolina,
this 1st day of February, 2002.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NUMBER NO. 19
CLASSROOM PROTECTION AND ORDERLY
BUDGET ADMINISTRATION
GIVEN STATE OF FISCAL EMERGENCY**

WHEREAS, Article III, Sec. 5(3) of the Constitution of North Carolina provides that the State may not operate at a deficit during the fiscal period covered by a budget. For these purposes, a "deficit" is defined as having been incurred when total expenditures for the fiscal period of the budget exceed the total of receipts during the period, plus the surplus remaining in the State Treasury at the beginning of the period. The fiscal period for the current budget began July 1, 2001; and,

WHEREAS, to insure that the State does not incur a deficit for the fiscal year covered by a budget, Article III, Sec. 5(3) of the Constitution requires the Governor to continually survey the collection of revenue. If, as a result of his surveys, he determines that actual receipts for the fiscal period, when added to the surplus remaining in the Treasury at the beginning of the fiscal period, will not be sufficient to pay budgeted expenditures, the Governor, after first making adequate provisions for the prompt payment of the principal and interest on the State's outstanding bonds and notes, must effect the necessary economies in State expenditures to keep the deficit from occurring; and,

WHEREAS, continually surveying the collection of the State's revenues pursuant to Article III, Sec. 5 (3) of the Constitution is a normal function of the Office of State Budget and Management (OSBM) and reports on its surveys are received routinely by the Governor; and,

WHEREAS, OSBM has provided the Governor with detailed briefings on the growing fiscal period deficit and, along with the Office of the Governor, has also advised members of the General Assembly of the situation, including the President Pro-Tempore of the Senate and the Speaker of the House of Representatives; and,

WHEREAS, on October 31, 2001, OSBM, at the direction of the Governor, reduced state agency expenditures for the remainder of the fiscal year; and,

WHEREAS, as detailed in a memorandum to the Governor from OSBM dated February 4, 2002, OSBM estimates, in light of January 2002 collections and new economic forecasts, a growing substantial deficit for fiscal year 2001-02 that will not be covered by the reduction in expenditure measures adopted on October 31, 2001; and,

WHEREAS, in light of OSBM estimates, the budget enacted by the General Assembly for fiscal year 2001-02 cannot be administered as enacted without the State incurring a deficit in its administration; and,

WHEREAS, it is found as a fact that based on General Fund revenue collections through January 31, 2002, and projections for these revenues through June 30, 2002, actual receipts for the current fiscal year will not meet the expenditures anticipated and budgeted by the 2001 General Assembly; and,

WHEREAS, from this fact it is determined and concluded that unless further economies in State expenditures are made, the State's General Fund expenditures will exceed General Fund receipts, for the current fiscal year.

NOW THEREFORE, by the authority vested in me as Governor by Article III, Sec. 5(3) of the Constitution of North Carolina to insure that a deficit is not incurred in the administration of the budget for fiscal year 2002, IT IS ORDERED:

Section 1. OSBM will continue to reduce, as necessary, State expenditures from Funds appropriated to operate State departments and institutions, and continue monthly allotment expenditure and review measures.

Section 2. OSBM will halt, as necessary, expenditures for capital improvement projects for which State funds have been appropriated but not placed under State contract and, as necessary, transfer any unused capital improvement funds to the General Fund.

Section 3. OSBM will transfer, as necessary, non-General Fund and non-Highway Fund receipts into the General Fund to support appropriation expenditures in order to avoid a deficit in the General Fund.

Section 4. OSBM may borrow, as necessary, receipts from non-General Fund State receipts and non-Highway Fund State receipts for support of General Fund appropriation expenditures.

Section 5. OSBM may transfer, as necessary, funds from the Highway Trust Fund Account for support of General Fund appropriation expenditures.

Section 6. OSBM may, as necessary, order the delay or cancellation of purchase orders in State General Fund-supported departments and institutions.

Section 7. OSBM may, as necessary, take other steps as directed by the Governor to insure that a deficit is not incurred for the fiscal period, including re-allocation of certain funds shared with localities.

Section 8. The Office of the State Controller, as advised by the State Budget Officer, is directed to monitor disbursements as presented on requisitions for CASH.

Section 9. The Office of the State Controller, as advised by the State Budget Officer, is directed to receive the local government reimbursement funds and to escrow such funds in a special reserve as established by OSBM. Return of all such receipts shall be made to the local government reimbursement funds, if possible, after determination that such funds are not necessary to address the deficit.

This Executive Order rescinds Executive Order No. 3 and is effective immediately and shall remain in effect, as written, until terminated or amended at the Governor's direction.

EXECUTIVE ORDERS

Done in the Capital City of Raleigh, North Carolina,
this 5th day of February, 2002.

ATTEST:

Michael F. Easley
Governor

Elaine F. Marshall
Secretary of State

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

U.S. Department of Justice

Civil Rights Division

JDR:RPL:BGE:NJ
DJ 166-012-3
2001-2560

*Voting Section – GSt.
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530*

January 24, 2002

Kenneth R. Hoyle, Sr., Esq.
County Attorney
P.O. Box 1968
Sanford, NC 27331-1968

Dear Mr. Hoyle:

This refers to the 2001 redistricting plan for Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our October 23, 2001, request for additional information on December 2, 2001.

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

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 22 - AGING

Notice of Rule-making Proceedings is hereby given by the Secretary of Health and Human Services 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: 10 NCAC 22G; 22J - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143B-181.1(c)

Statement of the Subject Matter:

10 NCAC 22G – This Subchapter defines the services eligible for funding under Title III of the Older Americans Act.

10 NCAC 22J – This Subchapter governs the provision of In-home Aide Services for Older Adults for the Division of Aging (and by reference for the Division of Social Services).

Reason for Proposed Action: The NC Division of Aging is reviewing and updating the rules pertinent to In-home Aide Services to make them consistent with current needs and practices. (A concurrent review of rules is occurring in several other DHHS Divisions.)

Comment Procedures: Anyone wishing to comment should contact Lynne Berry, NC Division of Aging, 693 Palmer Dr., Taylor Building, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919) 733-8395.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 03 – MARINE FISHERIES

Notice of Rule-making Proceedings is hereby given by NC Marine Fisheries 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 03. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-134; 113-182; 113-221; 143B-289.52

Statement of the Subject Matter: Flounder size limits, rock shrimp restrictions, marine protected areas, snapper/grouper restrictions, red porgy restrictions, stone crab restrictions, oyster and clam fishery management plan.

Reason for Proposed Action: Amend size limits for summer flounder, impose restrictions on rock shrimp, adopt rules on marine protected areas, impose restrictions on snapper/grouper, red porgy, and stone crabs, and adopt/amend rules to implement the oyster and clam fishery management plan.

Comment Procedures: Written comments are encouraged and may be submitted to MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

CHAPTER 07 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by Coastal Resources 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 07B .0702. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-102, 113A-107(a); 113A-110; 113A-124(c)(8)

Statement of the Subject Matter: Substitute a definition for "probable 404 Wetlands" instead of relying on this term from federal law to convey to local governments what to show on a planning map.

Reason for Proposed Action: The intent of the proposed amendment is to provide an accurate definition of wetland areas mapped by local governments.

Comment Procedures: Kathy Vinson, Planning and Public Access Manager, Division of Coastal Management, 151-B, HWY 24, Hestron Plaza II, Morehead City, NC 28557. 252-808-2808.

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 05 – DEPARTMENT OF CORRECTION

Rule-making Agency: *Department of Correction*

Rule Citation: *05 NCAC 06 .0101-.0102; .0201; .0301; .0401*

Effective Date: *March 6, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *S.L. 2001-378*

Reason for Proposed Action: *S.L. 2001-378, ratified August 7, 2001, requires specified review by the Department of Correction with respect to certain hiring and training standards applicable to certain employees of a private correctional facility operating in North Carolina. The specific criteria and procedures to which such third party entities will be required to conform are the subject matter of these temporary rules.*

Comment Procedures: *Comments should be submitted in writing to Jane R. Garvey, Department of Correction, 4201 Mail Service Center, Raleigh, NC 27699-4201.*

CHAPTER 06 – PRIVATE CORRECTIONAL SERVICE PROVIDERS

SECTION .0100 – GENERAL

05 NCAC 06 .0101 APPLICATION

The following standards apply to the hiring and training of private correctional service providers.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002.

05 NCAC 06 .0102 PURPOSE

The purpose of these Rules is to establish the relevant and essential hiring and training standards, methods to verify compliance with the standards and the method of monitoring the standards by the Department of Correction for officers and security supervisors employed by private correctional service providers operating within the State.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002.

SECTION .0200 – HIRING

05 NCAC 06 .0201 HIRING STANDARDS

Private correctional service providers are required to meet the same relevant and essential minimum pre-employment standards for their correctional officers and security supervisors as have

been established for officers and supervisors for the Department of Correction.

- (1) Future applicants for employment as private correctional officers or security supervisors:
 - (a) Must be a high school graduate or have GED certificate;
 - (b) Must be at least 20 years of age;
 - (c) Must be a U.S. Citizen;
 - (d) Must pass a physical examination to determine fitness for duty;
 - (e) Must pass a urinalysis performed by qualified physician using a lab that protects the chain of custody;
 - (f) Must pass a local, state and national criminal background check through the National Crime Information Center (NCIC) and cleared through the FBI fingerprinting clearance process;
 - (g) Must have a completed background investigation that consists of verification of age, education, and employment;
 - (h) Must be personally interviewed by the Department Head or designee;
 - (i) Must have no felony conviction for 10 years;
 - (j) Must have no conviction of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years;
 - (k) Must have an evaluation and suitability for employment certified and documented by a state licensed psychologist; and
 - (l) Must be truthful in providing all required information as prescribed by the application process.
- (2) With respect to private correctional officers or security supervisors already employed as of the effective date of these Rules, the Department of Correction shall verify that correctional officers and security supervisors working for private correctional service providers have met the essential hiring standards. To accomplish this the department will:
 - (a) Require the private correctional service providers to submit a "Verification of Employment Standards" checklist for each correctional officer and security supervisor to the department. In addition to the applicant's name, social security number, position title

and effective date of employment, the checklist will, at a minimum, verify that all essential employment standards as described in Item (1) of this Rule have been completed. The verification of employment form will contain an authorizing signature line and a space to record the date.

(b) Upon receipt of the Verification of Employment Standards checklist by the Department of Correction, departmental staff will review the checklist and respond in a memorandum to the private correctional service provider as to whether the individual applicant meets or does not meet the minimum essential employment standards.

(c) To verify if a correctional officer or security supervisor who pleads no contest to, pleads guilty to or is found guilty of a felony or misdemeanor criminal offense is eligible for employment or continued employment, the private correctional service provider will submit a "Notification Form for Criminal Convictions" to the Department of Correction for review. This form will include at a minimum the employee's name, social security number, and position title. The form will also include the date of arrest, nature of the offense (including the general statute number), court of jurisdiction, the specific plea, date of disposition and a description of the disposition. The form will be signed and dated by an authorized private correctional service provider representative and forwarded to the Department of Correction for review. The form will contain space for Department of Correction personnel to verify if the employee meets or continues to meet the essential employment standards.

(d) Upon receipt of the Notification Form or Criminal Convictions by the Department of Correction, departmental staff will review the form and note if in the Department's opinion the employee meets or continues to meet the minimum essential employment standards. The form will then be signed and dated by an authorized NCDOC representative and returned to the private correctional service provider.

(e) Should a correctional officer or security supervisor previously designated as meeting the minimum

essential employment standards be separated from employment the private correctional service provider will submit a "Report of Separation" form to the Department of Correction Personnel Office. This form will contain at a minimum the separated employee's name, social security number, position title and date of separation. The form will be signed and dated by an authorized representative of the private correctional service provider.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002.

SECTION .0300 – TRAINING

05 NCAC 06 .0301 TRAINING STANDARDS

Correctional officers and security supervisors employed by a private correctional service provider must successfully complete a training curriculum that meets or exceeds the standards required by the Criminal Justice Education and Training Standards Commission. In order to accomplish this the private correctional service provider will:

- (1) Submit its training curriculum and all relevant documents related to training to the North Carolina Department of Correction;
- (2) The North Carolina Department of Correction will review the training curriculum and related information and will certify in writing to the private correctional service provider that it meets or does not meet the standards of the Criminal Justice Education and Training Standards Commission. Should the Department determine that the curriculum fails to meet the standards, it will provide direction related to the problem areas and allow the private provider to resubmit only those portions in question;
- (3) The Department of Correction shall verify that correctional officers and security supervisors working for private correctional service providers have met the essential training standards. To accomplish this the department will: Require the private correctional service providers to submit a "Verification of Training Standards" checklist for each correctional officer and security supervisor to the department. In addition to the applicant's name, social security number, position title and effective date of employment, the checklist will, at a minimum, verify that all essential training standards contained within the approved curriculum have been completed. The verification of training form will contain an authorizing signature line and a space to record the date;
- (4) Upon receipt of the Verification of Training Standards checklist by the Department of

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Correction, departmental staff will review the checklist and respond in a memorandum to the private correctional service provider as to whether the individual applicant meets or does not meet the training standards; and

- (5) Once approved, future changes to the training curriculum that could substantially affect its approval will be submitted to the Department of Correction for additional review.

*History Note: Authority S.L. 2001-378;
Temporary Adoption Eff. March 6, 2002.*

SECTION .0400 – COMPLIANCE

05 NCAC 06 .0401 REVIEW OF COMPLIANCE

The Department of Correction may monitor and audit private correctional service provider's records related to the essential hiring and training standards. To facilitate this function the private correctional service provider is required to maintain individual personnel files and training records for each correctional officer and security supervisor. These files and records will:

- (1) Contain all necessary documentation required to verify that an individual correctional officer or security supervisor meets the minimum relevant hiring standards;
- (2) Contain all necessary documentation required to verify that an individual correctional officer or security supervisor has completed the approved training standards; and
- (3) Be accessible upon request to Department of Correction personnel for review and audit. Should the Department of Correction have concerns or require additional information related to the hiring and/or training standards of any individual correctional officer or security supervisor, they may request additional information be provided.

*History Note: Authority S.L. 2001-378;
Temporary Adoption Eff. March 6, 2002.*

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

Rule-making Agency: *USS North Carolina Battleship Commission*

Rule Citation: *07 NCAC 05 .0203*

Effective Date: *September 1, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 143B-73*

Reason for Proposed Action: *To increase the Admissions fee schedule for the Battleship North Carolina.*

Comment Procedures: *Provide comments in writing to Director, Battleship North Carolina, PO Box 480, Wilmington, NC 28402-0480.*

CHAPTER 05 - U.S.S. NORTH CAROLINA BATTLESHIP COMMISSION

SECTION .0200 - USE REGULATIONS

07 NCAC 05 .0203 ADMISSION PRICES

(a) The admission price for the Battleship U.S.S. North Carolina is ~~eight dollars (\$8.00)~~ nine dollars (\$9.00) for persons age 12 and over, ~~four dollars (\$4.00)~~ four dollars and fifty cents (\$4.50) for children age 6 through 11, ~~two dollars (\$2.00)~~ two dollars and twenty-five cents (\$2.25) per student for organized school groups in grades kindergarten through 6, and ~~four dollars (\$4.00)~~ four dollars and fifty cents (\$4.50) per student for organized school groups in grades 7 through 12.

(b) There is no charge for children under 6.

(c) Classroom teachers, aides, and chaperones accompanying students in class field trips will be admitted without charge at the rate of one teacher/aide/chaperone for each 10 students.

*History Note: Authority G.S. 143B-73;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. January 1, 1993; January 1, 1990; June 1, 1989;
February 1, 1987;
Temporary Amendment Eff. January 1, 1997;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. January 1, 1997 Expired on
September 29, 1997;
Temporary Amendment Eff. March 1, 1998;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. September 1, 2002.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Department of Environment and Natural Resources*

Rule Citation: *15A NCAC 01R .0101*

Effective Date: *March 1, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *G.S. 143B-289.41(b); 143B-289.44*

Reason for Proposed Action: *The North Carolina Aquariums have the authority to establish uniform entrance fees for its facilities, pursuant to G.S. 143-289.44. The Secretary of the Department of Environment and Natural Resources has determined that existing fee revenue and recent General Assembly budgetary actions will not allow operations at the Aquariums to be maintained at an adequate level of service without the attached fee schedule being put in place as soon as possible. The general appropriations to the Aquariums were*

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recently reduced by \$500,000, and it was anticipated at that time that the reduction would be covered by fee increases. Additional budget constraints have been placed on the Aquariums since then, as well as other parts of State government. Funding through these fees is critical to allow the public a continued level of reasonable service and availability.

Comment Procedures: Written comments may be submitted to Mr. Rhett White, Director of NC Aquariums, 417 N. Blount St., Raleigh, NC. For further information, contact Mr. White at (919) 733-2290.

CHAPTER 01 – DEPARTMENTAL RULES

SUBCHAPTER 01R – NORTH CAROLINA AQUARIUMS

SECTION .0100 – FEES

15A NCAC 01R .0101 FEE SCHEDULE

(a) The following schedule of fees shall be applicable to govern admission to the North Carolina Aquariums:

- (1) Roanoke Island: (A) Adults, 18 and over \$6.00; (B) Senior Citizens \$5.00; (C) Active Military \$5.00; (D) Ages 6-17 \$4.00. (2) Fort Fisher: (A) Adults, 18 and over \$6.00; (B) Senior Citizens \$5.00; (C) Active Military \$5.00; (D) Ages 6-17 \$4.00. (3) Pine Knoll Shores: (A) Adults, 18 and over \$4.00; (B) Senior Citizens \$3.00; (C) Active Military \$3.00; (D) Ages 6-17 \$2.00.

- (b) Free admission is offered to the following groups: (1) Aquarium Society Members; (2) North Carolina School groups; (3) American Zoo and Aquarium Association reciprocals; and (4) Children under the age of six.

Free or modified admissions may also be offered on a case-by-case basis on state holidays, and for group events at the North Carolina Aquariums.

History Note: Authority G.S. 143B-289.41(b); 143B-289.44; Temporary Adoption Eff. March 1, 2002.

Rule-making Agency: Coastal Resources Commission

Rule Citation: 15A NCAC 07H .0209

Effective Date: February 15, 2002

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 temporary amendment would establish additional 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 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 submitted to Mike Lopazanski, 1638 Mail Service Center, Raleigh, NC 27699-1638, 919-733-2293.

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. 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 which~~ 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

- (10) shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- 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 07H .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 07H .0209(d)(10) of this Section. Development shall be exempted from the buffer requirement set out in Paragraph (d) of this Rule under the following circumstances:

- (1) 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 section 07H .0209(d)(10), 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;

- (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 07J .0201 and 07J .0211.

~~(2) 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 section 7H .0209(d)(10), 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) 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 NCAC 15A 2H .1005. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer;~~
- ~~(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.~~

(2) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that is 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:

(A) The lot on which the proposed residential structure is to be located, is located between:

(i) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer;
or

(ii) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(B) Development of the lot 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;

(C) Placement of the residential structure and pervious decking 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 inches 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 applicable State 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 as approved or conditionally approved shellfish waters by the Shellfish Sanitation

Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

(f) The buffer requirements in 07H .0209 (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.

- (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission.

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within designated Urban Waterfronts as set out below.

- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.
- (ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.
- (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:
 - (I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;
 - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or

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- solid walls of any kind and shall be limited to a single story;
- (III) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
- (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
- (V) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
- (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
- (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 the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) 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;

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- (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 the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.
- History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494).*

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of January 17, 2002 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
04	NCAC	19L	.0103	16:05 NCR
04	NCAC	19L	.0401	16:05 NCR
04	NCAC	19L	.0403*	16:05 NCR
04	NCAC	19L	.0407*	16:05 NCR
04	NCAC	19L	.0501-.0502*	16:05 NCR
04	NCAC	19L	.0911	16:05 NCR
04	NCAC	19L	.1002*	16:05 NCR
04	NCAC	19L	.1701*	16:05 NCR
04	NCAC	19L	.1702	16:05 NCR
04	NCAC	19L	.1703*	16:05 NCR
04	NCAC	19L	.2002	16:05 NCR
04	NCAC	19L	.2003*	16:05 NCR
10	NCAC	41H	.0409-.0410	16:07 NCR
10	NCAC	42B	.2701*	16:09 NCR
10	NCAC	42B	.2702	16:09 NCR
10	NCAC	42B	.2703*	16:09 NCR
10	NCAC	42C	.4002*	16:09 NCR
10	NCAC	42C	.4003	16:09 NCR
10	NCAC	42C	.4004*	16:09 NCR
10	NCAC	42D	.2302*	16:09 NCR
10	NCAC	42D	.2303	16:09 NCR
10	NCAC	42D	.2304*	16:09 NCR
12	NCAC	09B	.0102*	16:06 NCR
12	NCAC	09B	.0203*	16:06 NCR
12	NCAC	09B	.0205*	16:06 NCR
12	NCAC	09B	.0215*	16:06 NCR
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12	NCAC	09D	.0204-.0205	16:06 NCR
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15A	NCAC	02C	.0107*	16:09 NCR
15A	NCAC	02C	.0112*	16:09 NCR
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15A	NCAC	03O	.0101	16:07 NCR
15A	NCAC	04B	.0126*	16:06 NCR
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15A	NCAC	07B	.0201-.0204	16:02 NCR
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15A	NCAC	07B	.0401-.0406	16:02 NCR
15A	NCAC	07B	.0501-.0507	16:02 NCR

APPROVED RULES

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15A	NCAC	07B	.0802*	16:02 NCR
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15A	NCAC	18A	.0169	16:07 NCR
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15A	NCAC	18C	.1607	16:07 NCR
15A	NCAC	18C	.2003*	16:07 NCR
15A	NCAC	18C	.2008	16:07 NCR
15A	NCAC	18D	.0301-.0303*	not required (G.S. 150B-21.5), Eff. February 1, 2002
15A	NCAC	18D	.0501*	not required (G.S. 150B-21.5), Eff. February 1, 2002
15A	NCAC	18D	.0508*	not required (G.S. 150B-21.5), Eff. February 1, 2002
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21	NCAC	58E	.0406*	16:08 NCR
21	NCAC	64	.0211*	16:05 NCR
25	NCAC	01B	.0438*	16:10 NCR

TITLE 4 - DEPARTMENT OF COMMERCE

04 NCAC 19L .0403 SIZE AND USE OF GRANTS MADE TO RECIPIENTS

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization: Concentrated Needs subcategory - seven hundred thousand dollars (\$700,000), Infrastructure category - eight hundred fifty thousand dollars (\$850,000), and Scattered Site Housing category - four hundred thousand dollars (\$400,000) Housing Development - two hundred fifty thousand dollars (\$250,000); Urgent Needs - six hundred thousand dollars (\$600,000); Contingency - six hundred thousand dollars (\$600,000). Applicants shall not have a project or combination of projects under active consideration for funding which exceeds one million two hundred fifty thousand dollars (\$1,250,000), except for Urgent Needs projects, Demonstration projects, Capacity Building, and Scattered Site Housing. Applicants in the Community Revitalization category shall choose to apply for either a Concentrated Needs award, or a Revitalization Strategy award.

(b) No local government may receive more than a total of one million two hundred fifty thousand dollars (\$1,250,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local governments may also receive up to six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and funds for one demonstration project in addition to other grants awarded during the same time period.

(c) Concentrated Needs subcategory applicants may spend a portion of their total grant amount to finance local option activities. Up to 15 percent may be spent on eligible activities

which do not need to be directly related to proposed projects. Job creation activities are not eligible local option activities. Local option activities shall not be competitively rated by the Division, but may be limited to specific eligible activities. Each local option project must show that:

- (1) At least fifty-one percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons, except that CDBG funds may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) The Division may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning and administrative budgets without prior Division approval. In no case, may applicants budget and expend more than 18 percent of the sum of funds requested and program income for administrative and planning activities for each project, except that demonstration funds may be awarded for projects limited to planning activities only in which case all funds will be spent for planning and administration.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients shall be provided in amounts commensurate with the size of the applicant's program. In

determining appropriate grant amounts for each applicant, the Division may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; 42 U.S.C. 5301; Eff. July 1, 1982; Amended Eff. August 1, 1998; February 1, 1996; March 1, 1995; June 1, 1994; June 1, 1993; June 1, 1992. Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .0407 GENERAL APPLICATION REQUIREMENTS

- (a) Local governments shall submit applications as prescribed by this Rule in order to be considered for funding. Selection of applications for funding shall be based primarily on information contained in the application; thus applications must contain sufficient information for the Division to rate them against the selection criteria. In addition, the following may be considered: information from any source which regards the eligibility of the applicant or application; the legality or feasibility of proposed activities; the applicant's compliance with application procedures specified in this Subchapter or the accuracy of the information presented in the application; evaluation of proposed projects by on-site review; and category-specific information described in Sections .0500, .0700, .0800, .1200, .1300, and .1700 of this Subchapter. All applicants shall address their projects to one of the following grant categories: Community Revitalization (either Concentrated Needs, or Revitalization Strategies), Housing Development, Urgent Needs, Demonstration, Scattered Site Housing, Infrastructure, and Economic Development. Applicants may apply in more than one grant category, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in sufficient detail to be rated.
- (b) Applications must be received by the Division's administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.
- (c) Applicants must provide citizens with adequate opportunity for meaningful involvement in the development of Community Development Block Grant applications. Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the Division is aware of an applicant's failure to meet these citizen participation requirements, the Division may not rate the application.
- (d) The Division may submit all CDBG applications and environmental review records as may be required by the National Environmental Policy Act and the State Environmental Policy Act to the State Clearinghouse of the Department of Administration for review and comments. The Division may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.
- (e) The applicant shall certify to the Division that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state

requirements are available for public inspection from the Division.

- (f) Applicants must comply with the Housing and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, and Executive Orders.
- (g) Application requirements described in this Rule .0407 do not apply to demonstration grants and Urgent Needs grants, except for Paragraphs (a), (d), and (f).
- (h) For multi-family rental housing activities, the applicant must state in the application the standards it has adopted for determining affordable rents for such activities.
- (i) Applicants that receive CDBG funding for projects may charge the cost of application preparation to prior CDBG programs or to the current program provided that procurement procedures consistent with 24 CFR 85.36 are followed. No more than three thousand five hundred dollars (\$3,500) may be charged to the CDBG program for application preparation,
- (j) Applicants may apply for a Capacity Building grant in any category except in the Urgent Needs and Demonstration Projects categories.

History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.483; Eff. July 1, 1982; Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; June 1, 1992; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

SECTION .0500 – COMMUNITY REVITALIZATION PROJECTS

04 NCAC 19L .0501 DESCRIPTION

- (a) The Community Revitalization category includes activities in which a majority of funds is directed towards improving, preserving or developing residential areas. All eligible CDBG activities may be undertaken for the purpose of community revitalization. Applications for funding may involve single or multiple activities, addressing one or more needs in the area. All Community Revitalization activities, must be carried out within defined project areas. Community Revitalization funds shall be distributed to eligible units of local government on a competitive basis. Community Revitalization projects shall be evaluated against other Community Revitalization project proposals.
- (b) The Community Revitalization category includes a subcategory for Revitalization Strategies activities which provides funds to selected governments to address multiple need in high poverty areas. This new subcategory shall provide funding to help carry out a long term revitalization strategy. Up to three hundred fifty thousand dollars (\$350,000) per year, shall be awarded to eligible local government to carry out a strategy over three to five years. Revitalization Strategies funds may be used for any of the following components as part of strategies to address high poverty arrears in Tier 1/Tier 2 counties and non-entitlement municipalities with State Development Zones: housing, public services, economic development, public facilities, infrastructure. Activities must be targeted toward a defined geographical area that has at least 25% poverty and must involve collaboration with community/economic development organizations and partners.

(c) The Community Revitalization category includes a subcategory for concentrated needs activities which provides funds for improving, preserving, or developing residential neighborhoods. Concentrated Needs may not include more than one project. A project may have two sub-areas. Projects may have single or multiple activities except a project may not have only water and sewer activities. The maximum award amount for a Concentrated Needs application is seven hundred thousand dollars (\$700,000). The highest priority is given to housing needs, substandard housing, lack of water/sewer, and the second priority is given to neighborhood needs (streets and drainage). Concentrated needs funds can be used for rehabilitation, acquisition, clearance, relocation, disposition, water and wastewater, and streets and drainage.

History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483; Eff. July 1, 1982; Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; October 1, 1990; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .0502 ELIGIBILITY REQUIREMENTS

(a) Applications for concentrated needs subcategory funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each project shall benefit low- and moderate-income persons, except that CDBG funds proposed for local option activities may be used for acquisition, disposition, or clearance of vacant units to address the national objective of prevention or elimination of slums or blight; and
- (2) CDBG funds proposed for each activity shall meet a national objective as specified in HUD regulations previously incorporated by reference, except that funds shall not be used to meet the national objective of urgent need which is covered by Rule .0801 of this Subchapter.

Applications that do not meet these eligibility requirements shall not be rated or funded. In designing projects which meet these requirements, applicants must ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

(b) Applicants for Revitalization Strategies subcategory funds must show that:

- (1) the defined area has at least 25% poverty as determined in the most recent decennial census and defined in HUD CPD NOTICE 97-01 paragraph D section 2 third bullet as all of census tracts/block numbering areas in the area have at least a 20% poverty rate, and at least 90% of them have at least a 25% poverty rate; and the area is primarily residential.
- (2) CDBG funds proposed for acquisition, clearance, and disposition of vacant units shall address a national objective of preventing or eliminating slums or blight.

(c) Applicants shall have the capacity to administer a CDBG program. The Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs. Applicants that show a lack of capacity shall not be rated or funded.

History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483; Eff. July 1, 1982; Amended Eff. August 1, 1998; March 1, 1995; June 1, 1994; June 1, 1993; September 1, 1990; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .1002 CITIZEN PARTICIPATION

(a) Each applicant and recipient shall provide citizens with an opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the program. Each applicant and recipient shall provide information to citizens, hold public hearings, provide for timely responses to citizens' complaints, and certify that it is following a detailed Citizen Participation Plan as in (b) through (h) of this Rule. All public hearings shall be held by the governing board of the applicant or recipient.

(b) Citizen participation in the application process.

- (1) Each applicant for CDBG funds shall:
 - (A) Solicit and respond in a timely manner to views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas where activities are proposed. Applicants shall respond in writing to written citizen comments. Responses shall be made within 10 calendar days of receipt of the citizen comment, when practicable.
 - (B) Provide technical assistance to facilitate citizen participation, where requested. The technical assistance shall be provided to groups representative of persons of low- and moderate-income that request such assistance in developing proposals. The level and type shall be determined by the applicant.
 - (C) Provide notices of public hearings in a timely manner to all citizens and in such a way as to make them understandable to non-English speaking persons. Hearings must be held at times and locations

convenient to potential or actual beneficiaries and with accommodations for persons with disabilities. A notice of the public hearing shall be published at least once in the nonlegal section of a newspaper having general circulation in the area. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. The notice of public hearing to obtain citizens' views after the application has been prepared, but prior to the submission of the application to the Division, shall contain a description of the proposed project(s) including the proposed project location, activities to be carried out, and the total costs of activities. The notice of the public hearing shall also contain the language for submitting objections contained in the Part (b)(2)(A) of this Rule.

- (D) Schedule hearings to obtain citizens' views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low- and moderate-income persons, members of minority groups, handicapped persons, and residents of blighted neighborhoods and project areas.
- (E) Conduct one public hearing during the planning process to allow citizens the opportunity to express views and proposals prior to formulation of the application, except that applicants in the Urgent Needs category are exempt from holding this public hearing.
- (F) Conduct one public hearing after the application has been prepared but prior to submission of the application to the Division.
- (2) Submitting objections to the Division.
 - (A) Persons wishing to object to the approval of an application by the Division shall submit to the Division their objections in writing. The Division shall consider objections made only on the following grounds:
 - (i) The applicant's description of the needs and objectives is plainly inconsistent with available facts and data,
 - (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives

identified by the applicant, and

- (iii) The application does not comply with the requirements of this Subchapter or other applicable laws.

(B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with available facts and data, the objection shall include the facts and data upon which the objection is based.

(c) Citizen Participation Plan. Recipients shall develop and adopt, by resolution of their governing board, a written citizen participation plan developed in accordance with all provisions of this Rule and which:

- (1) provides for and encourages citizen participation with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blight areas and of areas in which CDBG funds are proposed to be used;
- (2) provides citizens with reasonable and timely access to local meetings, information, and records relating to the recipient's proposed and actual use of funds;
- (3) provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in accordance with Part (b)(1)(B) of this Rule;
- (4) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program in accordance with Paragraphs (b), (f), and (g) of this Rule;
- (5) provides a procedure for developing written responses to written complaints and grievances within ten calendar days of receipt of the complaint. The procedure shall include all provisions of Paragraph (d) of this Rule; and
- (6) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(d) The recipient shall develop and adopt a written complaint procedure to respond to citizen complaints involving the CDBG program. The complaint procedure shall be applicable through the life of the grant and available to the general public. It shall specify that the recipient will respond in writing to written citizen complaints within 10 calendar days of receipt of the complaint. The procedure shall include a phone number for further information or clarification on the complaint procedure and shall identify any local procedures or appeals process that would normally be used by the recipient to address citizen complaints. The complaint procedure shall also state that if a citizen lodging a complaint is dissatisfied with the local

response, then that person may direct the complaint to the North Carolina Division of Community Assistance.

(e) Citizen participation during program implementation. Citizens shall have the opportunity to comment on the implementation of a Community Development Program throughout the term of the program. Recipients shall solicit and respond to the views and proposals of citizens in the same manner as in Part (b)(1)(A) of this Rule.

(f) Citizen participation in the program amendment process.

- (1) Recipient procedures.
 - (A) Recipients proposing amendments which require prior Division approval in accordance with Rule .0910 of this Subchapter shall to conduct one public hearing prior to submission of the amendment to the Division in the same manner as in Part (b)(1)(C) of this Rule.

- (B) Each recipient shall respond to citizen objections and comments in the same manner as in Part (b)(1)(A) of this Rule.

(2) Submitting Objections to the Division.

- (A) Persons wishing to object to the approval of an amendment by the Division shall make such objection in writing. The Division shall consider objections made only on the following grounds:

- (i) The recipient's description of needs and objectives is plainly inconsistent with available facts and data,
- (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the recipient, and
- (iii) The amendment does not comply with the requirements of this Section or other applicable laws and regulations.

- (B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with available facts and data, the objection shall include the facts and data upon which the objection is based.

(g) Citizen participation in the program closeout process.

- (1) Recipients shall conduct one public hearing to assess program performance during the grant closeout process and prior to the actual closeout of the grant in the same manner as in Part (b)(1)(C) of this Rule.
- (2) Recipients shall continue to solicit and respond to citizen comment in the same manner as in

Part (b)(1)(A) of this Rule until such time as the grant program is closed.

(h) Persons may submit written comments to the Division at any time concerning the applicant's or recipient's failure to comply with the requirements contained in this Subchapter.

(i) All records of public hearings, citizens' comments, responses to comments and other relevant documents and papers shall be kept in accordance with Rule .0911 of this Subchapter. All program records shall be accessible to citizens in accordance with Rule .0911(b) of this Subchapter.

History Note: Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(2); 24 C.F.R. 570.486; Eff. July 1, 1982; Amended Eff. August 1, 1998; June 1, 1993; September 1, 1990; May 1, 1988; March 1, 1984; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .1701 DESCRIPTION

Grants under the Scattered Site Housing Category direct activities toward one hundred percent low- and moderate-income persons. Scattered Site Housing projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities. Scattered Site Housing activities may be carried out in any location throughout the recipient's jurisdiction. Scattered Site Housing funds shall be distributed to eligible units of local governments in a three year rotating basis and periodically based on distribution plans and prior performance.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; Eff. March 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .1703 SELECTION CRITERIA

Criteria for Scattered Site Housing awards are:

- (1) community need;
- (2) community impact;
- (3) project design;
- (4) financial feasibility;
- (5) year of eligibility;
- (6) distribution plan; and
- (7) participation process.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Eff. March 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002.

04 NCAC 19L .2003 SELECTION CRITERIA

Criteria for Infrastructure awards are:

- (1) severity of needs;
- (2) benefit to low and moderate income persons;
- (3) local commitment;
- (4) treatment of needs; and
- (5) appropriateness and feasibility.

History Note: Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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, fire, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.
- (2) "Immediately" means at once, at or near the present time, without delay.
- (3) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring, or abusing another person.

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

10 NCAC 42B .2703 REPORTING REQUIREMENTS

(a) Upon learning of a resident death as described in Paragraphs (b) and (c) of this Rule, a facility shall file a report in accordance with this Rule. A facility shall be deemed to have learned of a resident death when any facility staff obtains information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for the following:

- (1) 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
- (2) a resident death occurring 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 may be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice may be submitted. The notice shall include at least the following information:

- (1) Reporting facility: Name, address, county, license number (if applicable),

- (2) 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 7 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 may 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.

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

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, fire, burns, or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.
- (2) "Immediately" means at once, at or near the present time, without delay.
- (3) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring. or abusing another person .

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

10 NCAC 42C .4004 REPORTING REQUIREMENTS

(a) Upon learning of a resident death as described in Paragraphs (b) and (c) of this Rule, a facility shall file a report in accordance with this Rule. A facility shall be deemed to have learned of a resident death when any facility staff obtains information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for the following:

- (1) a resident death occurring in an adult care home within seven days of the the use of a physical restraint or physical hold on the resident; or
- (2) a resident death occurring 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 may be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice may 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 7 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 may 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.

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

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, fire, burns or thermal injury, electrocution,

misuse of equipment, motor vehicle accidents, and natural disasters.

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

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

10 NCAC 42D .2304 REPORTING REQUIREMENTS

(a) Upon learning of a resident death as described in Paragraphs (b) and (c) of this Rule, a facility shall file a report in accordance with this Rule. A facility shall be deemed to have learned of a resident death when any facility staff obtains information that the death occurred.

(b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for the following:

- (1) 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
- (2) a resident death occurring 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 may be reported by telephone following the same time requirements under Subparagraphs (b) and (c) of this Rule until such time the written notice may 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 7 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 may 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.

History Note: Authority G.S. 131D-2; 131D-34.1; Temporary Adoption Eff. May 1, 2001; Eff. July 18, 2002.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0102 BACKGROUND INVESTIGATION

(a) Any agency contemplating the employment of an applicant as a criminal justice officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a criminal justice officer and shall determine whether the applicant is of good moral character pursuant to 12 NCAC 09B .0101(3).

(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form to provide a basis for the investigation.

(c) The agency shall utilize an investigator with prior experience or training in conducting background investigations.

The investigator shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) criminal history data;
- (6) interviews with the applicant's references; and
- (7) a summary of the investigator's findings and conclusions regarding the applicant's moral character.

(d) For criminal justice officers employed by the North Carolina Department of Correction, the agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form must be used to collect minimum information to be recorded by the investigator for all other criminal justice officer applicants that are regulated by the Commission.

(e) Upon written request by the Director of the Standards Division, the employing agency shall provide the Commission with a copy of any background investigation retained by the agency.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2002; August 1, 1998; July 1, 1989.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school may not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.

(b) The school shall give priority admission in accredited criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(c) The school may not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the minimum education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within three months of successful completion of the Instructor Training State Comprehensive Examination.

(d) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.

(e) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the

Standards Division may grant an exception to this for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 602 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- | | | |
|-----|--|-----------|
| (1) | LEGAL UNIT | |
| (A) | Motor Vehicle Laws | 20 Hours |
| (B) | Preparing for Court and Testifying in Court | 12 Hours |
| (C) | Elements of Criminal Law | 24 Hours |
| (D) | Juvenile Laws and Procedures | 8 Hours |
| (E) | Arrest, Search and Seizure/Constitutional Law | 28 Hours |
| (F) | ABC Laws and Procedures | 4 Hours |
| | UNIT TOTAL | 96 Hours |
| (2) | PATROL DUTIES UNIT | |
| (A) | Techniques of Traffic Law Enforcement | 24 Hours |
| (B) | Explosives and Hazardous Materials Emergencies | 12 Hours |
| (C) | Traffic Crash Investigation | 20 Hours |
| (D) | In-Custody Transportation | 8 Hours |
| (E) | Crowd Management | 12 Hours |
| (F) | Patrol Techniques | 20 Hours |
| (G) | Law Enforcement Communication and Information Systems | 8 Hours |
| | UNIT TOTAL | 104 Hours |
| (3) | LAW ENFORCEMENT COMMUNICATION UNIT | |
| (A) | Dealing with Victims and the Public | 10 Hours |
| (B) | Domestic Violence Response | 12 Hours |
| (C) | Ethics for Professional Law Enforcement | 4 Hours |
| (D) | Individuals with Mental Illness and Mental Retardation | 8 Hours |

APPROVED RULES

	(E)	Crime Prevention Techniques	6 Hours
	(F)	Communication Skills for Law Enforcement Officers	8 Hours
		UNIT TOTAL	48 Hours
(4)		INVESTIGATION UNIT	
	(A)	Fingerprinting and Photographing Arrestee	6 Hours
	(B)	Field Note-taking and Report Writing	12 Hours
	(C)	Criminal Investigation	32 Hours
	(D)	Interviews: Field and In-Custody	16 Hours
	(E)	Controlled Substances	10 Hours
		UNIT TOTAL	76 Hours
(5)		PRACTICAL APPLICATION UNIT	
	(A)	First Responder	40 Hours
	(B)	Firearms	48 Hours
	(C)	Law Enforcement Driver Training	40 Hours
	(D)	Physical Fitness	8 Hours
	(i)	Fitness Assessment and Testing	12 Hours
	(ii)	1 hour - 3 days a week	34 Hours
	(E)	Subject Control Arrest Techniques	40 Hours
		UNIT TOTAL	222 Hours
(6)		SHERIFF-SPECIFIC UNIT	
	(A)	Civil Process	24 Hours
	(B)	Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C)	Sheriffs' Responsibilities: Court Duties	6 Hours
		UNIT TOTAL	34 Hours
(7)		COURSE ORIENTATION	2 Hours
(8)		TESTING	20 Hours
		TOTAL COURSE HOURS	602 Hours

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained from the Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99

Salemburg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy shall be used by School Directors in planning, implementing and delivering basic training courses. Each School Director shall be issued a copy of the guide at the time of certification at no cost to the accredited school. The public may obtain copies of this guide from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09B .0215 SUPPLEMENTAL SMI TRAINING

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

- (1) possess a valid radar or time-distance speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 9B .0210, .0211, .0212, .0213 or .0214.
- (2) present the endorsement of a Commission-recognized school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include but not be limited to the topical areas and minimum number of hours as outlined in The Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall demonstrate 100 percent proficiency in the performance of the additional speed measuring instrument(s).

(d) Certification as instructor or operator of the additional speed measuring instruments shall expire on midnight of the date of expiration of the instructor or operator certification referred to in 12 NCAC 9B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

(f) Commission-accredited schools that are accredited to offer the "Supplemental SMI Training Course" for Instructors are: The North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6;
Eff. November 1, 1981;
Readopted Eff. July 1, 1982;
Amended Eff. August 1, 2002; April 1, 1999.*

12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of 60 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized physical fitness instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice physical fitness instructor in a Basic Law Enforcement Training Course.

- (c) Each applicant for specialized physical fitness training shall:
 - (1) qualify through one of the following three options:
 - (A) have completed the criminal justice general instructor training course; or
 - (B) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
 - (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education; and
 - (2) present a written endorsement by a school director indicating the student will be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; and
 - (3) present a letter from a physician stating fitness to participate in the course; and
 - (4) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized physical fitness instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	5 Hours
(2)	Lesson Plan Review	8 Hours
(3)	Physical Fitness Assessments, Exercise Programs and Instructional Methods	31 Hours
(4)	Injury Care and Prevention	4 Hours
(5)	Nutrition	6 Hours
(6)	Civil Liabilities for Trainers	2 Hours
(7)	CVD Risk Factors	2 Hours
(8)	State Examination	2 Hours
	TOTAL	60 Hours

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized physical fitness instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

(f) Commission-accredited schools that are accredited to offer the "Specialized Physical Fitness Instructor Training" course are: The North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6;
Eff. July 1, 1989;
Amended Eff. August 1, 2002; August 1, 2000; November 1, 1998; August 1, 1985; March 1, 1990.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) The schedule may be inspected at the following places:

- (1) Clerk of Court:
 - Beaufort County
 - Carteret County
 - Craven County
 - Durham County
 - Franklin County
 - Granville County
 - Greene County
 - Johnston County
 - Jones County
 - Lenoir County
 - Nash County
 - Orange County
 - Pamlico County
 - Person County
 - Pitt County
 - Wake County
 - Wayne County
 - Wilson County
- (2) North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
 - (B) Washington Regional Office

(C) 943 Washington Square Mall
 Washington, North Carolina
 Wilmington Regional Office
 127 Cardinal Drive
 Wilmington, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994;
- (20) July 1, 1996;
- (21) September 1, 1996;
- (22) April 1, 1997;
- (23) August 1, 1998;
- (24) August 1, 2002.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

(1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

(2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road

1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.

(3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. August 1, 2002; August 1, 1998; April 1, 1997; September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991.

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 system100 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, 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

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- preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required horizontal 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 below land surface;
 - (3) In designated areas described in 15A NCAC 02C .0116 of this Section, the source may be less than 20 feet below land surface, but in no case less than 10 feet below land surface; 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
5-1/2	0.164
6	0.185
8	0.250
10	0.279

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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; | (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 shall 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. |
| (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 shall not | | |

TABLE 2: Maximum allowable depths (in feet) of Installation of Thermoplastic Water Well Casing

Schedule number-	Nominal Diameter (in inches)											
	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
SDR Number	All Diameters (in inches)											
SDR 41	20											
SDR 32.5	50											
SDR 27.5	100											
SDR 26	95											

SDR 21

185

SDR 17

355

SDR 13.5

735

- (D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface.
- (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.
- (F) Thermoplastic casing shall not be driven into consolidated rock.
- (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 shall not occur.
- (4) Every well shall be cased so that the bottom of the casing extends to a minimum depth as follows:
 - (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.
 - (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.
 - (C) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.
- (5) The top of the casing shall be terminated by the drilling contractor at least 12 inches above land surface.
- (6) The casing in wells constructed to obtain water from a consolidated rock formation shall be:
 - (A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (h) of this Rule; and
 - (B) firmly seated at least five feet into the rock.
- (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.
- (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.
- (e) Grouting.
 - (1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:
 - (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.
 - (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.
 - (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.
 - (2) For large diameter wells cased with concrete pipe or ceramic tile of a pipe diameter equal to or greater than 20 inches, the following shall apply:
 - (A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;
 - (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 shall 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 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 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 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 shall 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.

History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. May 14, 2001; December 1, 1992; March 1, 1985; September 1, 1984; April 20, 1978; Temporary Amendment Eff. August 3, 2001; Amended Eff. August 1, 2002.

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 abandoned pursuant to the requirements of 15A NCAC 02C .0113.
- (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 10 working days after the liner has been installed.

History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. August 1, 2002; April 1, 2001; December 1, 1992; September 1, 1984.

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) The annual commercial harvest limit (September 1 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.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; October 1, 1992; September 1, 1991; Temporary Amendment Eff. May 1, 2000; July 1, 1999; October 22, 1998; Amended Eff. April 1, 2001; Temporary Amendment Eff. May 1, 2001; Amended Eff. August 1, 2002.

15A NCAC 04B .0126 PLAN REVIEW FEE

(a) A nonrefundable plan review processing fee, in the amount stated in Paragraph (e) of this Rule, shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 04B .0118.

(b) Each plan shall be deemed incomplete until the plan review processing fee is paid.

(c) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.

(d) No plan review processing fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph (e) of the Rule for each additional acre (or any part thereof) disturbed.

(e) The nonrefundable plan review processing fee shall be fifty dollars (\$50.00) for each acre or part of any acre of disturbed land.

(f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of

Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.

History Note: Authority G.S. 113A-54; 113A-54.2; Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991; ARRC Objection Lodged November 14, 1990; ARRC Objection Removed December 20, 1990; Eff. January 1, 1991; Amended Eff. August 1, 2002; July 1, 2000.

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a Coastal Area Management Act (CAMA) Land Use Plan.

History Note: Authority G.S. 113A-107(a); 113A-110, 113A-124; Eff. August 1, 2002.

15A NCAC 07B .0602 EXAMPLES

Examples included in this Rule are for illustrative purposes and neither represents a prioritization nor a limitation of issues.

History Note: Authority G.S. 113A-107(a); 113A-110, 113A-124; Eff. August 1, 2002.

15A NCAC 07B .0702 ELEMENTS OF CAMA CORE AND ADVANCED CORE LAND USE PLANS

(a) Organization of the Plan. The elements in this Rule provide general direction for development of the CAMA Core and Advanced Core Land Use Plans. A detailed Table of Contents shall be included and if the organization does not follow the outline described in this Rule, a matrix shall be included that shows the exact location of the following required elements.

(b) Community Concerns and Aspirations:

- (1) Significant existing and emerging conditions: The plan shall include a description of the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: The plan shall include a description of the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and local areas of concern as described in Subparagraph (d)(3) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: This shall consist of a description of the general physical appearance and form that represents the local government's plan for the future. The community vision shall include statements of general objectives to be achieved by the plan. These objectives shall serve as the foundation for more specific objectives and policies stated

elsewhere in the CAMA Land Use Plan. The objectives shall include changes that the local government feels are needed to achieve the planning vision.

(c) Analysis of Existing and Emerging Conditions within the planning jurisdiction. The purpose of this element is to provide a sound factual and analytical base that is necessary to support the land use and development policies included in the plan. The analysis shall be based upon the best available data or mapping information from state, federal and local sources. This element shall describe the following:

(1) Population, Housing, and Economy. The plan shall include an analysis and discussion of the following data and trends:

- (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age; and
 - (v) Income.
- (B) Housing stock:
 - (i) Estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured); and
 - (ii) Building permits issued for single-family, multifamily, and manufactured homes since last plan update.
- (C) Local economy: Employment by major sectors and description of community economic activity.
- (D) Projections. Short-term (five and ten year) and long-term (20-year) projections of permanent and seasonal population.

(2) Natural systems analysis. The purpose of the natural systems analysis is to describe and analyze the natural features and environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development. This analysis shall include:

(A) Mapping and analysis of natural features. The 14-digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. Maps of the following natural features shall be developed with data provided by DCM or other state agencies for analysis and plan development. These maps may be reproduced and

included in the CAMA Land Use Plan at the option of the local government. If the maps are not included in the plan, they shall be made available to the public.

- (i) Areas of Environmental Concern (AECs);
- (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
- (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of Environmental Health (DEH) shellfish growing areas and water quality conditions;
- (iv) Flood and other natural hazard areas;
- (v) Storm surge areas;
- (vi) Non-coastal wetlands-probable 404 wetlands;
- (vii) Water supply watersheds or wellhead protection areas;
- (viii) Primary nursery areas, where mapped;
- (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
- (x) Additional natural features or conditions identified by the local government.

(B) Composite map of environmental conditions:

- (i) Composite map of environmental conditions: The plan shall include a map that shows the extent and overlap of natural features listed in Part (c)(2)(A) of this Rule and, based on the local government's determination of the capabilities and limitations of these features and conditions for development, shows the location of the following three categories of land:
 - (I) Class I – land containing only

- minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;
- (II) Class II – land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and
- (III) Class III – land containing serious hazards for development or lands where the impact of development may cause serious damage to the functions of natural systems.
- (ii) The CAMA Land Use Plan shall describe or list the features or conditions selected by the local government for inclusion in each class.
- (C) Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features and discuss their limitations or opportunities for development:
 - (i) Water quality:
 - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Quality Basinwide Water Quality Plans, 303(d) List and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation Section of the N.C. Division of Environmental Health;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
 - (ii) Natural hazards:
 - (I) Areas subject to storm hazards such as recurrent flooding, storm surges and high winds;
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; and
 - (III) Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas (as defined in Subpart (c)(2)(A)(ix) of this Rule) or areas where resource functions may be impacted as a result of development; and
 - (II) Areas containing potentially valuable natural resources. These may include, but are not limited to the following: beach quality sand deposits, protected

- open space, and agricultural land that may be impacted or lost as a result of incompatible development.
- (3) Analysis of Land Use and Development. The purpose of the analysis of land use and development is to describe and quantify existing patterns of land uses, identify potential land use and land use/water use conflicts, determine future development trends, and project future land needs. The plan shall include the following mapping and analysis of existing land use:
- (A) A map of land including the following: Residential, commercial, industrial, institutional, public, dedicated open space, agriculture, forestry, confined animal feeding operations, and undeveloped;
- (B) The land use analysis shall include the following:
- (i) Table that shows estimates of the land area allocated to each land use;
 - (ii) Description of any land use conflicts;
 - (iii) Description of any land use – water quality conflicts;
 - (iv) Description of development trends using indicators. These development trends may include, but are not limited to the following: building permits and platted but un-built lots; and
 - (v) Location of areas expected to experience development during the five years following plan certification by the CRC and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis;
- (C) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.
- (D) These areas and sites shall be located on either the existing land use map or a separate map; and
- Projections of future land needs. The analysis shall include short term (five and ten year) and long term (20-year) projections of residential land area needed to accommodate the planning jurisdiction's projected future permanent and seasonal population (population projections as defined in Part (C)(1)(d) of this Rule (Analysis of Existing and Emerging Conditions)). The projections of land needs may be increased up to 50% to allow for unanticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1 in 15A NCAC 07B .0701), the projections of land needs may consider economic strategies in the final calculations.
- (4) Analysis of Community Facilities. The purpose of the analysis of community facilities is to evaluate existing and planned capacity, location, and adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. This analysis shall include:
- (A) Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(s) of existing public and private systems, including existing condition and capacity; location of pipelines, documentation of any overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health; existing and planned service areas; and future needs based on population projections. If any required information is not available for private systems, the local government shall so state in the plan and this factor may be eliminated from the analysis.
- (B) Transportation systems. The analysis of the transportation system shall include a map showing: the existing highway system; any segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels; highway facilities on the current thoroughfare plan; and facilities on the current transportation improvement program. The analysis

- shall also assess the impact of planned highway or other transportation facilities on growth levels and development patterns.
- (C) Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of existing drainage problems in the planning area; identification of water quality issues related to point-source discharges of stormwater runoff; and an overview of potential stormwater system requirements for local governments subject to the EPA's Storm Water Phase II Final Rules.
 - (D) Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.
- (5) Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for development based on the following considerations: natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development criteria of local, state, and federal agencies and the availability and capacity of water, sewer, stormwater management facilities, and transportation systems. The analysis shall include a land suitability map showing vacant or under-utilized land that is suitable for development. The following factors shall be considered to assess land suitability:
- (A) Water quality;
 - (B) Land Classes I, II, and III summary environmental analysis;
 - (C) Proximity to existing developed areas and compatibility with existing land uses;
 - (D) Potential impact of development on areas and sites designated by local historic commissions or the North Carolina Department of Cultural Resources as historic, culturally significant, or scenic;
 - (E) Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and
 - (F) Availability of community facilities, including water, sewer, stormwater and transportation.
- (6) Review of Current CAMA Land Use Plan. The purpose of the review of the current CAMA Land Use Plan is for the local governing body to review its success in implementing the policies and programs adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:
- (A) Consistency of existing land use and development ordinances with current CAMA Land Use Plan policies;
 - (B) Adoption of the land use plan's implementation measures by the governing body; and
 - (C) Efficacy of current policies in creating desired land use patterns and protecting natural systems.
- (d) Plan for the Future. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and CAMA. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map.
- (1) Land use and development goals. The following shall be considered in the development of the plan's goals:
 - (A) Community concerns and aspirations identified at the beginning of the planning process; and
 - (B) Needs and opportunities identified in the analysis of existing and emerging conditions.
 - (2) Policies:
 - (A) Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land Use Plan shall demonstrate how the land use and development goals, policies and future land use map, as required in Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.
 - (B) The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.

- (C) The plan shall contain a clear statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land Use Plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan.
- (3) Land Use Plan Management Topics. The purposes of the CRC management topics are to insure that CAMA Land Use Plans support the goals of CAMA, to define the CRC's expectations for the land use planning process, and to give the CRC a substantive basis for review and certification of CAMA Land Use Plans. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) include three components: a management goal, a statement of the CRC's planning objective, and requirements for the CAMA Land Use Plans.
- (A) Public Access:
- (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
 - (ii) Planning Objective: Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall address access needs and opportunities, include strategies to develop public access, and identify feasible funding options.
 - (iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain provisions for public access for all segments of the community, including persons with disabilities, and shall establish access criteria for beach areas targeted for nourishment.
- (B) Land Use Compatibility:
- (i) Management Goal: Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and manmade features.
 - (ii) Planning Objective:
 - (I) Adopt and apply local development policies that balance protection of natural resources and fragile areas with economic development.
 - (II) Policies to provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.
 - (iii) Land Use Plan Requirements:
 - (I) Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.
 - (II) Establish local mitigation criteria and concepts. These may include, but are not limited to the following: cluster subdivision design, enacting local buffers, impervious surface limits, and effective innovative stormwater

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| <p>(C) Infrastructure Carrying Capacity:</p> <p>(i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.</p> <p>(ii) Planning Objective: Establish level of service policies and criteria for infrastructure consistent with Part (c)(3)(iv) (Projections of Future Land Needs) of this Rule.</p> <p>(iii) Land Use Plan Requirements:</p> <p>(I) Identify/establish service area boundaries for existing and future infrastructure.</p> <p>(II) Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation.</p> | <p>(D) Natural Hazard Areas:</p> <p>(i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.</p> <p>(ii) Planning Objective: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.</p> <p>(iii) Land Use Plan Requirements:</p> <p>(I) Develop location, density, and intensity criteria for</p> | <p>new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.</p> <p>(II) Correlate existing and planned development with existing and planned evacuation infrastructure.</p> | <p>(E) Water Quality:</p> <p>(i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.</p> <p>(ii) Planning Objective: Adopt policies for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired.</p> <p>(iii) Land Use Plan Requirements:</p> <p>(I) Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.</p> <p>(II) Establish policies and land use categories aimed at protecting open shellfishing waters and restoring closed or conditionally closed shellfishing waters.</p> | <p>(F) Local Areas of Concern:</p> <p>(i) Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.</p> |
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- (ii) Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.
 - (iii) Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.
- (4) Future land use map. This map depicts application of the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure policies. The local government shall include such categories and descriptions of land uses and development as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following:
- (A) 14-digit hydrological units encompassed by the planning area;
 - (B) areas and locations planned for conservation or open space and a description of compatible land uses and activities;
 - (C) areas and locations planned for future growth and development with descriptions of the following characteristics:
 - (i) predominant and supporting land uses that are encouraged in each area;
 - (ii) overall density and development intensity planned for each area; and
 - (iii) infrastructure required to support planned development in each area; and
 - (D) areas in existing developed areas for infill, preservation, and redevelopment;
 - (E) existing and planned infrastructure, including major roads, water, and sewer.

mitigate the impacts. In addition, the plan shall include an estimate of the cost of any community facilities or services that shall be extended or developed. The amount of land allocated to various uses shall be calculated and compared to the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Subpart (c)(3)(A)(iv) of this Rule (Projections of Future Land Needs).

(e) Tools for Managing Development. This element of the plan provides a description of the management tools that the local government selects and the actions to be taken to implement the CAMA Land Use Plan. It also includes a five-year schedule for implementation. This element shall at a minimum include:

- (1) Guide for land use decision-making. Describe the specific role and the status of the land use plan policies and future land use plan map in local decisions regarding land use and development.
- (2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies.
- (3) Additional tools. Describe any of the following additional tools selected by the local government to implement the CAMA land use plan policies.
 - (A) Ordinances:
 - (i) Amendments or adjustments in existing development codes required for consistency with the plan;
 - (ii) New ordinances or codes to be developed;
 - (B) Capital improvements program. New, upgraded or expanded community facilities, such as but not limited to the following: water, sewer, stormwater, transportation, and other facilities, and policies regarding connections to and extensions of community facilities;
 - (C) Acquisition program. Planned acquisition of property, easements, or rights-of-way; and
 - (D) Specific projects to reach goals.
- (4) Action plan/schedule. Describe the priority actions that will be taken by the local government to implement the CAMA Land Use Plan and specify the fiscal year(s) in which each action is anticipated to start and finish. The document shall contain a description of the specific steps that the local government plans to take to involve the public in monitoring implementation of the CAMA Land Use Plan, including the adoption of local

The local government may use additional or more detailed categories if required to depict its land use policies.

If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis, or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to

ordinances that affect AECs. The action plan shall be used to prepare the implementation status report for the CAMA Land Use Plan.

(3)

take action as specified above the plan shall be certified.

The CRC shall certify plans which:

- (A) are consistent with the current federally approved North Carolina Coastal Management Program; and
- (B) are consistent with the Rules of the CRC; and
- (C) do not violate state or federal law; and
- (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within each of the six Management Topics the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified.

(d) Non-Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing a certified CAMA Land Use Plan shall remain in effect.

(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

History Note: Authority G.S. 113A-107(a); 113A-110, 113A-111; 113A-124; Eff. August 1, 2002.

15A NCAC 07B .0901 CAMA LAND USE PLAN AMENDMENTS

(a) Normal Amendment Process

- (1) The CAMA Land Use Plan may be amended and only the amended portions submitted for CRC certification if local conditions create a need for policy or map changes or clarifications. If the local government amends half or more of the contents or policies of the CAMA Land Use Plan, an entirely new locally adopted plan shall be submitted to the CRC.
- (2) The local government proposing an amendment to its CAMA Land Use Plan shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than 30

History Note: Authority G.S. 113A-102, 113A-107(a); 113A-110, 113A-111; 113A-124; Eff. August 1, 2002.

15A NCAC 07B .0802 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION

(a) Re-Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.

(b) Committee Designated by CRC to Review Local Land Use Plans:

- (1) The appropriate DCM District Planner shall report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan and recommend certification, conditional certification, or non-certification.
- (2) The Land Use Plan shall be presented to the committee designated by the CRC by an elected local official, municipal or county staff member, or designated citizen representative.
- (3) The public shall have an opportunity to present written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 10 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be couched within the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.
- (4) The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at anytime before review.

(c) CRC Certification:

- (1) The CRC shall certify, the CAMA Land Use Plan following the procedures and conditions specified in this Rule.
- (2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next regularly scheduled CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to

days prior to the public hearing. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the locally adopted amendment no earlier than 45 days and no later than 30 days prior to the next regularly scheduled CRC meeting for CRC certification.

- (3) For joint plans, originally adopted by each participating jurisdiction, each government shall retain its sole and independent authority to make amendments to the plan as it affects their jurisdiction.
- (4) CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC 07B .0802(b), (c),(d) and (e).

(b) Delegation of CRC Certification of Amendments to the Executive Secretary

- (1) A local government that desires to have the Executive Secretary instead of the CRC certify a CAMA Land Use Plan amendment shall first meet the requirements in Subparagraphs (a)(1) through (3) of this Rule and the following criteria defined in Parts (b)(1)(A) through (D) of this Rule. The local government may then request the Executive Secretary to certify the amendment. The Executive Secretary shall make a determination that all criteria have been met, and mail notification to the local government and CRC members, no later than two weeks after receipt of the request for certification. The CRC's delegation to the Executive Secretary to certify proposed amendments is limited to amendments that meet the following criteria:

- (A) Minor changes in policy statements or objectives for the purpose of clarification of intent; or
- (B) Modification of any map that does not impose new land use categories in areas least suitable for development as shown on the Land Suitability Map; or
- (C) New data compilations and associated statistical adjustments that do not suggest policy revisions; or
- (D) More detailed identification of existing land uses or additional maps of existing or natural conditions, that do not affect any policies in the CAMA Land Use Plan;

- (2) If the Executive Secretary certifies the amendment, the amendment shall become final upon certification of the Executive Secretary, and is not subject to further CRC review described in 15A NCAC 07B .0802 (Presentation to CRC for Certification).
- (3) If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan

certification process in 15A NCAC 07B .0802 (Presentation to CRC for Certification).

- (c) Any amendments to the text or maps of the CAMA Land Use Plan shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and CRC certification. The amended P CAMA Land Use Plan shall be maintained as required by G.S. 113A-110(g).
- (d) Within 90 days after certification of a CAMA Land Use Plan amendment, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common border and with the regional planning entity.
- (e) A local government that receives Sustainable Community funding from the Department pursuant to 15A NCAC 07L shall formulate and submit to the CRC for certification a CAMA Land Use Plan Addendum during its first year as a Sustainable Community and if new planning rules have been adopted by the CRC, shall update the CAMA Land Use Plan within six years of adoption of these new planning rules.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0101 AUTHORITY

The rules in this Subchapter are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of Environment and Natural Resources (DENR) in the Secretary's capacity as executive head of the state agency designated by the Governor to administer state funds and to receive and administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

History Note: Authority G.S. 113A-112; 113A-124; Eff. September 1, 1978; Amended Eff. August 1, 2002; October 1, 1991.

15A NCAC 07L .0102 PURPOSE

The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the DENR program of grants for local Coastal Area Management Act (CAMA) land use plans and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist local governments in developing and implementing CAMA land use plans and management strategies for their coastal resources, as mandated and encouraged by the CAMA. Funds are to be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the CAMA.

History Note: Authority G.S. 113A-112; 113A-124; Eff. September 1, 1978; Amended Eff. August 1, 2002; June 1, 1980.

15A NCAC 07L .0501 ELIGIBLE APPLICANTS

- (a) Applications for grants for local planning and management funds may be made by the following:
 - (1) Coastal Counties as defined in CAMA; and
 - (2) Municipalities within coastal counties.

(b) Two or more eligible applicants may submit a joint application for funds to carry out jointly sponsored or regional projects.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0502 CONSISTENCY WITH PLANS AND RULES

All proposed projects must be consistent with, CAMA, state rules and standards implementing CAMA, local CAMA land use plans certified by the Coastal Resources Commission (CRC), and the state's federally approved coastal management program.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0503 PRIORITIES FOR FUNDING CAMA LAND USE PLANS AND IMPLEMENTATION PROJECTS

(a) In funding local planning and management grants, DENR shall follow the general priorities set out in 15A NCAC 07L .0503(b). Examples of the types of eligible projects are listed and have been placed in the appropriate priority category. Any applications for project funding not specifically identified and placed in a priority category shall be assigned the appropriate priority category by DENR upon receipt of the application. Funding priorities and eligibility for the Sustainable Communities Component of the planning program are described in 15A NCAC 07L .0512.

(b) General priority categories for local planning and management grants are as follows:

- (1) The highest priority includes projects directly mandated by statute, including initial and updated CAMA land use plans, local participation in projects initiated by DENR, and projects DENR indicates urgently need local attention in order to meet CRC management topics. In general, grants for projects in this priority category, except CAMA Workbook land use plans, shall be funded for no more than 85 percent of the total project cost, although lower funding percentages may be awarded. The type of CAMA land use plan to be funded and the corresponding percentage of funding shall be based on community characteristics as determined during the scoping process described in 15A NCAC 07L .0505 to be held prior to project application.
- (2) The second priority includes projects directly related to carrying out the explicit goals of CAMA, for which DENR indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the CAMA land use plan such as public facilities planning or land use regulations preparation. Grants for projects in this category shall be for no more than 65 percent of the total project cost,

although lower funding percentages may be awarded.

- (3) The third priority includes projects related to improving local coastal management and land use management capabilities. Grants for projects in this priority category shall be for no more than 50 percent of the total project cost, although lower funding percentages may be awarded.

(c) In addition, DENR shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories.

- (1) project's contribution towards meeting CRC management topics;
- (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
- (3) applicant's urgency of need;
- (4) past history of applicant's implementation of CAMA planning and management activities;
- (5) feasibility of successful completion of project by the applicant;
- (6) past experience with this program as well as present management and administrative capabilities;
- (7) potential applicability of the project to other coastal area municipalities and counties; and
- (8) geographic distribution of applicants.

(d) In priority categories two and three, the proportion of the grant award to total project costs shall be the same for all similar projects. For example, if one waterfront access plan is funded at a 60 percent level, all waterfront access plans shall be funded at a 60 percent level. The only exception to this involves multi-year projects which may receive a lower level of funding within a given priority category after the initial year.

(e) Generally, available funds shall first be allocated to projects in priority category one; then, if there are funds remaining, grants shall be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in Paragraph (c) of this Rule shall also be considered in funding decisions. Sustainable Communities projects shall be funded as described in 15A NCAC 07L .0512.

(f) Any local government whose CAMA land use plan is not certified by the CRC due to failure to meet the criteria listed in 15A NCAC 07B .0803 shall not receive further funding under this program until these inconsistencies are corrected.

(g) Any local government that is not implementing its certified CAMA land use plan shall not receive additional funding under this program. CAMA land use plan implementation shall be documented through periodic Implementation Status Reports provided to the Division of Coastal Management (DCM), as described in 15A NCAC 07L .0511 (Required Periodic Implementation Status Reports). A local government that is deemed by the DCM Planner to not have implemented its current CAMA land use plan may seek a review by the Director of the DCM to determine if the current CAMA land use plan implementation is acceptable to receive future funding.

(h) All funding decisions shall be based on availability and amount of state and federal appropriations.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0504 ELIGIBLE PROJECTS

(a) The lists in Paragraph (b) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in 15A NCAC 07L .0503 (Priorities For Funding CAMA Land Use Plans and Implementation Projects.) These lists are not intended to be exhaustive or restrictive. Local governments may apply for funds for any related projects that will improve local planning and management capabilities.

(b) Examples of eligible projects and their associated priority category include:

- (1) Priority Category-Type 1
 - (A) Those activities specifically designated by DENR on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning;
 - (B) Adopting, amending, or updating CAMA land use plans to reflect changed conditions (these may include, but are not limited to: necessary data collection, public participation, policy development).
- (2) Priority Category-Type 2
 - (A) Adopting or amending ordinances to further secure compliance with state rules in AECs;
 - (B) Beach access plans and studies (these may include, but are not limited to: inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);
 - (C) Erosion control plans and studies (these may include, but are not limited to: mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
 - (D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;
 - (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing water-front parks and public areas (these may include, but

are not limited to: site design, use studies, cost analysis);

- (F) Preparing, adopting, or amending ordinances necessary to carry out certified CAMA land use plans, state rules, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements);
 - (G) Hazard mitigation plans.
- (3) Priority Category-Type 3
- (A) Initial water and sewer plans and studies;
 - (B) Land use related capital facilities programming;
 - (C) Base mapping as a management tool;
 - (D) Other planning, studies, and data acquisition supportive of coastal planning and management including but not limited to public education or involvement on coastal issues; solid waste planning; port planning; sport and commercial fishing studies;
 - (E) Enforcement of ordinances adopted to carry out certified CAMA land use plans;
 - (F) Coordination of local coastal management activities with other local management activities (these may include, but are not limited to: internal coordination, city-county coordination);
 - (G) Other coastally related management projects.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0505 SCOPING OF PLANNING NEEDS

(a) If a local government intends to request funding from DENR for the development or update of a CAMA land use plan a scoping meeting shall occur between the local government and the DCM. This meeting shall occur prior to the submission of a grant application. The scoping meeting shall determine the extent of planning needs and the type of plan to be produced and funded.

(b) The discussion and recommendations from the scoping meeting shall be presented at a regular meeting of the local governing board where action shall be taken to accept or modify the recommendations. Standard public meeting notification procedures common to the local government in question are sufficient public notice for these purposes, provided the notification specifically states that the scoping recommendations shall be discussed and acted upon. In addition, notification of the public meeting shall be provided to the DCM District

Planner. Public input shall be accepted and considered at this meeting.

(c) Assuming federal and state appropriations remain at or close to the 2001-02 fiscal year appropriations, DENR intends to provide funds for local governments to update their CAMA land use plans every six years. In the case of existing plans, the scoping process shall take place during the fourth year after the last certification. The local government may request scoping before the fourth year if special circumstances are identified in the Implementation Status Report described in 15A NCAC 07L .0511 -Required Periodic Implementation Status Reports.

(d) The community characteristics to be discussed during the scoping process to help determine the type of plan to be prepared shall include:

- (1) The capacity of the local government to administer the planning process;
- (2) Population growth rate as projected by the State Planning Office;
- (3) Development trends, such as number and type of building permits issued, number of lots subdivided, number of CAMA permits issued since certification of the current CAMA land use plan, and new and proposed industry;
- (4) Extent of AECs;
- (5) Water quality considerations including: Division of Water Quality (DWQ) classifications (outstanding resource waters, high quality waters) and current conditions (as per Basinwide Water Quality Plans, Use Support Designations.); and Division of Marine Fisheries (DMF) primary nursery areas and current conditions (as per Coastal Habitat Protection Plans); and shellfishing waters and their current conditions;
- (6) Natural and manmade hazards and other issues affecting land use; and
- (7) Natural and environmental constraints (these may include, but are not limited to: hydric soils and well head protection areas) which affect land use.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0506 PUBLIC PARTICIPATION

(a) Local Governments receiving DENR funding for CAMA land use plan preparation shall be responsible for the development and implementation of a Citizen Participation Plan. Local governments shall employ a variety of educational efforts and participation techniques to assure that all socioeconomic segments of the community and non-resident property owners have opportunities to participate during plan development.

(b) Extent of Required Effort. Prior to the start of CAMA land use plan development, the local governing board shall develop and adopt a Citizen Participation Plan. Interested citizens shall have an opportunity to participate in the development of the CAMA land use plan through oral and written comments as provided for in the Citizen Participation Plan. Copies of informational CAMA land use plan materials shall be provided at all meetings of the planning group. The Citizen Participation Plan shall be available to the public throughout the planning

process. At a minimum, the Citizen Participation Plan shall include the following:

- (1) Designation of the principal local board, agency, department or appointed group that shall take the lead role in preparing or updating the CAMA land use plan, including a contact name, address, and telephone number.
- (2) A specific date and time for an initial public information meeting or series of meetings.
 - (A) During the meeting(s) a local government updating its plan shall discuss the statements of local policy in the current CAMA land use plan, the effect of those policies on the community, and the ways the plan has been used to guide development during the past planning period. The local government shall explain the process by which it will report to the public and solicit the views of a wide cross-section of citizens in the development of updated policy statements.
 - (B) Written notice of the public information meeting(s) shall be published in a newspaper of general circulation in the planning jurisdiction twice prior to the public information meeting(s). The first notice shall appear not less than 30 days prior to the public information meeting(s). The second notice shall appear not less than 10 days prior to the meeting. Notice of the meeting shall also be conveyed to local Coastal Resources Advisory Council (CRAC) member(s) and to the appropriate DCM District Planner.
 - (C) The local government shall offer an opportunity for public comment during the public information meeting(s).
 - (D) The tools to be used to report planning progress to the public during CAMA land use plan development, such as newspaper reports, local government newsletters, radio or television announcements or other reporting methods shall be described at the initial public meeting. More than one means is required.
- (3) A description of the methods and techniques that shall be used to solicit public participation and input, such as citizen surveys, questionnaires, informational brochures, community outreach, town meetings or other pro-active methods. The Citizen Participation Plan shall describe the results that are expected from the methods and techniques that are used. More than one means is required and at least

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one effort shall be made to solicit input from non-resident landowners.

- (4) A general outline of the meeting schedule for the group developing the CAMA land use plan, as designated in Subparagraph (b)(1) of this Rule.

(c) All regular meetings of the designated planning group where the CAMA land use plan is discussed shall offer time on the agenda for public comment. A list of the names of speakers offering public comment and a copy of any written comments provided shall be kept on file by the local government and provided to the DCM staff for use in the CAMA land use plan review process.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0507 MINIMUM CAMA LAND USE PLANNING AND FUNDING REQUIREMENTS

(a) Each year DCM shall develop a list of local governments with whom DCM shall initiate a scoping process during the upcoming five years and the year in which DENR expects to have funds available for each local government desiring to seek DENR funding.

(b) To receive funding from DENR, counties shall, at a minimum, prepare a CAMA Core land use plan, as described in 15A NCAC 07B.

(c) To receive funding under this grant program for CAMA Core land use plan development, municipalities must have AECs within their jurisdiction and meet the population and growth rate

thresholds as shown in Figure 1. To receive funding under this grant program, municipalities with Ocean Hazard AECs must, at a minimum, prepare a CAMA Core land use plan. Additionally, municipalities with non-Ocean Hazard AECs shall at a minimum prepare a CAMA Core land use plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only non-Ocean Hazard AECs that are at or below the population and growth rate thresholds shown in Figure 1 may prepare a CAMA Core land use plan or a Workbook Plan as described in 15A NCAC 07B. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (such as water quality concerns) being addressed by the municipality, shall be considered during the scoping process described in 15A NCAC 07L .0505 when determining the final planning option to be funded.

(d) Municipalities that do not meet the minimum plan-making authority of G.S. 113A-110(c) or those with no AECs within their planning jurisdiction shall not be funded for individual plans except under special circumstances and if funds are available. Examples of special circumstances include: the existence of non-AEC fragile areas (such as federally regulated wetlands, historic and cultural resources, critical wildlife habitats and scenic areas), land use compatibility problems or unexpected growth pressures, such as the relocation of major industry to the area.

(e) Figure 1 illustrates the criteria DENR shall use to determine the minimum types of plans that shall be expected and funded for municipalities.

Figure 1: PRESUMED MINIMUM FUNDING FOR MUNICIPAL CAMA LAND USE PLANS

		AREAS OF ENVIRONMENTAL CONCERN (AECs)		
POPULATION	GROWTH RATE*	OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS**	AECs NOT PRESENT OR DO NOT MEET 113A-110 (c)***
= 5,000	N/A			
= 2,500	HIGH			
>1,000 and < 2,500	HIGH			
<1,000	HIGH			
= 2,500	MODERATE			
< 2,500	MODERATE			
= 2,500	LOW			
< 2,500	LOW			

Core Plan
 Core or Workbook plan- to be determined in the scoping process
 No Funding

(f) CAMA Land Use Plans shall be funded as follows:

- (1) The North Carolina Department of Commerce's Tier designations, as outlined by

the Lee Act (G.S. 105-129.3), shall be used to determine the economic status of counties. Counties designated as Tier 1 and Tier 2 shall be considered economically distressed. Economically distressed counties that prepare a CAMA Core land use plan shall be funded at no more than 75 percent of the project costs, although lower percentages of funding may be provided. Counties that prepare a CAMA Core land use plan and do not have a Tier 1 or Tier 2 designation shall be funded at no more than 65 percent of the project cost, although lower percentages of funding may be provided.

- (2) Municipalities preparing CAMA Core land use plans shall be funded at no more than 60 percent of the project cost, although lower percentages of funding may be provided.
- (3) Counties and municipalities preparing CAMA Advanced Core land use plans, as described in 15A NCAC 07B, shall be funded at no more than 75 percent, except for Tier 1 and Tier 2 designated counties preparing CAMA Advanced Core land use plans. If so designated, these County plans shall be funded at no more than 85 percent, although lower funding percentages may be provided. Eligibility for funding to prepare a CAMA Advanced Core land use plan shall be determined during the scoping process and shall be based on the level of planning proposed by the local government. To be considered for funding to prepare a CAMA Advanced Core land use plan, the proposal must demonstrably maintain or improve local environmental conditions and advance the local government towards implementation of its currently certified CAMA land use plan.
- (4) Municipalities preparing CAMA Workbook land use plans may receive no more than three thousand dollars (\$3,000.00) for map preparation only.
- (5) Local governments that choose to combine individual plans into joint or regional plans shall be eligible for funding not to exceed the amount that would have been provided for individual plans.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0508 STATE TECHNICAL ASSISTANCE, REVIEW AND COMMENT ON PRELIMINARY DRAFT PLAN

- (a) Educating Local Officials: At the beginning of the planning process, DCM shall provide opportunities for educating local officials about the CAMA land use planning rules, through such means as workshops and training videos.
- (b) Maps and Data: DCM shall provide maps and data to assist with developing the CAMA land use plan. This data may include population, natural resources, water quality, economic

activity and transportation infrastructure for counties, and where available, for municipalities. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other sources.

(c) Procedures for Agency Review and Comment: DCM shall review all draft CAMA land use plans for technical accuracy and consistency with the CRC's requirements for CAMA land use plans and shall provide notice to the CRC and other State and Federal Agencies that the plan is available for review and comment.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0509 INTERGOVERNMENTAL COORDINATION

(a) Notification of Adjacent Jurisdictions (including non-CAMA areas, and if applicable, out of state areas): Each local government receiving funding for CAMA land use planning from DENR shall solicit comments on its preliminary draft CAMA land use plan or updates submitted for state review from adjacent jurisdictions and applicable regional planning entities. Solicitation shall be made in writing and a copy of the draft CAMA land use plan shall accompany the request. The review period shall be, at a minimum, 45 calendar days. After the review period ends, any comments from the adjacent planning jurisdictions and regional planning entities shall be provided to the local governing body and to the applicable DCM District Planner. Additionally, within 90 days after CRC certification of a CAMA land use plan, the local government shall provide one copy of its plan to each jurisdiction with which it shares a common border and with the regional planning entity.

(b) Coordination of Policies: Where watershed(s) that contain an AEC fall within more than one planning jurisdiction, the jurisdictions shall coordinate the development of land use policies affecting shared AECs to the greatest extent practical.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

(a) To be eligible for future funding each local government engaged in CAMA land use planning shall complete a CAMA land use plan Implementation Status Report every two years as long as the current plan remains in effect. DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B -Tools for Managing Development.

(b) The Implementation Status Report shall identify:

- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan;
- (2) Any actions that have been delayed and the reasons for the delays;
- (3) Any unforeseen land use issues that have arisen since certification of the CAMA land use plan;
- (4) Consistency of existing land use and development ordinances with current CAMA land use plan policies; and

- (5) Current policies that create desired land use patterns and protection of natural systems.
- (c) Results shall be made available to the public and shall be forwarded to DCM.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0512 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM

- (a) Sustainable Communities Component: Under conditions outlined in this rule, DENR may provide additional financial support for plans that exceed the minimum requirements of 15A NCAC 07B. This Rule establishes a Sustainable Communities Component of the planning program, which provides funds to selected communities to support actions to implement the CRC-certified CAMA land use plans of selected local governments.
- (b) The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast. Local governments designated as Sustainable Communities shall execute multi-year, land/water projects that are consistent with CRC management topics and the CRC-certified CAMA local land use plan. Examples of sustainable projects include but are not limited to, oyster re-seeding projects, establishment of greenway systems, and eco-tourism projects.
- (c) The CRC may identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas shall be provided in the Notice of Availability of Funds and Request for Proposals.
- (d) The following factors shall be considered by DENR in the selection of Sustainable Communities: merit of proposal and its relevance to CRC management topics; proposed education and public participation throughout the life of the project; financial and administrative capacity of the local government to implement the project; and past history of CAMA land use plan implementation by that local government.
- (e) DENR shall accept applications for the Sustainable Communities Component once every three years from counties and municipalities whose CAMA land use plans have been certified within the past three years. During the first year the Sustainable Communities Component is offered, local governments with CAMA land use plans older than three years will be eligible to apply. DENR shall make final selections of no more than four communities per funding cycle, based on recommendations of the CRC and the CRAC. Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.
- (f) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to DENR.
- (g) Sustainable Communities shall receive the following assistance: planning grant funds for the initial phase of the project and a local CAMA land use plan addendum for up to 80 percent of the project costs, not to exceed forty thousand dollars (\$40,000); priority funding consideration for Planning and Management Grant Funds for related projects for two of the following three years, provided funds are available for priority two and priority three projects, for a maximum of twenty thousand dollars (\$20,000) for each grant, and DCM support for all grant applications to other agencies for project funding.

- (h) DCM will catalog, advertise and distribute summary reports on projects funded under this program to other local governments in the coastal area.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0513 PROJECT DURATION

- (a) CAMA Core and Advanced Core land use plans may be funded over a two-year period. Funding during the first year will be to prepare background material, with second year funding primarily used for policy development.
- (b) Other planning and management projects may be approved for up to three years. However, individual grants will usually be for a period of one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requires more than one year to complete, and is funded for its first year, this action does not commit DENR to subsequent funding throughout the estimated duration of the project, except that multi-year CAMA land use plans will be given priority funding for Phase II.
- (c) In the event that any local planning and management funds remain or become available after the initial disbursement of funds, DENR may provide additional grants to local governments to supplement existing projects or to initiate new projects based on need and ability of the local government to initiate a new project. All previous unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by local governments at specified times during the year.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0601 APPLICATION FORM

- (a) At least 30 days prior to each new land use planning and management grant period, DENR shall distribute to each eligible applicant a grant application form and notice of availability of funds.
- (b) The grant application form shall request a project description, project objectives, project deliverables, project budget, consistency of the proposed project with the certified CAMA land use plan (if applicable), and other information as deemed necessary by DENR. A project narrative that more completely describes the proposed project may supplement the form. Incomplete, vague or inadequate applications may not be processed.
- (c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.
- (d) A separate application form shall be completed for each proposed project.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0602 ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL

Local governments may contact the DCM offices for further assistance and information in completing grant applications.

Completed applications shall be submitted to the appropriate office as described in the Notice of Availability of Funds and Request for Proposals.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0603 PROCEDURE FOR APPROVAL OR DISAPPROVAL

(a) DENR shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, DENR may request the applicant to submit additional information or agree to a revised project proposal or project budget.

(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by 15A NCAC 07L .0701.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0701 CONTRACT AGREEMENT

(a) Prior to the disbursement of funds, the local government and DENR will become parties to the contract.

(b) DENR shall prepare the contract and submit it to the local government, following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person who is authorized by the local government to enter into contracts, and then returned to DENR. The contract is effective, and approval of the grant application final, when signed by the Secretary of DENR or the Secretary's designee.

(c) Subcontracts shall be reviewed and approved by DENR prior to execution by the local government. Past work history with DENR of the proposed subcontractor will be considered in reviewing the subcontract. No subcontracts may be made without the written approval of DENR.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0702 PROGRESS REPORTS AND GRANT MONITORING

(a) Specific requirements for progress reports will be set out in each contract with grantees.

(b) A progress report will be required of all grantees prior to the distribution of funds.

(c) DENR shall make such site visits and consultations as deemed necessary.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0703 PAYMENT

(a) Payment by DENR will be made periodically as specified in the contract upon the submittal of a requisition for payment and DCM certification that reasonable and satisfactory progress is being made on the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.

(b) DENR may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0704 PROJECT COMPLETION REPORT

(a) A project completion report shall be required for all projects. DENR shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.

(b) A draft project completion report shall be submitted to DENR with or prior to submission of the final requisition for payment. This report shall include an assessment by the local government of the consistency of the project with the certified CAMA land use plan and the rules of the CRC. If the project is found to be inconsistent by DENR, the local government shall include a satisfactory plan for creating consistency, including timelines for implementation. Final payment will not be made to the local government until this information is provided.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0705 ACCOUNTABILITY

Grantees will be subject to accounting techniques and procedures similar to those applicable to DENR as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards shall be followed.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 18A .0164 COOKED CRUSTACEA PICKING

(a) The picking operation shall be conducted in a manner to prevent contamination.

(b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.

(c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per picker whichever is sooner.

(d) Paper towels used at the picking table shall be discarded after initial use.

(e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A testing method or equipment to insure minimum prescribed strengths shall be available and used to test chemical sanitizers.

(f) Handles of picking knives shall not be covered with any material.

(g) Crustacea shall be cooked and picked in the same permitted facility unless a written plan for interfacility shipment has been filed with the Division. The plan shall address and be approved based upon the following:

- (1) time-temperature;

- (2) shipping-destination;
- (3) handling;
- (4) labeling;
- (5) records;
- (6) processing;
- (7) sanitation; and
- (8) HACCP plan.

- (5) Each container of foreign crustacea meat which has been repacked shall be labeled in accordance with Federal labeling requirements.

(e) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year. The records shall be available for inspection by the Division.

History Note: Authority G.S. 130A-230; Eff. October 1, 1992; Temporary Amended Eff. July 1, 2000; Temporary Rule Expired on March 12, 2001; Eff. August 1, 2002.

History Note: Authority G.S. 130A-230; Eff. October 1, 1992; Amended Eff. August 1, 2002; April 1, 1997.

15A NCAC 18A .0173 REPACKING

(a) Crustacea meat for repacking which is processed in North Carolina shall comply with Rules .0134 through .0187 of this Section. Crustacea meat for repacking which is processed outside of North Carolina shall comply with Rule .0182 of this Section. Quarterly bacteriological reports shall be provided to the Division by the repacker of all foreign crustacea meat for repacking.

(b) The repacker shall provide the Division a current written list of all sources of crustacea meat used for repacking.

(c) Repacking of crustacea meat:

- (1) Crustacea meat shall not exceed 45° F (7.1° C) during the repacking process.
- (2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
- (3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30 minute intervals during repacking.
- (4) Repacked crustacea meat shall be maintained at or below 40° F (4.4° C).
- (5) Blending or combining of any of the following shall be prohibited:
 - (A) Fresh crustacea meat.
 - (B) Frozen crustacea meat.
 - (C) Pasteurized crustacea meat.
 - (D) Crustacea meat packed in another facility.
- (6) Crustacea meat shall not be repacked more than one time.
- (7) All empty containers shall be rendered unusable.

(d) Labeling of repacked crustacea meat:

- (1) Each container shall be legibly embossed, impressed or lithographed with the repacker's or the distributor's name and address.
- (2) Each container shall be legibly embossed, impressed or lithographed with the repacker's certification number followed by the letters "RP."
- (3) Each container shall be permanently and legibly identified with a code indicating the repack date.
- (4) Each container shall be sealed so that tampering can be detected.

15A NCAC 18A .0436 MONITORING RECORDS

Monitoring records of critical control points and general sanitation requirements shall be recorded, as specified in the plan, signed and dated when recorded. The records shall be reviewed by the owner or designee within one week of recording.

History Note: Authority G.S. 130A-230; Eff. August 1, 2002.

15A NCAC 18C .1505 TURBIDITY SAMPLING AND ANALYSIS

The requirements of this Rule shall apply only to public water systems that use water obtained in whole or in part from surface sources. The provisions of 40 C.F.R. 141.22 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141; Eff. September 1, 1979; Amended Eff. March 31, 1981; December 19, 1979; Transferred and Recodified from 10 NCAC 10D .1623 Eff. April 4, 1990; Amended Eff. August 1, 2002; January 1, 1991; September 1, 1990.

15A NCAC 18C .1506 MAXIMUM CONTAMINANT LEVELS FOR TURBIDITY

The requirements of this Rule shall apply to public water systems that use water obtained in whole or in part from surface water sources. The provisions of 40 C.F.R. 141.13 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523;
40 C.F.R. 141;
Eff. September 1, 1979;
Transferred and Recodified from 10 NCAC 10D .1614 Eff.
April 4, 1990;
Amended Eff. August 1, 2002; January 1, 1991;
September 1, 1990.

**15A NCAC 18C .1515 ORGANIC CHEMICALS
OTHER THAN TTHM, SAMPLING AND ANALYSIS**

(a) The requirements of this Rule shall apply to community and non-transient non-community water systems. The provisions of 40 C.F.R. 141.24 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

(b) If the result of an analysis made pursuant to (a) of this Rule indicates that the level of any contaminant listed in 15A NCAC 18C .1517 exceeds the maximum contaminant level, the supplier of water shall report to the Department within 48 hours and initiate three additional analyses within one month.

History Note: Authority G.S. 130A-315; P.L. 93-523;
40 C.F.R. 141;
Eff. September 1, 1979;
Amended Eff. November 1, 1989; December 1, 1988; June 1,
1988; October 1, 1982;
Transferred and Recodified from 10 NCAC 10D .1624 Eff.
April 4, 1990;
Amended Eff. August 1, 2002; April 1, 1992; December 1,
1991; September 1, 1990.

**15A NCAC 18C .1519 MONITORING FREQUENCY
FOR RADIOACTIVITY**

(a) The requirements of this Rule shall apply to community water systems. The provisions of 40 C.F.R. 141.26 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

(b) An adjacent water system as defined in G.S. 130A-315(b2) shall conform to the following sampling schedule rather than the schedule set forth in 40 C.F.R. 141.26(a) and (b). A water supplier shall take samples for gross alpha particle activity, radium-226, radium-228, and uranium, and for man-made radioactivity from the water system when the Secretary determines that the system is in an area subject to radiological contamination. When the sampling is required, a water supplier shall submit samples every four years from each section of the water system supplied from a separate source.

(c) Travel trailer parks, campgrounds, and marina slips that are community water systems as defined by G.S. 130A-313(10), but do not serve 25 or more of the same persons more than six months per year shall monitor the same as required by adjacent systems in Paragraph (b) of this Rule.

History Note: Authority G.S. 130A-315; P.L. 93-523;
40 C.F.R. 141;
Eff. September 1, 1979;
Amended Eff. March 1, 1989; September 9, 1980;
December 19, 1979;
Transferred and Recodified from 10 NCAC 10D .1627 Eff.
April 4, 1990;
Amended Eff. August 1, 2002; July 1, 1994.

**15A NCAC 18C .1525 REPORTING
REQUIREMENTS**

(a) The requirements of this Rule shall apply to all public water systems. The provisions of 40 C.F.R. 141.31 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

(b) When a certified laboratory analyzes a compliance sample for a supplier of water, the certified laboratory shall report the results to both the Department and to the supplier of water or his designated representative within the required periods as set forth in 40 C.F.R. 141.31. The laboratory reporting to the State shall include analytical results for any MCL exceedence within the timeframes applicable to the system owner. Reporting shall be in a format, to include electronic reporting, provided by the Department and shall contain all required information. Should a certified laboratory fail to properly report a compliance sample result, it shall be the responsibility of the supplier of water to report results to the Department as required by this Rule.

History Note: Authority G.S. 130A-315;
Eff. September 1, 1979;
Amended Eff. February 1, 1987; October 1, 1984; March 31,
1981; March 31, 1980;
Transferred and Recodified from 10 NCAC 10D .1631 Eff.
April 4, 1990;
Amended Eff. August 1, 2002; January 1, 1991.

**15A NCAC 18C .2003 FILTER BACKWASH
RECYCLING RULE**

(a) The requirements of this Rule shall apply to a public water system that uses a surface water source or a groundwater source under the direct influence of surface water. The provisions of 40 C.F.R. 141.73 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's

homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

(b) The requirements of this Rule shall apply to a public water system that uses a surface water source or a groundwater source under the direct influence of surface water, uses direct or conventional filtration processes and recycles spent filter backwash water, sludge thickener supernatant, or liquids from dewatering processes. The provisions of 40 C.F.R. 141.76 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's homepage at <http://www.epa.gov/OGWDW/>. Any dates set forth in the federal rule shall be applicable.

History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.73; Eff. January 1, 1991; Amended Eff. August 1, 2002.

15A NCAC 18D .0301 APPLICATION FOR EXAM

(a) All applicants for regular exams shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

(b) Applications for certification must be submitted to the Board at least 30 days prior to the date of the examination.

(c) The application shall include the following information:

- (1) biographical data;
- (2) place of employment;
- (3) education;
- (4) work experience; and
- (5) date and location of exam.

(d) The applicant shall certify that the information given is correct to the best of his/her knowledge. In addition, the applicant's supervisor shall certify that he/she has reviewed the application and recommends that the applicant be considered for certification by the Board.

(e) Applicants are required to take the examination at the place and date specified on the application.

History Note: Authority G.S. 90A-21(c); 90A-24; Eff. February 1, 1976; Amended Eff. September 1, 1977; Readopted Eff. March 1, 1979; Amended Eff. February 1, 2002; August 3, 1992; September 1, 1990.

15A NCAC 18D .0302 APPLICATION FOR RECIPROCITY

(a) All applicants for reciprocity shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

(b) The application shall include the following information:

- (1) biographical data;
- (2) the grade of certificate held;
- (3) the name of the state that issued the certificate;
- (4) the name of the last employer in that state; and
- (5) a record of the applicant's previous employment.

History Note: Authority G.S. 90A-21(c); 90A-24; Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. February 1, 2002; September 1, 1990.

15A NCAC 18D .0303 APPLICATION FOR TEMPORARY CERTIFICATE

(a) All applicants for a temporary certificate shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

(b) The application shall include the following information:

- (1) Name and address of operator requesting temporary certificate;
- (2) Certification that the person applying for the certificate is employed by the utility;
- (3) Name of treatment facility;
- (4) Date the person was employed by the facility;
- (5) Signature of the town official or utility owner; and
- (6) The date of the application.

History Note: Authority G.S. 90A-21(c); 90A-24; Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. February 1, 2002; September 1, 1990.

15A NCAC 18D .0501 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Water Treatment Facility Operators Board of Certification (hereinafter referred to as the Board) shall make his request in a petition addressed to: Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

(b) The petition shall contain the following information:

- (1) either 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) the effect of proposed rules on existing rules or orders;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices in the area involved, 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 Board shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Board shall consider all the contents of the submitted petition, plus any additional information it deems relevant.

History Note: Authority G.S. 150B-20; 90A-21(c); Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. February 1, 2002; September 1, 1990.

15A NCAC 18D .0508 DECLARATORY RULINGS

(a) The Board shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to: Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

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

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

(c) The Board shall notify in writing the petitioner of the Chairman's decision to refuse issue a declaratory ruling and state the reasons. The Chairman may refuse to consider a request for 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) unless the rule making record evidences a failure by the agency to consider specified relevant factors;
- (3) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
- (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(d) Where a declaratory ruling is deemed appropriate, the Board 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 procedures as may be deemed appropriate, in the discretion of the chairman, in the particular case.

(f) The chairman 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.

History Note: Authority G.S. 150B-4; Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. February 1, 2002; September 1, 1990;

January 1, 1980.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02B .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules are established for the preparation, execution and administration of contracts over ten thousand dollars (\$10,000.00) for Asbestos Inspections, Asbestos Removals, and Structure Clearings by consultant firms.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) 23 CFR 710 FHWA right of way regulations which contain some contracting requirements.
- (2) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Contract Administrator at a cost of five dollars (\$5.00) for each document.

(c) Contracts on Specific Projects.

- (1) The Department may continue to let individual contracts on specific projects for inspections, abatements or structure clearings to a responsible bidder after publicly advertising for bids.
- (2) If the Manager of the Right of Way Branch determines that the project schedule does not allow time for public advertising the Department shall solicit at least three informal bids and may award a contract to the lowest responding qualified bidder.

(d) Retainer Contracts. In order to provide a method of accomplishing the required asbestos inspections, asbestos abatements, and structure clearings when the Right of Way Branch Manager determines that the project schedule does not provide enough time for a specific project contract to be put in place by the procedure in Subparagraphs (c)(1) and (c)(2) of this Rule, the Department may also contract with private firms as specified in Paragraphs (d) through (u) of this Rule.

(e) Due to the diversity of contract types, some portions of these Rules may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of these Rules are justified. Guidelines for determining if a waiver is justified shall include:

- (1) The amount of time the Department has to secure bids for a specific project under Subparagraphs (c)(1) and (c)(2) of this Rule.
- (2) The willingness of contractors retained under this Rule to perform work on a specific project. Any waiver from these Rules shall require approval of FHWA if Federal Funds are involved in the project.

(f) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Contract Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(g) Application. These Rules shall apply to all Retainer contracts for Asbestos Inspections, Asbestos Removals, and Structure Clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(h) Selection Committee. The Committee shall consist of the Right of Way Branch Manager or his designated Representative,

the State Right of Way Agent or his designated Representative, and at least one employee of the Department's Preconstruction Unit or Construction Unit Professional Staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his Representative.

(i) Selection of Firms. On a yearly basis (or more often if needed), the Department shall advertise for firms interested in performing Asbestos Inspections, Asbestos Removals, and Structure Clearings for the North Carolina Department of Transportation. The advertisement shall be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Health and Human Services, Division of Public Health Asbestos Hazard Management Program to perform Asbestos Inspections, copies of the firms latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including inspection, abatement, and structure clearings;
- (2) Number of staff available to perform the services required by the contract including inspection, abatement, and structure clearings;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;
- (6) Equipment necessary to perform the required services. The Selection Committee shall, on the basis of the criteria of Subparagraphs (1) - (6) of this Paragraph, select a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to handle the anticipated work over the next year. The number of firms shall be determined prior to advertising.

(j) Request for Proposals. Each Selected Firm shall be requested by the Contract Administrator to submit a Proposal which provides for:

- (1) Unit Cost for inspection and lab analysis, if any;
 - (A) per unit of less than 800 SF (minimum of 4 samples - to include out buildings, signs, barns, etc.);
 - (B) per unit of 800 SF to 2000 SF (maximum of 8 samples);
 - (C) per unit of 2000 SF to 5000 SF (maximum of 10 samples);
 - (D) per unit of 5000 SF or more (subject to adjustment if approved by the Department); and

- (2) a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a per unit abatement price - to a maximum of 200 SF or LF;
 - (A) Non-Friable Asbestos;
 - (i) per square foot of asbestos materials;
 - (ii) per linear foot of asbestos materials
 - (B) Friable Asbestos;
 - (i) per square foot of asbestos materials;
 - (ii) per linear foot of asbestos materials; and
- (4) a per unit cost for general clearings;
 - (A) Residential (up to 1,500 SF);
 - (i) per square foot - frame;
 - (ii) per square foot - masonry or other;
 - (B) Commercial (up to 3,000 SF);
 - (i) per square foot - frame;
 - (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a Retainer Contract for the term of one year and a maximum dollar amount of one million dollars (\$1,000,000) each with a sufficient number of firms on a Statewide basis to perform Asbestos Inspections, Asbestos Removal, and Structure Clearing on an as needed basis.

(k) Negotiation of Contracts. Upon receipt of the Proposals from the Selected Firms negotiations shall be initiated with the Selected Firms to produce a Retainer Contract with a term of one year and maximum amount of up to one million dollars (\$1,000,000). Should negotiations fail to reach successful execution of a contract with any Selected Firm, the negotiations shall be terminated and shall be initiated with an Alternate Firm. The object of the negotiations shall be to establish an acceptable per unit cost for any Asbestos Investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements. When agreement is reached on the unit costs, a Retainer Contract shall be executed with a sufficient number of Selected Firms to perform the anticipated work for the term of one year and shall provide for the scope of services enumerated in this Rule.

(l) Board of Transportation Approval and Execution of Contract. After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the Consultant Coordinator. The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator. The Right of Way Contract Administrator shall transmit one original contract to the contracting firm and shall retain one in the Central Office. The Contract Administrator shall provide a copy of the contract to the DOT Fiscal Section.

(m) Request for Specific Job Estimates. When the Department acquires Structures that require inspection for asbestos, two

firms who have executed the Retainer Contract will be contacted by the Right of Way Branch, given the location of the Structure(s), and requested to submit a Work Assignment Cost Estimate. The first Firm's estimate shall cover Inspections, both preliminary and final; and the second Firm's Estimate shall be for Abatements, if any, and Clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor shall be reviewed by Right of Way Staff Personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the Retainer Contract; and
- (2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the Contract Administrator shall authorize the work by the Firm under the Retainer Contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the Firm, an Estimate will be requested from another Firm on Retainer Contract and evaluated in the same manner until agreement is reached and work can be authorized. In the event that an agreement cannot be reached through negotiations with any firm on Retainer Contract, then the Department shall terminate negotiations and advertise for specific project bids under the provisions of Subparagraph(b)(2) of this Rule.

(n) Sub-Contracting. A Contracting Firm may sublet portions of the work proposed in the contract only upon approval of the Contract Administrator. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(o) Methods of Compensation. Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(p) Administration of Contract. The administration of the contract shall be the responsibility of the Contract Administrator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(q) Contract Amendments. Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment. The Department may, with the concurrence of the Manager of Right of Way, delete any clearing item.

(r) Monitoring of Work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm shall be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(s) Final Payment. When it is determined that the work is complete, the final invoice shall be approved by the Contract Administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated

by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensations or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 30 days after receipt of final payment. The Department shall render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(t) Termination of Contracts. All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

(u) Quarterly Report. A quarterly report on the use of outside firms shall be submitted to the Right of Way Branch Manager. This report shall be prepared by the Contract Administrator and shall be in chart/graphic or other appropriate format. Copies shall be provided to the State Highway Administrator and the Assistant State Highway Administrator.

History Note: Authority G.S. 130A-444; 136-28.1(f); Eff. November 1, 1991; Temporary Amendment Eff. May 4, 1992 for a Period of 180 Days to Expire on October 31, 1992; Amended Eff. August 1, 2002; November 2, 1992.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21 NCAC 18B .0204 EXAMINATIONS

- (a) All qualifying examinations administered by the Board for each license classification shall be written or computer-based examinations and must be taken personally by the approved applicant.
- (b) Approved applicants shall be provided a notice of examination eligibility that shall be valid for a period of six months and for a single administration of the qualifying examination. Upon receipt of a notice of examination eligibility from the Board, the applicant shall schedule the examination by contacting the Board or the authorized testing service. The applicant will be scheduled for the examination and will be notified of the date, time and place.

History Note: Authority GS 87-42; 87-43.3; 87-43.4; Eff. October 31, 1988; Temporary Amendment Eff. August 31, 2001; Amended Eff. July 18, 2002.

21 NCAC 18B .0207 APPLICATION FOR REGULAR EXAMINATIONS

- (a) To be eligible for consideration, applications for regular examinations must be filed with the Board on a form furnished by the Board.
- (b) The Board's staff shall determine whether applications are filed in accordance with Rule .0210 of this Section, process all applications, and return all applications not duly filed.

History Note: Authority G.S. 87-42; 87-43.3; 87-43.4; Eff. October 1, 1988; Amended Eff. February 1, 1996; Temporary Amendment Eff. August 31, 2001; Amended Eff. July 18, 2002.

21 NCAC 18B .0209 FEES

- (a) The examination fee for regular qualifying examinations is seventy-five dollars (\$75.00) for all classifications.
- (b) The examination fee for a specially-arranged qualifying examination is two-hundred dollars (\$200.00) for all classifications.
- (c) The fee for a supervised review of a failed examination with the Board or staff assistance is twenty-five dollars (\$25.00) for all classifications.
- (d) The examination fees for regular or specially-arranged examinations in all classifications and the fees for examination reviews may be in the form of cash, check, money order, Visa or Mastercard made payable to the Board and must accompany the respective applications when filed with the Board.
- (e) Examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:
 - (1) an application is not filed as prescribed in Rule .0210 of this Section, in which case the examination fee shall be returned; or
 - (2) the applicant does not take the examination during the examination period applied for and files with the Board a written request for a refund, setting out extenuating circumstances. The Board shall refund the examination fee if it finds extenuating circumstances.
- (f) Examination review fees are non-refundable unless the applicant does not take the review and files with the Board a written request for a refund, setting out extenuating circumstance. The Board shall refund the fee if it finds extenuating circumstances.
- (g) Any fee retained by the Board shall not be creditable toward the payment of any future application of examination fee or the fee for an examination review.
- (h) Extenuating circumstances for the purposes of Paragraphs (e)(2) and (f) of this Rule shall be the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

History Note: Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44; Eff. October 1, 1988; Amended Eff. May 1, 1998; July 1, 1989; Temporary Amendment Eff. June 30, 2000; Temporary Amendment Eff. August 31, 2001; Amended Eff. July 18, 2002.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2004 REQUEST FOR HEARING

- (a) Any time an individual believes that individual's rights, duties, or privileges have been affected substantially by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual may submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request shall contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(d) A request for administrative hearing must be submitted to the Board's office within 60 days of receipt of notice of the action taken by the Board which is challenged. The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 46 .2005, a hearing shall be scheduled.

History Note: Authority G.S. 90-85.6; 150B-38; Eff. September 1, 1988; Amended Eff. August 1, 2002.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

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. This additional fee shall be no more than the fee set by the private testing agency. 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) 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.

History Note: Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

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 for which renewal licensure/certification is sought, continuing education consisting of at least fourteen classroom hours of instruction must be taken. Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .Rule 0204(a) must, within the immediately preceding licensing/certification period for which renewal licensure/certification is sought, 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, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, 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 shall not carry over into the subsequent years any continuing education credit.

(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 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(e) 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 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 real estate appraiser may receive continuing education credit by taking any of the residential Board-approved precertification courses or precertification courses or their approved equivalents. The precertification 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 precertification 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.

History Note: Authority G. S. 93E-1-7(a), (b); 93E-1-8(a), 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

21 NCAC 57A .0208 REPLACEMENT REGISTRATION, LICENSE AND CERTIFICATE FEES

A trainee, licensee or certificate holder may, by paying a five dollar (\$5.00) fee to the Board, obtain a duplicate trainee registration, appraiser license or certificate or pocket card to replace an original registration, license, certificate or pocket card which has been lost, damaged or destroyed or if the name of the trainee, licensee or certificate holder has been lawfully changed. The Board, at its discretion, may require a trainee, licensee or certificate holder requesting a duplicate registration, license or certificate to submit an affidavit stating the reason for the request.

History Note: Authority G. S. 93E-1-7(d); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

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 upon a Board form. 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.

History Note: Authority G.S. 93E-1-10; 93E-1-11(d); Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 a notarized application with the Board.

(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 Rule .0202(c) of this Section.

(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) of 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 estate 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.

History Note: Authority G.S. 93E-1-9(c),(d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

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 shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants shall 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.

History Note: Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

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 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.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

21 NCACC 57A .0406 BUSINESS PRACTICES

Each trainee or appraiser who has an ownership interest in an appraisal firm must assure that:

- (1) 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.

History Note: Authority G.S. 93E-1-3(b); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

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 incorporated by reference. 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.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002; April 1, 1999.

21 NCAC 57B .0101 REGISTERED TRAINEE, AND LICENSED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete 90 hours of prelicensing 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); and
- (3) A minimum of 30 hours in Applied Residential Property Valuation (R-3).

(b) Effective January 1, 2003, each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete 90 hours of prelicensing 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)

(c) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with these Rules. These courses must be commenced and completed sequentially in the order listed and within the five-year period immediately preceding the date when application for registration, licensure or certification is made to the Board.

History Note: Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 worktable space for each student that contains sufficient area 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.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

21 NCAC 57B .0209 CERTIFICATION OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion must be on a document bearing the letterhead or insignia of the school or course sponsor and must have the signature or signature stamp, which must be in an ink color other than black, of the school or course sponsor director.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 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.

History Note: Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 Paragraphs (c) and (d) of Rule .0303 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 10 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 shall not be included in the credit hours.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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.

(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.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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. Applications for renewal that are complete and that are received between June 1 and June 30 will be processed after processing applications received by the due date. 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.

History Note: Authority G.S. 93E-1-8(a), (b); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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. Applications for renewal that are complete and that are received between June 1 and June 30 will be processed after processing applications received by the due date. 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.

History Note: Authority G.S. 93E-1-8(a), (b); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification and;
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught;

- (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught; or
 - (iv) an equivalent combination of such education and experience.
- (4) 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 shall 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.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (5) of this Rule, shall be physically present in the classroom at all times and who shall 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 shall 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 Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.
- (6) 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 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 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.

- (7) 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.
- (8) 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.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 and 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 and must send the original course completion certificate with the request.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

21 NCAC 57B .0605 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor shall 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 shall be three and one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, shall be 30 hours. Continuing education credit hours shall not be carried forward into subsequent licensing periods.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 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.
- (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 sufficient worktable space 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 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 Rule .0306(c) of this Section.
- (9) Upon the request of the Board, course sponsors shall 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.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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, and must bear the 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.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

21 NCAC 57B .0608 SPONSOR REPORTING OF CONTINUING EDUCATION CREDIT

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.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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. Applications for renewal that are complete and that are received between June 1 and June 30 will be processed after processing applications received by the due date. 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.

History Note: Authority G.S. 93E-1-8(c), (d); 93E-1-10; Eff. July 1, 1994;

Amended Eff. August 1, 2002.

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.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

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 shall be granted only by a majority of the Board. The granting of a continuance is wholly discretionary.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

21 NCAC 57C .0302 PRESIDING OFFICER

The presiding officer at any rule-making hearing shall have 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.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. August 1, 2002.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction shall be in writing. Every agreement for brokerage

services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," review it with him or her, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker or salesperson shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.

(d) A real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or

subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;

- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salespersons so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

History Note: Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; July 1, 1997; August 1, 1996; July 1, 1995.

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow

account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include but not be limited to:

- (1) bank statements.
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall clearly identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks provided that such images are legible reproductions of the front and back of the original instruments with no more than four instruments per page and no smaller images than 2.25 x 5.0 inches, and provided that the licensee's bank retains the original checks on file for a period of at least five years and

- (3) makes them available to the licensee and the Commission upon request. deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency.
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are

- accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.
- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.
- (7) copies of contracts, leases and management agreements.
- (8) closing statements and property management statements.
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association.
- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

- (f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.
- (g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition and or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through G.S. 56 and G.S. 42A-18.
- (h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than 10 days prior to the anticipated settlement

date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account or accounts dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheet to the corresponding property or property owner ledger sheet.

History Note: Authority G.S. 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

21 NCAC 58A .0108 RETENTION OF RECORDS

Licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated prior to its successful conclusion. The licensee shall retain such records for three years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements and any other records pertaining to real estate transactions. All such records shall be made available for inspection by the Commission or its authorized representatives without prior notice.

History Note: Authority G.S. 93A-3(c);

Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. September 1, 2002; August 1, 1998; February 1, 1989; February 1, 1988.

21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for any party, without full disclosure to such party; provided, however, that nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to such Act.

(c) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of salespersons, and similar matters.

(d) Except as provided in (e) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent

and their addresses, the property and dates of the tenancy, and the amount paid.

History Note: Authority G.S. 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. September 1, 2002; August 1, 2000; August 1, 1998; April 1, 1997; July 1, 1989; November 1, 1987.

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office or branch office. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more brokers or salespersons affiliated with him or her in the real estate business. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and

(8) the proper supervision of all brokers and salespersons employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continually maintain his or her license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm which demonstrates on a form prescribed by the Commission that it has qualified for licensure solely for the purpose of receiving compensation for brokerage services furnished by its principal broker through another firm, and that no person is affiliated with it other than its principal broker, shall not be required to designate a broker-in-charge.

(f) Every broker-in-charge shall complete the Commission's broker-in-charge course at least once every five years following the effective date of this Rule. Every broker designated as a broker-in-charge after October 1, 2000 shall complete the Commission's broker-in-charge course within 120 days following designation and at least once every five years thereafter for so long as he or she remains broker-in-charge. If a broker who is a designated broker-in-charge fails to complete the broker-in-charge course within the prescribed time period, the broker-in-charge status of that broker shall be immediately terminated, and the broker must complete the broker-in-charge course before he or she may again be designated as a broker-in-charge.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4; Eff. September 1, 1983; Amended Eff. September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.

21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of forty dollars (\$40.00).

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(d) Any person or firm which engages in the business of a real estate broker or salesperson while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A.

History Note: Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6;
Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. September 1, 2002; April 1, 1997; July 1, 1996;
August 1, 1995; July 1, 1994; February 1, 1991;
February 1, 1989.

21 NCAC 58A .0507 PAYMENT OF FEES

Checks, credit cards, and other forms of payment given the Commission for fees due which are returned unpaid shall be considered cause for license denial, suspension, or revocation.

History Note: Authority G.S. 93A-3(c); 93A-4(c),(d); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. September 1, 2002; May 1, 1984.

21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S CHARACTER IS IN QUESTION

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite truthfulness, honesty, and integrity. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or salesperson or for licensure or approval as a prelicensing or continuing education instructor, director, coordinator, school or sponsor. When the applicant is an entity, it shall be directed and controlled by persons who are truthful and honest and who possess integrity.

(b) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be 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 letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be

considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3.

(c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

History Note: Authority G.S. 93A-4;
Eff. September 1, 2002.

21 NCAC 58C .0216 CHANGES DURING THE LICENSING PERIOD

Schools shall obtain advance approval from the Commission for any changes to be made during the licensing period with respect to program structuring, course content, course completion standards, textbooks, facilities, directors, policies and procedures, publications or any other matter subject to regulation by the Commission. Schools are limited to one change in classroom facilities within the same county during any licensing period. In the event a school desires to make a second change in classroom facilities within the same county, or to relocate such facilities to another county, during any licensing period, it will be necessary for the owner to make application for an original license for the new location.

History Note: Authority G.S. 93A-4(a),(d); 93A-33;
Eff. October 1, 1980;
Transferred and Recodified from 21 NCAC 58A .1316 Eff. November 27, 1989;
Amended Eff. September 1, 2002; February 1, 1989;
September 1, 1984.

21 NCAC 58C .0302 PROGRAM STRUCTURING

(a) Real estate pre-licensing education programs shall include a salesperson course consisting of at least 67 classroom hours of instruction and a broker course consisting of at least 60 classroom hours of instruction.

(b) Completion of the North Carolina salesperson course within the previous three years, possession of a current North Carolina salesperson license, or possession of a current salesperson or broker license in another state shall be a prerequisite for enrollment in the broker course.

History Note: Authority G.S. 93A-4(a),(d); 93A-33;
Eff. September 1, 1979;
Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983; January 1, 1981;
Transferred and Recodified from 21 NCAC 58A .1102 Eff. November 27, 1989;
Temporary Amendment Eff. July 5, 1990, For a Period of 180 Days to Expire on January 1, 1991;
Amended Eff. January 1, 1991; February 1, 1991;
Temporary Amendment Eff. April 5, 1991, For a Period of 180 Days to Expire on October 2, 1991;
Temporary Amendment Eff. May 9, 1991, For a Period of 146 Days to Expire on October 2, 1991;
Amended Eff. September 1, 2002; October 1, 2000;
July 1, 1994; October 1, 1991.

21 NCAC 58E .0406 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall include students' names, students' license numbers, course date, sponsor and course codes and course information presented in the format prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information in such reports. Such reports shall be transmitted electronically via the Internet, provided on a computer disk, or provided in some other manner acceptable to the Commission that permits the Commission to electronically post the information on course completion to the Commission's computer records. Sponsors must submit these reports to the Commission in a manner that will assure receipt by the Commission within fifteen calendar days following the course, but in no case later than June 15 of any approval period for courses conducted during that approval period, provided that the last reporting date shall be June 20 of any approval period for distance education courses where students registered for the courses between June 1 and June 10, inclusive of that approval period.

(b) At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form provided by the Commission. Sponsors must submit the completed evaluation forms to the Commission with the reports verifying completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his or her proof of having completed the course.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses on computer disk or by electronic means, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing

education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar (\$5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course, but not later than the last course reporting dates for an approval period specified in Paragraph (a) of this Rule. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

History Note: Authority G.S. 93A-3(c); 93A-4A; Eff. July 1, 1994; Amended Eff. September 1, 2002; October 1, 2000; July 1, 1996; July 1, 1995.

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

21 NCAC 64 .0211 NAME AND QUALIFICATIONS IDENTIFICATION BADGES

(a) Persons licensed or registered under N.C.G.S. 90-292. et seq. shall be required to wear an identification badge or other form of identification displaying the name of the person and license or registration qualification held by such person, in type readable from a distance of three feet, as required by the provisions of G.S. 90-640.

(b) A licensed or registered person may be exempted from this requirement either partially or completely if such person, or such person's employer, shows to the Board of Examiners that the person's or patient's safety or some therapeutic concern requires that an identification badge not be worn or that only a first name be displayed.

History Note: Authority G.S. 90-304(a)(3); 90-640; Eff. August 1, 2002.

TITLE 25 - OFFICE OF STATE PERSONNEL

25 NCAC 01B .0438 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY THE COMMISSION

The Commission shall award the reimbursement of legal fees and costs as follows:

- (1) Attorney fees incurred in connection with the contested case proceeding before the Commission and with any successful appeal of a Commission decision in the General Courts of Justice at a reasonable hourly rate based on the prevailing market rate but at a rate no higher than the fee agreement between the parties;
- (2) Law Clerk, Paralegal, or Legal Assistant fees at a reasonable hourly rate based on the

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- (3) prevailing market rate but at a rate no higher than the fee agreement between the parties;
Travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate;
- (4) Costs at the actual cost.

Fees shall not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity,

accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

*History Note: Authority G.S. 126-4(11);
Eff. March 1, 1996;
Temporary Amendment Eff. May 11, 2001;
Amended Eff. August 1, 2002.*

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, March 21, 2002, 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, March 15, 2002 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

Thomas Hilliard, III
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

Paul Powell - Chairman
Jennie J. Hayman Vice - Chairman
Dr. Walter Futch
Jeffrey P. Gray
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

March 21, 2002
April 18, 2002
May 16, 2002
June 20, 2002

Commission Review/Administrative Rules

Log of Filings (Log #185)

January 20, 2002 through February 20, 2002

AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE

Adoption by Reference	2 NCAC 9G .0101	Amend
Certification	2 NCAC 9L .1101	Repeal
Definitions	2 NCAC 9L .1102	Amend
Certification Options	2 NCAC 9L .1103	Amend
Recertification	2 NCAC 9L .1106	Repeal
Term of Certification	2 NCAC 9L .1108	Amend
Continuing Certification	2 NCAC 9L .1109	Repeal
Expiration of Certification	2 NCAC 9L .1110	Amend

AGRICULTURE, DEPARTMENT OF

Adoption by Reference	2 NCAC 38 .0701	Amend
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AGRICULTURE, DEPARTMENT OF

Adoption by Reference	2 NCAC 39 .0101	Adopt
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AGRICULTURE, DEPARTMENT OF

Labeling of Dispensing Devices	2 NCAC 42 .0401	Amend
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AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE

Importation Requirements Wild Animals	2 NCAC 52B .0212	Amend
Importation Requirements Cervidae	2 NCAC 52B .0213	Adopt
Intrastate Requirements Wild Animals	2 NCAC 52C .0701	Amend

DEPARTMENT OF CORRECTIONS

General	5 NCAC 2C .0901	Repeal
Mail Records	5 NCAC 2D .0310	Repeal
General	5 NCAC 2D .0501	Repeal
Authorization	5 NCAC 2D .0503	Repeal
Responsibility	5 NCAC 2D .0802	Repeal
General	5 NCAC 2E .0101	Repeal
Menu	5 NCAC 2E .0102	Repeal
Statutory Responsibility	5 NCAC 2E .0201	Repeal
Hospitalization	5 NCAC 2E .0210	Repeal
Initial Health Care Screening	5 NCAC 2E .0221	Repeal
Dental Services	5 NCAC 2E .0223	Repeal
Health Care Orientation	5 NCAC 2E .0226	Repeal
Sick Call	5 NCAC 2E .0227	Repeal

RULES REVIEW COMMISSION

Inmates in Disciplinary Segregation	5 NCAC 2E .0228	Repeal
Administrative Transfers	5 NCAC 2E .0234	Repeal
Purpose	5 NCAC 2E .0701	Repeal
General	5 NCAC 2E .1301	Repeal
Mandatory Education Program	5 NCAC 2E .1401	Repeal
Criteria for Mandatory Participation	5 NCAC 2E .1402	Repeal
Identification of Inmates with Educational Defic	5 NCAC 2E .1403	Repeal
Assignment of Inmates to ABE/GED Programs	5 NCAC 2E .1404	Repeal
Disciplinary Action	5 NCAC 2E .1406	Repeal
Searches of Inmates	5 NCAC 2F .0103	Repeal
Searches of Employees	5 NCAC 2F .0105	Repeal
Complete Facility Search	5 NCAC 2F .0106	Repeal
Disposition of Contraband	5 NCAC 2F .0107	Repeal
Prohibited Organizations	5 NCAC 2F .0208	Repeal
General	5 NCAC 2F .0401	Repeal
Approving Authority	5 NCAC 2F .0402	Repeal
Emergency Leave	5 NCAC 2F .0403	Repeal
Disposition of Unauthorized Personal Property	5 NCAC 2F .0504	Repeal
Return of Personal Property Upon Release	5 NCAC 2F .0506	Repeal
Purpose	5 NCAC 2F .1503	Repeal
Policy	5 NCAC 2F .1504	Repeal
Procedures	5 NCAC 2F .1505	Repeal
Medical Response	5 NCAC 2F .1506	Repeal
Reporting Procedures	5 NCAC 2F .1507	Repeal
Purpose	5 NCAC 2F .2001	Repeal
Supervision	5 NCAC 2F .2007	Repeal
Inmate Misuse of Plumbing Facilities	5 NCAC 2F .2101	Repeal
Design and Evaluation	5 NCAC 2F .2304	Repeal
Purpose	5 NCAC 2F .2501	Repeal
Enforcement	5 NCAC 2F .2504	Repeal
Purpose	5 NCAC 2F .2601	Repeal
Responsibility	5 NCAC 2F .2602	Repeal
Legal Materials	5 NCAC 2G .0208	Repeal
Submission of Grievances	5 NCAC 2G .0304	Repeal
Rejection of Grievances	5 NCAC 2G .0306	Repeal
Emergency Grievances	5 NCAC 2G .0308	Repeal
Confidential Grievances	5 NCAC 2G .0309	Repeal
Transfers During Grievance Process	5 NCAC 2G .0311	Repeal
Record Maintenance and Confidentiality	5 NCAC 2G .0312	Repeal
Purpose	5 NCAC 2G .0401	Repeal
General	5 NCAC 2H .0101	Repeal
Membership	5 NCAC 2H .0102	Repeal
Islamic Diet	5 NCAC 2H .0104	Repeal
Approved Religious Property	5 NCAC 2H .0105	Repeal
DHHS/DIVISION OF VOCATIONAL REHABILITATION SERVICES		
Definitions	10 NCAC 20A .0102	Amend
Vocational and other Training	10 NCAC 20C .0304	Amend
Occupational Licenses, Tools, Equipment, and Supp	10 NCAC 20C .0314	Amend
DHHS/SOCIAL SERVICES COMMISSION		
Vehicle Determination	10 NCAC 30 .0218	Adopt
DHHS		
Day Care Services for Adults	10 NCAC 35E .0303	Amend
DHHS/SOCIAL SERVICES COMMISSION		
Purpose	10 NCAC 41F .0401	Adopt
Method of Mutual Home Assessment	10 NCAC 41F .0402	Amend
Information to be Given and Obtained	10 NCAC 41F .0403	Repeal
Assessment Process	10 NCAC 41F .0404	Amend
Use of References	10 NCAC 41F .0405	Amend
Periodic Reassessment of Home	10 NCAC 41F .0406	Amend
Agency Foster Parent Agreement	10 NCAC 41F .0407	Amend
License Application	10 NCAC 41F .0501	Amend

RULES REVIEW COMMISSION

Foster Parents' Agreement	10 NCAC 41F .0502	Amend
Department of Social Services	10 NCAC 41F .0504	Amend
Definitions	10 NCAC 41F .0601	Amend
Family Foster Home	10 NCAC 41F .0602	Amend
Client Rights and Care of Children	10 NCAC 41F .0701	Amend
Criteria for the Foster Family	10 NCAC 41F .0702	Amend
Location and Surroundings	10 NCAC 41F .0703	Repeal
Physical Facility	10 NCAC 41F .0704	Amend
Licensing Compliance Visits	10 NCAC 41F .0705	Amend
Criminal Histories	10 NCAC 41F .0707	Amend
Responsibility	10 NCAC 41F .0801	Amend
New Licenses	10 NCAC 41F .0802	Amend
Renewal	10 NCAC 41F .0803	Amend
90 Day Grace Period	10 NCAC 41F .0804	Repeal
Change in Factual Information on the License	10 NCAC 41F .0805	Amend
Termination	10 NCAC 41F .0806	Amend
Revocation	10 NCAC 41F .0807	Amend
Licensing Authority	10 NCAC 41F .0808	Amend
Kinds of Licenses	10 NCAC 41F .0809	Amend
Out-of-State Facilities	10 NCAC 41F .0810	Amend
Reports of Abuse and Neglect	10 NCAC 41F .0811	Amend
Criminal History Checks	10 NCAC 41F .0813	Amend
Training Requirements	10 NCAC 41F .0814	Amend
Scope	10 NCAC 41N .0101	Amend
Licensure	10 NCAC 41N .0102	Amend
Responsibilities of the Governing Body	10 NCAC 41N .0203	Amend
Responsibility to Licensing	10 NCAC 41N .0209	Amend
Staff	10 NCAC 41N .0211	Amend
Confidentiality	10 NCAC 41N .0212	Adopt
Client Rights	10 NCAC 41N .0213	Adopt
Grievance Procedures	10 NCAC 41N .0214	Adopt
Searches	10 NCAC 41N .0215	Adopt
Medication Administration	10 NCAC 41N .0216	Adopt
Home Schooling	10 NCAC 41N .0217	Adopt
Scope	10 NCAC 41O .0101	Adopt
Organization and Administration	10 NCAC 41O .0102	Amend
Assessment and Treatment/Habilitation or Service	10 NCAC 41O .0206	Adopt
Client Records for Children Receiving Mental Health	10 NCAC 41O .0207	Adopt
Medication Requirements	10 NCAC 41O .0208	Adopt
Behavior Management and Discipline	10 NCAC 41O .0209	Adopt
DHHS		
Governing Body	10 NCAC 42E .0901	Amend
Transportation	10 NCAC 42E .1103	Amend
Definitions	10 NCAC 42Z .0502	Amend
Transportation	10 NCAC 42Z .0804	Amend
DEPARTMENT OF INSURANCE/N C FIRE AND RESCUE COMMISSION		
Certification of Eligibility	11 NCAC 5A .0302	Amend
DEPARTMENT OF INSURANCE/NC CODE OFFICIALS		
QUALIFICATIONS BOARD/HOME INSPECTOR LICENSURE BOARD		
Definitions	11 NCAC 8 .1401	Adopt
CE Courses-General	11 NCAC 8 .1402	Adopt
Sponsor Advance Approval Required	11 NCAC 8 .1403	Adopt
Sponsor Name	11 NCAC 8 .1404	Adopt
Accreditation Standards	11 NCAC 8 .1405	Adopt
CE Course Subject Matter	11 NCAC 8 .1406	Adopt
Scheduling	11 NCAC 8 .1407	Adopt
Notice of Scheduled Courses	11 NCAC 8 .1408	Adopt
Advertising and Providing Course Information	11 NCAC 8 .1409	Adopt
Solicitation of Students	11 NCAC 8 .1410	Adopt
Cancellation and Refund Policies	11 NCAC 8 .1411	Adopt
Denial or Withdrawal of Approval of Course or Cour	11 NCAC 8 .1412	Adopt

RULES REVIEW COMMISSION

Renewal of Course and Sponsor Approval	11 NCAC 8 .1413	Adopt
Sponsor Changes during Approval Period	11 NCAC 8 .1414	Adopt
CE Requirements	11 NCAC 8 .1415	Adopt
Continuing Education Coordinator	11 NCAC 8 .1416	Adopt
Monitoring Attendance	11 NCAC 8 .1417	Adopt
Instructor Requirements	11 NCAC 8 .1418	Adopt
Student Participation Standards	11 NCAC 8 .1419	Adopt
Student Fee for CE Courses	11 NCAC 8 .1420	Adopt
Minimum Class Size	11 NCAC 8 .1421	Adopt
Classes Open to All Licensees	11 NCAC 8 .1422	Adopt
Classroom Facilities	11 NCAC 8 .1423	Adopt
Student Check-In	11 NCAC 8 .1424	Adopt
Accommodations for Persons with Disabilities	11 NCAC 8 .1425	Adopt
Course Completion Reporting	11 NCAC 8 .1426	Adopt
Retention of Course Records	11 NCAC 8 .1427	Adopt
Request for Video of an Elective Course	11 NCAC 8 .1428	Adopt
Change in Sponsor Ownership	11 NCAC 8 .1429	Adopt
Course Monitors	11 NCAC 8 .1430	Adopt
Non-Resident Licensees and CE Credits	11 NCAC 8 .1431	Adopt
Non-Compliance	11 NCAC 8 .1432	Adopt
DEPARTMENT OF INSURANCE		
Filing Approval Life Accident and Health Forms	11 NCAC 12 .0307	Amend
Definitions	11 NCAC 12 .1002	Amend
Policy Practices and Provisions	11 NCAC 12 .1004	Amend
Required Disclosure Provisions	11 NCAC 12 .1006	Amend
Reserve Standards	11 NCAC 12 .1012	Amend
Loss Ratio	11 NCAC 12 .1013	Amend
Filing Requirement	11 NCAC 12 .1014	Amend
Standard Format Outline of Coverage	11 NCAC 12 .1015	Amend
Requirements for Advertising	11 NCAC 12 .1017	Amend
Standards for Marketing	11 NCAC 12 .1018	Amend
Non Forfeiture Benefit Requirements	11 NCAC 12 .1026	Amend
Required Disclosure of Rating Practices to Consum	11 NCAC 12 .1027	Adopt
Premium Rate Schedule Increases	11 NCAC 12 .1028	Adopt
Scope and Application	11 NCAC 12 .1029	Adopt
JUSTICE/CRIMINAL JUSTICE EDUCATION & TRAINING STANDARDS COMMISSION		
Purpose	12 NCAC 9D .0101	Amend
General Provisions	12 NCAC 9D .0102	Amend
Basic Law Enforcement Certificate	12 NCAC 9D .0103	Repeal
Intermediate Law Enforcement Certificate	12 NCAC 9D .0104	Amend
Advanced Law Enforcement Certificate	12 NCAC 9D .0105	Amend
Method of Application	12 NCAC 9D .0106	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Hiwassee River Basin	15 NCAC 2B .0302	Amend
French Broad River Basin	15 NCAC 2B .0304	Amend
Particulates from Wood Burning Indirect Heat	15 NCAC 2D .0504	Amend
Control of Ethylene Oxide Emissions	15 NCAC 2D .0538	Amend
Control of Particulate Emissions from Cotton Ginn	15 NCAC 2D .0542	Adopt
Bulk Gasoline Terminals	15 NCAC 2D .0927	Amend
Gasoline Truck Tanks and Vapor Collection	15 NCAC 2D .0932	Amend
Purpose and Scope	15 NCAC 2D .1201	Amend
Definitions	15 NCAC 2D .1202	Amend
Hazardous Waste Incinerators	15 NCAC 2D .1203	Amend
Sewage Sludge and Sludge Incinerators	15 NCAC 2D .1204	Amend
Municipal Waste Combustors	15 NCAC 2D .1205	Amend
Hospital, Medical, and Infectious Waste	15 NCAC 2D .1206	Amend
Other Incinerators	15 NCAC 2D .1208	Amend
Commercial and Industrial Solid Waste	15 NCAC 2D .1210	Adopt
Where to Obtain and File Permit Applications	15 NCAC 2Q .0104	Amend
Definitions	15 NCAC 2Q .0202	Amend
Exemptions	15 NCAC 2Q .0702	Amend

RULES REVIEW COMMISSION

Definitions	15 NCAC 2S .0102	Amend
Calculation of Full Time Equivalent Employment	15 NCAC 2S .0103	Adopt
Applicability	15 NCAC 2S .0201	Amend
Required Minimum Management Practices	15 NCAC 2S .0202	Amend
Filing	15 NCAC 2S .0301	Adopt
Other Potentially Responsible Parties	15 NCAC 2S .0302	Adopt
Prioritization Assessment	15 NCAC 2S .0401	Adopt
DENR/COASTAL RESOURCES COMMISSION		
Coastal Shorelines	15 NCAC 7H .0209	Amend
Vegetation Line Establishment	15 NCAC 7H .0305	Amend
Permit Fee	15 NCAC 7H .1703	Amend
Private Bulkheads Riprap and Piers Exempted	15 NCAC 7K .0203	Repeal
DENR/DIVISION OF FOREST RESOURCES		
Referrals and Limitations	15 NCAC 9C .0401	Amend
Technical Services	15 NCAC 9C .0402	Amend
Tree Seedlings Prices	15 NCAC 9C .0503	Amend
Custom Sale of Tree Seedlings	15 NCAC 9C .0507	Amend
Application for Tree Seedlings or Seed	15 NCAC 9C .0508	Amend
Payment for Tree Seedlings	15 NCAC 9C .0510	Amend
Forfeiture of Payment for Late Cancellation	15 NCAC 9C .0511	Amend
Disposition and Processing of Tree Seedlings	15 NCAC 9C .0512	Amend
Exchanged and Distribution of Clonal Material	15 NCAC 9C .0515	Amend
Storage Fees	15 NCAC 9C .0516	Amend
Hunting	15 NCAC 9C .0517	Adopt
Definition of Terms	15 NCAC 9C .0602	Amend
Fees for Services	15 NCAC 9C .0604	Amend
Contracts for Services	15 NCAC 9C .0605	Amend
Authority to Sub-Contract Custome Services	15 NCAC 9C .0606	Amend
Practices	15 NCAC 9C .0607	Amend
Administration of Program	15 NCAC 9C .0902	Amend
Approved Practices	15 NCAC 9C .0903	Amend
DENR/RADIATION PROTECTION COMMISSION		
Definitions	15 NCAC 11 .0104	Amend
Communications	15 NCAC 11 .0111	Amend
Incorporation by Reference	15 NCAC 11 .0117	Amend
Human Use by Individual Physicians	15 NCAC 11 .0320	Amend
Specific Licenses Groups of Diagnostic Uses	15 NCAC 11 .0321	Amend
Fee Amounts	15 NCAC 11 .1105	Amend
Definitions	15 NCAC 11 .1403	Amend
Application for Registration of Tanning Facilities	15 NCAC 11 .1405	Amend
Renewal of Certificate of Registration	15 NCAC 11 .1408	Amend
Report of Changes	15 NCAC 11 .1409	Amend
Denial Revocation Termination of Registration	15 NCAC 11 .1412	Amend
Warning Signs Required	15 NCAC 11 .1414	Amend
Equipment and Construction Requirements	15 NCAC 11 .1415	Amend
Protective Eyewear Required	15 NCAC 11 .1417	Amend
Records Reports and Operating Requirements	15 NCAC 11 .1418	Amend
Communications with the Agency Agency Address	15 NCAC 11 .1419	Amend
Reports and Installation	15 NCAC 11 .1422	Amend
Fees and Payments	15 NCAC 11 .1423	Amend
Planned Special Exposures	15 NCAC 11 .1608	Amend
Dose Equivalent to an Embryo/Fetus	15 NCAC 11 .1610	Amend
Surveys	15 NCAC 11 .1613	Amend
Monitoring of External and Internal Occupational	15 NCAC 11 .1614	Amend
Exceptions to Posting Requirements	15 NCAC 11 .1625	Amend
Procedures for Receiving and Opening Packages	15 NCAC 11 .1627	Amend
General Provisions for Records	15 NCAC 11 .1635	Amend
Records of Individual Monitoring Results	15 NCAC 11 .1640	Amend
EDUCATION, STATE BOARD OF		
Definitions	16 NCAC 6D .0101	Amend
End-of-Course Tests	16 NCAC 6D .0305	Amend

RULES REVIEW COMMISSION

Annual Performance Standards Grades K-12	16 NCAC 6G .0305	Amend
SECRETARY OF STATE		
Location and Hours	18 NCAC 5A .0101	Repeal
Administration and Function	18 NCAC 5A .0102	Repeal
Place of Filing	18 NCAC 5A .0201	Repeal
Contents of Documents Submitted for Filing	18 NCAC 5A .0202	Repeal
Forms	18 NCAC 5A .0203	Repeal
Fees	18 NCAC 5A .0204	Repeal
Continuations	18 NCAC 5A .0205	Repeal
Termination	18 NCAC 5A .0206	Repeal
Filing by Mail	18 NCAC 5A .0207	Repeal
Over the Counter Filings	18 NCAC 5A .0208	Repeal
Refunds	18 NCAC 5A .0209	Repeal
Request for Information by Mail	18 NCAC 5A .0301	Repeal
Preparation of the UCC-11 Form	18 NCAC 5A .0302	Repeal
Contents of Certified UCC-11 Form	18 NCAC 5A .0303	Repeal
Fees for Information from the Filing Officer	18 NCAC 5A .0305	Repeal
Telephone Searches	18 NCAC 5A .0306	Repeal
Filing of Federal Tax Liens	18 NCAC 5A .0401	Repeal
Information from the Filing Officer Regarding Tax	18 NCAC 5A .0402	Repeal
Fees for Information Regarding Tax Liens	18 NCAC 5A .0403	Repeal
Scope	18 NCAC 5B .0101	Adopt
Definitions	18 NCAC 5B .0102	Adopt
Place of Filing Time of Filing and Methods of Deli	18 NCAC 5B .0103	Adopt
Contents of Records Submitted for Filing	18 NCAC 5B .0104	Adopt
Approved Forms	18 NCAC 5B .0105	Adopt
Processing Fees and Methods of Payments	18 NCAC 5B .0106	Adopt
Public Records Services	18 NCAC 5B .0107	Adopt
Fees for Public Records Services	18 NCAC 5B .0108	Adopt
Role of Filing Officer	18 NCAC 5B .0201	Adopt
Grounds for Refusal of UCC Document	18 NCAC 5B .0202	Adopt
Procedure for Refusal	18 NCAC 5B .0203	Adopt
Notification of Defects	18 NCAC 5B .0204	Adopt
Refusal Errors	18 NCAC 5B .0205	Adopt
Filing Officer Errors	18 NCAC 5B .0206	Adopt
Notice of Bankruptcy	18 NCAC 5B .0207	Adopt
Policy Statement	18 NCAC 5B .0301	Adopt
Primary Data Elements	18 NCAC 5B .0302	Adopt
Initial Financing Statement	18 NCAC 5B .0303	Adopt
Amendment	18 NCAC 5B .0304	Adopt
Assignment of Powers of Secured Party of Record	18 NCAC 5B .0305	Adopt
Continuation	18 NCAC 5B .0306	Adopt
Termination	18 NCAC 5B .0307	Adopt
Correction Statement	18 NCAC 5B .0308	Adopt
Procedure Upon Lapse	18 NCAC 5B .0309	Adopt
IACA Standards Adopted	18 NCAC 5B .0310	Adopt
Implementation Guide	18 NCAC 5B .0311	Adopt
Direct on-Line Data Entry Procedures	18 NCAC 5B .0312	Adopt
Policy Statement	18 NCAC 5B .0401	Adopt
Minimum Standards for Indexing and Filing UCC Recor	18 NCAC 5B .0402	Adopt
Document Filing Review and Acknowledgment	18 NCAC 5B .0403	Adopt
Entry of Individual and Organizational Names	18 NCAC 5B .0404	Adopt
Filing Dates and Lapse Calculations	18 NCAC 5B .0405	Adopt
Filing Errors	18 NCAC 5B .0406	Adopt
Designated Name Fields	18 NCAC 5B .0407	Adopt
Verification of Data Entry	18 NCAC 5B .0408	Adopt
Creation of New Records	18 NCAC 5B .0409	Adopt
Archival Documents	18 NCAC 5B .0410	Adopt
General Requirements	18 NCAC 5B .0501	Adopt
Search Requests and Reports	18 NCAC 5B .0502	Adopt
Rules Applied to Search Request	18 NCAC 5B .0503	Adopt

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Optional Information	18 NCAC 5B .0504	Adopt
Search Responses	18 NCAC 5B .0505	Adopt
Policy Statement	18 NCAC 5B .0601	Adopt
Filing	18 NCAC 5B .0602	Adopt
Requests for Information	18 NCAC 5B .0603	Adopt
OCCUPATIONAL LICENSING BOARDS/N C LICENSING BOARD FOR GENERAL CONTRACTORS		
Eligibility	21 NCAC 12 .0204	Amend
Single -Prime Public Contracts	21 NCAC 12 .0210	Adopt
OCCUPATIONAL LICENSING BOARDS/DENTAL EXAMINERS, BOARD OF		
Time for Filing	21 NCAC 16B .0305	Amend
Reexamination	21 NCAC 16B .0315	Amend
Time for Filing	21 NCAC 16C .0305	Amend
Reexamination	21 NCAC 16C .0310	Amend
Restrictions on Practice	21 NCAC 16D .0102	Amend
Examination	21 NCAC 16D .0105	Amend
Examination	21 NCAC 16E .0104	Amend
Corporate or Limited Liability Company Name	21 NCAC 16F .0103	Amend
Reporting Continuing Education	21 NCAC 16I .0104	Amend
License Void Upon Failure to Renew	21 NCAC 16I .0107	Amend
Equipment	21 NCAC 16Q .0202	Amend
Temporary Approval Prior to Site Evaluation	21 NCAC 16Q .0203	Amend
Procedure for Evaluation or Inspection	21 NCAC 16Q .0204	Amend
Results of Site Evaluation and Reevaluation	21 NCAC 16Q .0205	Amend
Equipment	21 NCAC 16Q .0302	Amend
Temporary Approval Prior to Site Evaluation	21 NCAC 16Q .0303	Adopt
Annual Renewal Required	21 NCAC 16Q .0401	Amend
Reporting of Continuing Education	21 NCAC 16R .0103	Amend
Eligibility Requirements	21 NCAC 16Y .0101	Adopt
Application	21 NCAC 16Y .0102	Adopt
Employment	21 NCAC 16Y .0103	Adopt
Direction and Supervision	21 NCAC 16Y .0104	Adopt
Compliance	21 NCAC 16Y .0105	Adopt
OCCUPATIONAL LICENSING BOARDS/N C BOARD OF NURSING		
License Required	21 NCAC 36 .0221	Amend
Approval and Practice Parameters for Nurse Pract	21 NCAC 36 .0227	Amend
Approval Body	21 NCAC 36 .0301	Amend
Establishment of a Nursing Program	21 NCAC 36 .0302	Amend
Agency Approval Process - Initial Survey	21 NCAC 36 .0310	Repeal
Full Approval/Approval with Stipulations	21 NCAC 36 .0315	Repeal
Curriculum	21 NCAC 36 .0321	Amend
Facilities	21 NCAC 36 .0322	Amend
Removal of Approval	21 NCAC 36 .0325	Repeal
OCCUPATIONAL LICENSING BOARDS/STATE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS		
Executive Director Other Personnel	21 NCAC 50 .0104	Amend
Location of Office	21 NCAC 50 .0106	Amend
Qualifications Determined by Examination	21 NCAC 50 .0301	Amend
Special Examinations	21 NCAC 50 .0304	Repeal
Applications Issuance of License	21 NCAC 50 .0306	Amend
Refund of Deposit	21 NCAC 50 .0307	Amend
Review of Examination	21 NCAC 50 .0308	Amend
Expanding Scope of License	21 NCAC 50 .0309	Amend
Active Employment	21 NCAC 50 .0404	Amend
Reinstatement of Expired License	21 NCAC 50 .0409	Amend
Publications	21 NCAC 50 .0411	Amend
Air Conditioning Further Defined	21 NCAC 50 .0501	Amend
Heating License Required	21 NCAC 50 .0508	Amend
Fuel Piping	21 NCAC 50 .0511	Amend
Examination Fees	21 NCAC 50 .1101	Amend
License Fees	21 NCAC 50 .1102	Amend
Expanding Scope of License	21 NCAC 50 .1103	Repeal

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Fees for Copies of Records and Returned Checks	21 NCAC 50 .1104	Amend
OCCUPATIONAL LICENSING BOARDS/REAL ESTATE COMMISSION, BOARD OF		
Elective Course Component	21 NCAC 58E .0302	Amend
OCCUPATIONAL LICENSING BOARDS/N C SUBSTANCE ABUSE PROFESSIONAL CERTIFICATION BOARD		
Definitions	21 NCAC 68 .0101	Amend
Application for Registration	21 NCAC 68 .0201	Amend
Registration Process for Board Certification	21 NCAC 68 .0202	Amend
Designation as Substance Abuse Counselor Intern	21 NCAC 68 .0203	Amend
Supervised Practical Training for Substance Abuse	21 NCAC 68 .0204	Amend
Certified Substance Abuse Counselor Certification	21 NCAC 68 .0205	Amend
Process for Prevention Consultant Certification	21 NCAC 68 .0206	Amend
Continuing Education Required for Counselor and	21 NCAC 68 .0208	Amend
Process for Clinical Supervisor Certification	21 NCAC 68 .0211	Amend
Process for Residential Facility Director Certific	21 NCAC 68 .0212	Amend
Continuing Education School Curricula Approval	21 NCAC 68 .0214	Amend
Verification	21 NCAC 68 .0215	Amend
Definitions	21 NCAC 68 .0302	Repeal
Certification Requirements for Individual Applican	21 NCAC 68 .0305	Amend
Renewal of Individual Certification as Clinical	21 NCAC 68 .0306	Amend
Proof of Rehabilitation	21 NCAC 68 .0611	Adopt
Publication of Ethics Sanctions	21 NCAC 68 .0620	Adopt

AGENDA
RULES REVIEW COMMISSION
March 21, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency (DeLuca)
 - B. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency (DeLuca)
 - C. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency (DeLuca)
 - D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency (DeLuca)
 - E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency (De Luca)
 - F. Commission for the Blind - 10 NCAC 19A .0601; .0602 Objection 2/21/02 (Bryan)
 - G. Commission for the Blind – 10 NCAC 19C .0207; .0209 .0309; .0311 .0410; .0504 .0511 .0607; .0701; .0702; .0704 Objection 2/21/02 (Bryan)
 - H. Commission for the Blind – 10 NCAC 19G .0105; .0107; .0805; .0806 Objection 2/21/02 (Bryan)
 - I. Commission for the Blind – 10 NCAC 19H .0102; .0103 Objection 2/21/02 (Bryan)
 - J. NC Sheriffs’ Education & Training Standards – 12 NCAC 10B 12 NCAC 10B .0301; .0305; .0705; .0706; .0707; .0708; .0710; .0711; .0712 Objection 2/21/02 (Bryan)
 - K. DENR/Environmental Management Commission – 15A NCAC 2H .0802; .0803 .0805 Objection 2/21/02 (DeLuca)
 - L. DENR/Soil and Water Conservation Commission – 15A NCAC 6E .0103 Objection on 12/20/01 (Bryan)
 - M. NC Acupuncture Licensing Board – 21 NCAC 1 .0301 Objection 2/21/02 (DeLuca)
 - N. NC Board of Pharmacy – 21 NCAC 46 .1814 Objection 2/21/02 (DeLuca)
 - O. NC Respiratory Care Board – 21 NCAC 61 .0201; .0202; .0304; .0305; .0307; .0401 Objection 2/21/02 DeLuca
- IV. Review of rules (Log Report #185)
- V. Commission Business
- VI. Next meeting: Thursday, April 18, 2002

CONTESTED CASE DECISIONS

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	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
NC ABC Commission v. James Okwudili Nwizu, T/A Sahara Mini Mart	01 ABC 1209	Elkins	02/01/02	
<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>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
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	
Ricardo Darnell Jones v. NC Crime Victims Compensation Commission	01 CPS 0242	Elkins	02/01/02	
Marie King Cutler v. NC Crime Victims Compensation Commission	01 CPS 0926	Gray	01/28/02	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
Edna Hunt v. NC Crime Victims Compensation Commission	01 CPS 1434	Chess	01/10/02	
<u>HEALTH AND HUMAN SERVICES</u>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
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 ²	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	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
Ronald A. Kaye v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1380	Lassiter	01/15/02	
Christopher Beauchamp v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1688	Wade	02/04/02	
Daryle M McLaughlin v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1726	Elkins	01/08/02	
James A Altizer v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1884	Morrison	01/08/02	
Mathis Raye Sessoms v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 2023	Chess	02/06/02	

Child Support Enforcement Section

CONTESTED CASE DECISIONS

Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01
Asuncion I. Crawford v. Department of Health & Human Services	99 CSE 1398	Mann	11/16/01
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01
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
Winston Shell v. Department of Health & Human Services	00 CSE 0340	Gray	12/21/01
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
Gregory Kent Cranford v. Department of Health & Human Services	00 CSE 0392	Chess	11/30/01
Thellie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01
Melvin Lewis Smith v. Department of Health & Human Services	00 CSE 0597	Chess	02/06/02
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01
Bryant Harold Silance v. Department of Health & Human Services	00 CSE 0740	Gray	02/01/02
Wade R Locklear v. Department of Health & Human Services	00 CSE 0872	Lassiter	01/08/02
Robert D Goodman v. Department of Health & Human Services	00 CSE 1083	Conner	11/26/01
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
Ronnie Chapman v. Department of Health & Human Services	00 CSE 1367	Conner	11/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Sharon Tucker v. Department of Health & Human Services	00 CSE 1530	Morrison	11/27/01
William E Kurn v. Department of Health & Human Services	00 CSE 1544	Morrison	11/16/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Marvin R Thorpe Sr v. Department of Health & Human Services	00 CSE 1570	Morrison	12/04/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
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
Walter Chambers v. Department of Health & Human Services	00 CSE 1610	Conner	01/09/02
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
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
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
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
Terry Antonio Leath v. Department of Health & Human Services	00 CSE 1709	Morrison	10/16/01
Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Raymond Stevens v. Department of Health & Human Services	00 CSE 1730	Mann	10/31/01
David John Pehler v. Department of Health & Human Services	00 CSE 1733	Morrison	12/04/01
Mohammad E Ghafarian v. Department of Health & Human Services	00 CSE 1734	Wade	11/16/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Joe Louis Hall Jr. v. Department of Health & Human Services	00 CSE 1737	Morrison	11/16/01
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
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
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
Jason Cline v. Department of Health & Human Services	00 CSE 1804	Gray	11/14/01
Larry J Thompson v. Department of Health & Human Services	00 CSE 1824	Morrison	12/18/01
John N. Pullium v. Department of Health & Human Services	00 CSE 1829	Chess	11/21/01
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
Allen K. Galloway v. Department of Health & Human Services	00 CSE 1883	Morrison	12/06/01
Jeffery W Sisk v. Department of Health & Human Services	00 CSE 1884	Lassiter	11/28/01
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
Robert E Scott v. Department of Health & Human Services	00 CSE 1907	Chess	02/06/02
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
Wayne DeRoss v. Department of Health & Human Services	00 CSE 1940	Conner	11/26/01
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
Paula Morrill v. Department of Health & Human Services	00 CSE 1948	Conner	10/16/01
Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01
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

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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
Scott S Jacobs v. Department of Health & Human Services	00 CSE 1977	Conner	01/08/02
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
Howard Jacobs v. Department of Health & Human Services	00 CSE 1996	Morrison	11/05/01
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
Robert Scot Pope v. Department of Health & Human Services	00 CSE 2014	Gray	11/14/01
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
Jeffrey D Lain v. Department of Health & Human Services	00 CSE 2075	Lassiter	01/08/02
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
Mario C Crank v. Department of Health & Human Services	00 CSE 2172	Conner	11/26/01
Dennis Cunningham v. Department of Health & Human Services	00 CSE 2183	Conner	11/26/01
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
George A Snipes v. Department of Health & Human Services	01 CSE 0105	Lassiter	10/25/01
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
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Sarah L Thomas, Sarah's Child Care v. Division of Child Dev.	01 DHR 0818 ¹	Gray	12/28/01
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Blackwell and Assoc. & Alamance Child Learning Center v. NC DHHS Div. of Child Development	01 DHR 1281	Chess	02/06/02

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Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01
Dr. Mitchell James Lequire, PharmD Realo Drug v. DHHS, Division of Medical Assistance	01 DHR 0989	Chess	07/12/01
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Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01
Tabitha Perry v. DHHS, Division of Facility Services	01 DHR 0330	Mann	10/01/01
Tonitia Langley v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01
Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01
Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01
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Madge B Murray v. NC DHHS, Div. of Facility Services, Health Care Personnel Registry	01 DHR 0953	Conner	09/12/01
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Rossie Nicole Home v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01
Tiffany L Wilkerson v. NC DHHS, Div. of Facility Services (Rosemary H. Harrell, RN, BSN)	01 DHR 1279	Chess	09/07/01
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Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01
Antonio Ray v. NC DHHS, Division of Facility Services	01 DHR 1344	Gray	09/24/01
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Gloria Elaine Evans v. NC DHHS, Division of Facility Services	01 DHR 1403	Wade	02/04/02
Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01
Annette Hill v. DHHS, Division of Facility Services	01 DHR 1514	Conner	01/24/02
Alice G. Stevenson v. NC DHHS, Division of Facility Services	01 DHR 1567	Mann	12/13/01
Caroline Peck Whitaker v. NC DHHS, Division of Facility Services	01 DHR 1595	Gray	12/28/01
Joseph C. Turay v. DHHS, Division of Facility Services	01 DHR 1617	Elkins	01/29/02
Desiree Scales v. DHHS, Division of Facility Services	01 DHR 1621	Conner	11/26/01
Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01
Archie Kelly McNeilly v. NC DHHS, Division of Facility Services	01 DHR 1772	Gray	02/08/02
Brenda Garner v. DHHS, Division of Facility Services	01 DHR 1809 ²	Conner	01/24/02
Vieta Ann Jamison v. DHHS, Division of Facility Services	01 DHR 1907	Chess	01/30/02
April Michelle McGuire v. NC DHHS, Division of Facility Services	01 DHR 1935	Elkins	12/13/01
Elizabeth Winter v. DHHS, Division of Facility Services	01 DHR 1954	Chess	01/17/02
Angela Roberson v. DHHS, Division of Facility Services	01 DHR 2215	Lassiter	01/07/02
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Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01
Claire Diggs v. DHHS, Moore Co. Dept. of Social Services	01 DHR 0551	Elkins	08/02/01
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John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01
Judy P Miller v. Ashe Co. Dept. of Social Services, NC DHHS, Division of Facility Services, Health Care Personnel Registry	01 DHR 1363	Gray	09/18/01

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Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01
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⁹ Combined Cases

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Deona Renna Hooper v. Co. Police Program, Co. Police Administrator	00 DOJ 2177	Wade	06/22/01	
Alarm Systems Licensing Board				
Edward James Summers v. Alarm Systems Licensing Board	01 DOJ 0352	Morrison	06/13/01	
Joseph Brian Moses v. Alarm Systems Licensing Board	01 DOJ 0582	Wade	06/01/01	
Arthur Eugene Corpening v. Alarm Systems Licensing Board	01 DOJ 0789	Morrison	06/13/01	
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Stephen Wayne Farmer v. Alarm Systems Licensing Board	01 DOJ 0998	Lassiter	07/24/01	
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Michael Bullard v. Alarm Systems Licensing Board	01 DOJ 1310	Gray	10/30/01	
James Kevin Hightower v. Alarm System Licensing Board	01 DOJ 1351	Gray	10/12/01	16:10 NCR 947
Telzy T. Porter v. Alarm System Licensing Board	01 DOJ 1496	Elkins	11/19/01	
Francis Hoi Chan v. Alarm System Licensing Board	01 DOJ 1497	Chess	01/02/02	
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Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01	
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01	
Emar I. Ifediora v. Private Protective Services Board	01 DOJ 0823	Conner	10/16/01	
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Michael David Faris v. Private Protective Services Board	01 DOJ 1271	Gray	10/12/01	
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01	
Johnny Randolph Clark v. Private Protective Services Board	01 DOJ 1509	Wade	12/27/01	
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01	
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Marsha Lynn Marshall v. Private Protective Services Board	01 DOJ 1856	Morrison	12/06/01	
Lonnie Mack Maines, Jr. v. Private Protective Services Board	01 DOJ 1985	Morrison	12/11/01	
Timothy Ray Robinson v. Private Protective Services Board	01 DOJ 2216	Wade	12/27/01	

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Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01	
Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1558	Elkins	06/12/01	
Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm.	00 DOJ 1577	Gray	08/27/01	
Darrick Harris v. NC Sherriffs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01	
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01	
Alan Henry Roebuck v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0444	Gray	11/30/01	
Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0470	Gray	10/11/01	
Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm.	01 DOJ 0478	Morrison	11/08/01	
Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0500	Gray	10/12/01	
Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm.	01 DOJ 0557	Conner	11/07/01	
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Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems	00 DST 0727	Mann	08/06/01	
Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System	00 DST 0776	Gray	07/06/01	16:04 NCR 384

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Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education	00 EDC 2119	Elkins	11/07/01	16:12 NCR 1252
Carolyn H. Lancaster v. NC Department of Public Instruction	01 EDC 0054	Morrison	11/08/01	

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James W and Winnifred King v. Div. of Coastal Management	97 EHR 0791	Gray	11/29/01	16:14 NCR 1618
Leahman Coday, Jr. v. NC DENR	99 EHR 1651	Wade	06/21/01	
Hawley Farms, Inc. v. NC DENR, Div. of Water Quality	99 EHR 1740	Conner	10/25/01	
Holly Ridge Associates, LLC, v. NC DENR and its Div. of Land Resources, William P. Holman, Sec. of the DENR, in his official Capacity and Charles H. Gardner, Director of the Div. of Land Resources, in his official capacity	00 EHR 0423	Conner	12/20/01	16:16 NCR 1825
Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0438	Conner	08/17/01	
Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0439	Conner	08/17/01	
Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01	
Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0441	Conner	08/17/01	
Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0448	Conner	08/17/01	
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Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0501	Conner	08/17/01		
Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0508	Conner	08/17/01		
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Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0510	Conner	08/17/01		
Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01		
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01		
Angela & Larry Freeman v. Brunswick Co. Health Department	00 EHR 0635	Conner	11/29/01		
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01		
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ²	Gray	08/07/01	16:05 NCR	463
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR	40
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR	1043
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gullely Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR	463
Albert Galluzzo, James T. Gullely, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 + 1/2 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, Lot 66					
Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484
S. Adrian Becton v. NC DENR	00 EHR 1358	Chess	01/15/02		
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01		
Thomas Tilley, Trustee v. NC DENR	00 EHR 1668	Elkins	11/28/01		
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 ²	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ²	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ²	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ²	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ²	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ²	Gray	08/07/01	16:05 NCR	463
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01		
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01		
Paul J Williams v. NC Dept.of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01		
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Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
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Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01		
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01		
Terry Peterson Residential Twenty, LLC v. County of Durham	01 EHR 0558	Conner	12/17/01	16:14 NCR	1624
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01		
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01		
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01		
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn NC DENR	01 EHR 0730	Morrison	06/26/01		
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01		
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01		
Nancy D. Tuchscherer v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 0992	Gray	11/28/01	16:14 NCR	1634
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01		
Vickie Jacobs Little v. Brunswick County Health Department	01 EHR 1298	Mann	11/30/01		

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Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01
John (Jack) W. Henry v. DENR, Env. Health Services Section	01 EHR 1322	Conner	12/14/01
Albert Eric Pickett v. NC DENR	01 EHR 1332	Elkins	11/30/01
Elfleda G. Shepard v. NC DENR, Division of Coastal Management	01 EHR 1390	Conner	11/28/01
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Peter Pallas v. New Hanover County Board of Health	01 EHR 1441	Conner	01/09/02
NC Real Estate Services Corp. v. NC DENR, Div. of Air Quality	01 EHR 1503	Elkins	11/20/01

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Spli-Con, LLC v. NC Office of Information Technology	01 GOV 1799	Chess	11/26/01
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HUMAN RELATIONS COMMISSION

NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01
NC Human Relations Commission on behalf of Janie Teele v. Wedco Enterprises, Inc., Quality Construction, Inc., The Apartment Group, Erin Banks, and Terry Taylor	00 HRC 1449	Gray	12/21/01
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01

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Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01
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NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01
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MISCELLANEOUS

Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01
Donald Jason Biles v. W-S/Forsyth Zoning Dept et al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01
Sara E. Parker v. Medical Review of North Carolina	01 MIS 1607	Lassiter	12/03/01
Sara E. Parker v. Administrative Office of the Courts	01 MIS 1608	Lassiter	12/03/01
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01

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James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01
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Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01	
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01	
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01	
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01	
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01	
Ricky E Yates v. NC Department of Correction	00 OSP 0453	Gray	01/31/02	16:17 NCR 1959
Victor Garnett v. Dept. of Correction, Craven Correctional Inst.	00 OSP 0722	Elkins	01/11/02	16:17 NCR 1966
Tina C. Lowery v. NC DOC/Craven Correctional Institution	00 OSP 0767	Conner	11/28/01	
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01	
Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01	
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01	16:06 NCR 550
Warren E. Pigott v. NC Department of Correction	00 OSP 1096	Gray	11/26/01	
Andora Taylor Hailey v. NC Department of Correction	00 OSP 1247 ⁵	Conner	11/26/01	
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01	
Stephen E Dunn v. NC Department of Correction	00 OSP 1693	Morgan	01/23/02	
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 1702 ⁸	Gray	12/31/01	16:16 NCR 1853
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR 271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01	
Natalynn P. Tollison v. NCSU et al	00 OSP 1909	Wade	06/01/01	
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 2117 ¹	Gray	12/31/01	16:16 NCR 1853
Andora Taylor Hailey v. NC Department of Correction	00 OSP 2180 ⁵	Conner	11/26/01	
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01	
Deanna Kay Sadler v. NC Department of Transportation	01 OSP 0097	Gray	01/28/02	
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01	
Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01	
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR 864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01	
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01	
Valerie Thompson Enoch v. Alamance Co. Dept. of Social Services	01 OSP 0316	Lassiter	11/29/01	
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01	
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01	
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01	

⁵ Combined Cases
⁸ Combined Cases

CONTESTED CASE DECISIONS

James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	12/19/01
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01
Craig B Hilliard v. NC Department of Correction	01 OSP 1214	Morrison	12/18/01
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01
Dennis Damon Foster v. NC Department of Correction	01 OSP 1283	Chess	12/07/01
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01
Berton Hamm v. Eastern Adolescent Treatment Center	01 OSP 1397	Chess	01/14/02
Dorothy L. Stinson v. Gaston-Lincoln Area Mental Health "Pathways"	01 OSP 1400	Chess	12/12/01
Gloria E. Morrow v. NC Division of Social Services	01 OSP 1439	Elkins	12/18/01
Walter Daniel Giese v. George O' Daniel & the Onslow Co. Health Dept.	01 OSP 1445	Conner	12/17/01
Annie Karamatsos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01
Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01
Larry S Height v. NC Utilities Comm. of the NC Dept. of Commerce	01 OSP 1487	Morrison	12/28/01
Alvin Earl Williams v. NC DHHS, Division of Facility Services	01 OSP 1491	Mann	12/17/01
Larry T. Strickland v. Jennifer Heath and the Dept. of Corrections	01 OSP 1537	Mann	11/30/01
Gregory S. Harmon v. NC Department of Revenue	01 OSP 1575	Mann	01/18/02
Tammy M. Snipes v. DHHS, (Broughton Hospital)	01 OSP 1873	Chess	01/16/02
Lillie Joyce Blount v. Caswell Center, Human Resources Employee, Clifton Jones, Supervisor	01 OSP 1898	Lassiter	12/04/01
Sheila Nickerson v. UNC-CH	01 OSP 2016	Lassiter	01/02/02
Mark Thomas v. John Umstead Hospital	01 OSP 2180	Mann	02/05/02
Mary Hood Fletcher v. The University of North Carolina at Charlotte	01 OSP 2210	Lassiter	01/15/02
Elizabeth Hall Austin v. University of North Carolina at Charlotte	01 OSP 2338	Mann	02/07/02

16:12 NCR 1263

DEPARTMENT OF REVENUE

George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02
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SECRETARY OF STATE

Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01
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UNIVERSITY OF NORTH CAROLINA

Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01
Phyllis Green v. The UNC Hospitals at Chapel Hill	01 UNC 1354	Gray	11/26/01

WELL CONTRACTORS

Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01
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6. At the time of Petitioner's promotion, he was able to walk and to use his arms. Symptoms affecting the use of his hands and feet had not yet accelerated. Petitioner's main symptoms were fatigue in his legs, if he tried to walk or run for any period of time; he also was experiencing some problem controlling the fingers on his right hand, and noticed that the fingers did not have the flexibility and mobility that they once had. TI, 53, 54.
7. At the time of Petitioner's promotion to CPPO III, the essential functions of the job, as related to firearms, were the ability to load and unload a gun and shoot it from various positions, and possibly under stressful conditions. The essential job functions did not include a requirement to pass a state certification. TI, 57, 58.
8. In 1993, Petitioner could shoot a gun from various positions. Petitioner had difficulty using a revolver as the weapon of choice because Petitioner could not load the bullets into the revolver using his right hand in a timely manner. TI, 58.
9. In March, 1994, when Petitioner no longer could load and unload the weapon, he was directed to submit a request for a reasonable accommodation, specifically that the firearms requirement be waived, or that he be allowed to use an automatic weapon. TI, 58; PE 16. Sometime in late 1994 or early 1995, Petitioner received a letter from Woodley Lee, a representative of Respondent based in Raleigh, in response to the request for an accommodation. Petitioner's request for accommodation was denied. TI, 59.
10. In 1993, however, when Petitioner was promoted to a CPPO III, there was no requirement that an individual in that position be firearms certified. In 1993, the only requirement was that an individual be able to use a firearm, which Petitioner testified he could do in 1993. In 1996, Petitioner also was able to perform the essential functions of the job, including the firearms requirement, as those essential functions were presented to him in 1993, at the time of his promotion. TI, 58, 68; PE 14, Essential Job Functions for a Chief Unit Supervisor III, No. 23, p. 2.
11. Petitioner submitted a request for a reasonable accommodation, waiver of firearms standards, in March of 1994. TII, 194, PE 16, 17. Petitioner submitted the request on the advice of Avery Ervin, who at that time held the position of assistant branch manager for the area in which Petitioner worked. Ervin and Beam advised Petitioner that he would have to meet the certification standards, which meant that he would have to go and qualify with the firearm. TI, p. 69; TIII, 401-426.
12. In 1996, a year after Petitioner had submitted his request for accommodation, Respondent altered the essential functions of the job of CPPO III and issued a revised listing of the essential job functions of the CPPO III. The firearms requirement was altered to include the same requirements which existed for intensive and surveillance officers. Respondent was no longer requiring only the ability to load and unload a weapon, but also the ability to obtain state certification in firearms. TI, 59, 60. PE 14,
13. In 1996, at the time of the changed job function, Petitioner's MS symptoms included increased weakness in his legs and increased spasticity. Petitioner walked with the use of a cane at certain times. TI, 60.
14. Respondent notified Petitioner, in response to Petitioner's request for an accommodation, that: "It appears the only way we can accommodate your inability to perform the firearms component of your current position and to keep you in a supervisory position is to reallocate you to a different position in which the firearms component is not an issue. In order to accomplish this accommodation, we are willing to offer you a Chief Probation/Parole Officer I position in Catawba County with no adverse impact on your base salary." TI, 62, PE 14, Letter from Carol Jenkins, DOC, dated July, 1996.
15. The letter continued: "We are, however, aware that you have multiple sclerosis and that a diagnosis constitutes a disability under the guidelines of the Americans with Disabilities Act whereby major life activities are substantially affected." PE 14.
16. During July of 1996, MS affected Petitioner's major life activities in that he was not able to run; his difficulties with the use of his right hand increased to the point where he had to use his left hand. TI, 64.
17. Respondent, through Deputy Secretary Mack Jarvis, sent Petitioner a letter in August of 1996, stating that: "This is to inform you of our decision to reallocate your current position from a Chief PPO III, grade 70, to a Chief PPO I, grade 68, with no change in your base salary. This is effective September 1, 1996." PE 14, Letter from Mack Jarvis to Petitioner, dated August 13, 1996.
18. In 1996, Respondent reallocated Petitioner's position from a CPPO III to a CPPO I. The loss in position was from a grade 70 down to a 68. TI, 64. Petitioner perceived Respondent's action as a demotion, not an accommodation. TI, 64, 65
19. Dismissal was the only alternative to the reallocation offered to Petitioner by Respondent, through its representative, Carol Hinnant. TI, 67; TIV, 684-691, at 685, 686, 687.

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20. As a result of the reallocation, Petitioner lost status, and opportunities for economic and career advancement. TI, 62, 63; TII, 181-209, Testimony of Mack Jarvis, at 191; *Edwards v. University of North Carolina*, 107 N.C. App. 606, 421 S.E.2d, 383, cert. denied, 333 N.C. 167, 424 S.E. 2d 909 (1992).
21. The maximum level of pay for a paygrade 68 is \$44, 890 per year; the maximum level of pay for a paygrade 70 is \$49, 174 per year. TII, 199-202.
22. The reason given by the Respondent for the reallocation was that Petitioner was not firearms certified. Petitioner's Exhibit 14.
23. Respondent's agent, Mack Jarvis, testified that Respondent decided it could not maintain Petitioner at the level of CPPO III because Petitioner could not fill in for the intensive team or intensive officers when they were not available if Petitioner was not firearms certified. TII, 196. This was not listed as a reason in the letter of August, 1996. PE 14.
24. The JDM position, for which Petitioner applied, but for which he was not interviewed, does not require firearms certification or use. TI, 83. The JDM supervises the CPPO III, and would directly fill in for a CPPO III in the absence of the CPPO III. TI, 83.
25. In 1997, a year after Petitioner's reallocation, firearms certification was not actually required by the essential job functions of a CPPO III. TII, 192, 193; PE 14.
26. The only justification for the addition of firearms use and certification to the essential job functions of the CPPO III was the manner in which the department wrote the job description. The department added supervision of surveillance teams to the CPPO III job description to justify to the State Personnel Commission the difference in a Chief PPO III and a CPPO I. The difference was created in order to start to develop a career ladder for people to move from one level to another. TII, 196, 198. In late 1992, Mack Jarvis worked with a correction transition team from the former administration to the Hunt administration, and in interviewing personnel in probation and parole, the team was advised that there was not a career ladder, a source of complaints from probation and parole personnel. TII, 190. Other than justifying the career ladder, there was no other reason to include the firearm certification in the CPPO III job functions. TII, 198.
27. The essential functions of the CPPO III, revised in May of 1995, and again in December of 1998 and February of 1999, do not include filling in for intensive officers in the absence of intensive officers. PE 7.
28. No survey or data was collected on the frequency of use of a firearm by a CPPO III. TII, 198.
29. No appeal rights were given to the Petitioner by the Respondent at the time of the reallocation although Respondent was aware that such appeal rights were required. TI, 64; PE 14.
30. The reallocation took place two and a half years after Petitioner filed his additional accommodation request, asking that he be allowed to waive the firearms requirement. TI, 65; PE 16. During the two years Petitioner was awaiting a decision on the accommodation request, Petitioner continued to supervise officers who held the position of intensive, surveillance or probation\parole officers. TI, 65. During the period between Petitioner's accommodation request and the reallocation Petitioner not only supervised firearms certified officers, but also continued to perform all other duties of a CPPO III. TI, 65. Petitioner's staff sent Respondent letters of support for Petitioner's accommodation request. 11/16/95. PE 18.
31. During the period of time when Petitioner was serving as a CPPO III, he was not issued a gun.
32. During the period between March 20, 1994 and August 13, 1996, Petitioner experienced a worsening of his MS symptoms. Problems with his legs and back became worse; Petitioner became more dependent on the use of a cane. Petitioner lost some mobility with his hands; Petitioner felt that much of the acceleration of his symptoms was coming from the stress of the job itself, and waiting for a response to his request for an accommodation. TI, 66.
33. After the reallocation, Respondent removed Petitioner's supervision of firearms certified officers, stating that Petitioner could no longer supervise anyone who was firearms certified. TI, 65.
34. Petitioner received a packet of information on or about July 15th 1996, from Respondent's agent Carol Jenkins. This packet included essential job functions; Ms. Jenkins also included a deadline for Petitioner's response. TI, p. 67.
35. No alternatives to the change in position from a 70 to a 68, and from a CPPO III to a CPPO I were offered to Petitioner. TI, p. 67. Respondent considers its reallocation of Petitioner, following his request for a waiver of the firearms requirement, an accommodation. TII, 195, 196,213.

36. Mack Jarvis, representative of the Respondent who issued the reallocation letter of August 13, 1996, had contact with Petitioner at the ribbon cutting for the Newton facility in 1996, and noted for the first time that Petitioner was in a wheelchair or motorized chair, and that Petitioner was a person who could not walk and who was in a wheelchair. TII, 194.
37. The use of a firearm by a CPPO III is infrequent, and in fact can be a hindrance. Officer Ross takes a gun into the field, but does not carry it on his person. Officer Ross does not wear a gun in the office. TIV, 458-456, Testimony of Ronald Ross, at 461, 465, 466.
38. Respondent employs Arthur Williams as a CPO III in Mecklenburg County; Mr. Williams has held that position for three years. Mr. Williams was promoted to that position, with a pay grade of 70, in 1997, the year after Petitioner's position was reallocated by the Respondent for lack of firearms certification. Mr. Williams never has been firearms certified and was not firearms certified at the time of the hearing. TII, 215; PE 40.
39. Mr. Williams also was required to take firearms training, but has not done so. TII, 216.
40. Mr. Williams testified that firearms certification as an essential function of the job was required in 1997 (one year after Petitioner's reallocation for not having firearms certification). TII, 218.
41. Mr. Williams has supervised intensive officers during the three year period that he served as a CPPO III without firearms certification. He never has been called upon to assume the duties of the intensive officers whom he supervised. TII, P. 217.
42. Mr. Williams does not have MS, and suffers no impairment of his hands; he has difficulty walking without crutches and uses a wheelchair occasionally. TII, 226, 227.
43. Petitioner performed the job of CPPO III for two years without being firearms certified, with no negative impact on his staff, and Arthur Williams performed the job of CPPO III for three years without being firearms certified with no negative impact on his staff.
44. Arthur Williams remained in his position as CPPO III, without being firearms certified, until September of 2000, following Petitioner's filing of a contested case petition, and naming of Mr. Williams as a witness. In September of 2000, Mr. Williams was placed on administrative leave. TIV, 728.
45. From 1987 to 1989, and from 1995 to 1998, Petitioner was supervised by Jeff Joines, who then was Judicial District Manager; Mr. Joines was promoted by Respondent to Division Chief in 1998. TI, 56. Mr. Joines and Petitioner discussed Petitioner's diagnosis of MS on several occasions. TI, 56, 57.
46. During this period of time, Petitioner approached Mr. Joines and other members of Respondent's staff concerning the provision of handicapped parking at one of Respondent's office locations. Respondent did not require the lessor to provide the parking, and took no steps to provide the parking until the intervention of the United States Department of Justice. TI, 75-81.
47. At the time of this hearing, Petitioner was able to perform all sixteen of the essential functions of his job as CPPO I. TI, 71.
48. At the time of this hearing, Petitioner used a wheelchair; when using the chair, Petitioner cannot pull up to a desk and he requires a specially designed work station. TI, 99. In May of 1999, Petitioner requested this as a reasonable accommodation; it was provided after Petitioner filed his contested case petition, and the Department of Vocational Rehabilitation provided design and financial assistance. TI, 100, 110; TIII, 442-446, Testimony of Joe McLeod; PE 25, PE 36 (photo showing Petitioner at work).
49. Respondent knew or had reason to know, of Petitioner's difficulties in getting in and out of his office and using his chair for approximately three years.
50. Following the filing of a contested case petition in November of 1999, Petitioner was allowed to use voice-activated software, but only after Petitioner bought the software and brought it into the office to use it. Petitioner's request for voice-activated software, was initially denied by Evelyn Wooten. PE26.
51. Voice-activated software is available to individuals within the department who do not have handicapping conditions, and the Department of Correction has installed the software for everyday use for individuals who have not requested accommodations of any kind. Hudson deposition, 7,8,12, 13, and 14.

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52. Petitioner has not been provided accommodation for participation in interviews. Mr. Yates supervises PPO officers, but he is not allowed to participate in the interviewing of those officers. T1,89-94.
53. Respondent has responded to Petitioner's Requests for Accommodation as follows: Jeff Joines, JDM for Petitioner's work area at this time, stated that because Petitioner cannot write, Petitioner cannot participate in interviews. Taping was not offered, although Mr. Joines testified that there is no rule against taping interviews. Assistance of support staff was not considered, and no laptop with DragonSpeak or some other voice-activated software, was provided.
54. In 1999, Betty Echerd wrote Mr. Yates a letter threatening him with discipline. Ms. Echerd also circulated the memorandum to all coworkers because coworkers were assisting Petitioner in getting to work. At the time of the letter from Ms. Echerd, Petitioner's co-workers were traveling to Petitioner's home each day, helping Petitioner into his specially equipped van, and following him back to the office. At the end of the day, the process was reversed. PE 35.
55. For nearly two years, Petitioner asked the Respondent to provide handicap spaces at the facility where Petitioner performed some of his job duties. At a cost of approximately \$76, Respondent installed the spaces approximately two years after Petitioner submitted his initial request. T1, 81. The property leased by respondent was required to have these spaces, but no effort was made to ensure that the spaces were available until Petitioner complained and filed a civil rights claim with the Department of Justice. The Department of Justice issued an ultimatum to Respondent, and the spaces finally were provided. PE21
56. Since Petitioner was promoted in 1993, Respondent has attempted to alter the essential functions of the job. In 1996, Petitioner met the firearms qualification with an automatic weapon. Petitioner requested a waiver of the firearms requirement; this was refused, and Petitioner's position was reallocated. PE 14.
57. In February of 1999, Respondent made a second attempt at changing essential job functions ; Petitioner signed off on those changes. PE 7.
58. Petitioner's immediate supervisor is Betty Echerd, who is Judicial District Manager (JDM)for the Respondent's Catawba County Office of Probation and Parole. Petitioner and Ms. Echerd discussed Petitioner's MS following Ms. Echerd's promotion to JDM in April of 1999. TI, 56.
59. In November of 1999, Respondent made a third attempt to change the essential job functions to include bending, squatting, and jumping. PE 7,8.
60. These job functions have the effect of ruling out anyone with a disability.
61. Petitioner refused to sign off on those job functions. Respondent withdrew those job functions.
62. Several representatives of Respondent, including Betty Echerd, met with Petitioner in November of 1999 to question his abilities and asking that he articulate his ability to perform the essential functions of the job. TI, TIV, 692-704.
63. Petitioner has at all times maintained an overall rating of "outstanding" on performance evaluations.
64. Petitioner has been recognized in the media and in his community for the contributions he has made, and the example and inspiration to his coworkers for his determination to continue working. PE 36.
65. Respondent has demonstrated insensitivity toward Petitioner's disability by the following: (1) Jeff Joines, Petitioner's former immediate supervisor, and now Judicial District Manager, responded to Petitioner's request to participate in interviews by asking, if he can participate in interviews, why can't he write in files. PE 6. (2) In December of 1999, Respondent's representative, Jeff Joines, referred to Petitioner and several other individuals with impairments, as a "bunch of cripples," in the presence of approximately seventy people attending a training sponsored by the Respondent; (3) Respondent scheduled the training at an auditorium with declining steps. The steps ran down at an angle, so that any individual who was using a wheelchair or had a disability would have to be seated away from the main part of the seminar and restricted to the back of the room.
66. At the time of the hearing in this matter, Mr. Yates was not working because he had undergone two surgeries to install a pump in his spine that provides medication to him to diminish his symptoms. As a result of the first surgery not accomplishing what it was set out to do, the second surgery occurred, resulting in Mr. Yates continued absence. TI, 55.
67. On August 25th 2000, Petitioner received a letter from Betty Echerd, his immediate supervisor, advising Petitioner to take short-term disability and talking about the few options available for Petitioner to continue his medical leave. TI, 55; PE 34.

68. Ms. Echerd failed to provide Petitioner with complete information concerning his application for shared leave and when he was eligible to submit the application. Ms. Echerd further failed to issue the "broadcast memo" in a timely fashion, resulting in a reduced eligibility for shared leave, and placing Petitioner's job in jeopardy. Ms. Echerd confirmed the existence of this jeopardy in her letter to Petitioner dated September 25, 2000. PE 34; Exhibits to Petitioner's Supplemental Pleading.
69. Petitioner, Ricky E. Yates died on May 20, 2001.

CONCLUSIONS OF LAW

1. This Court has subject matter and personal jurisdiction in this action.
2. At the time of the hearing, the Court allowed Petitioner's Motion to Reconsider and specifically includes the personnel action of August 13th, 1996, deemed by the Respondent as a reallocation with no change in salary, as a matter specifically appealed and heard by this court. Respondent's reallocation of Petitioner from a CPPO III to a CPPO I on August 13, 1996 constituted a demotion. The foregoing conclusion is based on *Edwards v. UNC*, which holds that a change in position, with no change in salary is a demotion when that change in position has some negative implications for the future. 107 N.C. App. 606, 421 S.E. 2d 383, cert denied, 333 N.C. 167, 424 S.E. 2d 909 (1992). As Petitioner was not provided his appeal rights at the time of the August 13th 1996 demotion, his appeal of the demotion in the context of the instant action is allowed.
3. At the time of the hearing the Court allowed Petitioner's Motion for Leave to Amend to include for hearing other acts and omissions by the Respondent since the filing of the contested case petition of November 1999 which could constitute harassment in the workplace, specifically the reduction in Petitioner's opportunity for shared leave by closing the donation period prematurely and placing Petitioner in jeopardy of discharge.
4. Petitioner Ricky E. Yates is a qualified individual with a handicapping condition under the North Carolina State Personnel Act, 126-36, and 126-34 and 126-34.1; the ADA, the North Carolina Handicapped Persons Protection Act, the Rehabilitation Act of 1973, and the North Carolina Equal Employment Practices Act. He is protected from discrimination, harassment and a hostile working environment based on his handicapping condition.
5. Petitioner was subjected to a continued hostile working environment, based on his handicapping condition, including, but not limited to, the refusal of the department to timely respond to his request for a reasonable accommodation on firearms; demoting Petitioner without advising him of his appeal rights; the department's failure to promptly provide handicapped parking at one of its office facilities; removing Petitioner from the interview committee because he could not write, even though the interviewees were to be assigned to Petitioner to supervise, and refusing reasonable alternatives to writing; failing to reprimand a supervisor, Jeff Joines, for an offensive remark directed to Petitioner and other handicapped individuals; failing to provide an accessible work space and voice-activated software in a timely manner; providing incorrect information to Petitioner concerning shared leave, continued medical coverage, and delaying the broadcast of the request so that Petitioner lost his window for greater donations.

RECOMMENDED DECISION

Petitioner is posthumously awarded:

- a. Reinstatement to his position as a CPPO III from the date of his demotion until May 20, 2001 with no break in service and credit for retirement and other benefits;
- b. Payment of all lost wages, if any, from the time of his demotion, based on a projection of the yearly difference in salary between a 68 and 70 until May 20, 2001, and
- c. Reasonable attorney fees and costs in an amount to be approved by the State Personnel Commission.

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, NC 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The Recommended Decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(1) and (b2). The agency making the final decision is required

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to give each party an opportunity to file exceptions to the Recommended Decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 31st day of January, 2002.

Beecher R. Gray
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 OSP 0722

VICTOR GARNETT
Petitioner,

v.

DEPARTMENT OF CORRECTION
CRAVEN CORRECTIONAL INSTITUTION,
Respondent.

DECISION

THIS MATTER came before Administrative Law Judge Augustus B. Elkins II on September 19, 2001 and September 21, 2001 in New Bern, North Carolina.

APPEARANCES

For the Petitioner: Alden B.Cole
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EXHIBITS

PETITIONER:

PA Tap Appraisals
PB Disciplinary history of Timothy L. Durham
PC January 8, 2001 Dismissal letter

RESPONDENT:

R1 9-8-00 Use of Force report
R2 8-25-00 Internal investigation
R3 8-25-00 Statement of Stanley Drewery
R4 8-25-00 Statement of Janet Barnes
R5 8-26-00 Statement of Nancy Cantey
R6 8-29-00 Statement of Vertie Roland
R7 8-25-00 Health services evaluation for Inmate Shea Love
R8 8-26-00 Statement of Inmate Shea Love
R9 8-28-00 Inmate Grievance of Shea Love
R10 8-30-00 Statement of Inmate Shea Love
R11 8-30-00 Statement of Inmate Timothy Durham
R12 8-28-00 Statement of Kevin Barnes
R13 8-30-00 Statement of Vernon Badger
R14 8-26-00 Statement of Sean Thompson
R15 8-29-00 Statement of Sean Thompson
R16 9-1-00 Statement of Petitioner
R17 11-2-00 Statement of Kevin Lee
R18 11-2-00 Statement of Sean Thompson
R19 9-14-00 Administrative Assignment of Petitioner

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R20	11-2-00	Written Warning - Sean Thompson
R21	1-8-01	Dismissal Letter
R22	10-2-00	Memo from Darlyn White to H. Lofton
R23		Petitioner - Polygraph Results
R24		Sean Thompson - Polygraph Results
R25		Division of Prisons' Policy and Procedure Manual, Chapter 2F, Section .1500, "Use of Force"
R26		Craven Correctional Institution, Standard Operating Procedures, Chapter 4 Subject 4.23 "Use of Force"
R27		Craven Correctional Institution, Standard Operating Procedures, Chapter 4, Subject 4.02 "Custody/Operations"
R28		Picture of Albemarle Control Station
R29		Picture of View from Albemarle Control Room of Unit A-3, Cell 5
R30		Picture of Unit A3, Cell 5 Door
R31		Picture of Unit A3, Cell Doors to A4 and A5
R32		Picture of Unit A3, Cell 5
R33		Diagram of Albermarle -Bogue Unit
R34		Picture of Cuffing an Inmate to Remove Him From Segregation Cell
R35		Post Order Albemarle Unit, Block A-1, A-2, A-3, and A-4
R36	8-25-00	Daily Report of Inmate Shea Love
R37		Photo of Shea Love's injuries - Left Lower Side
R37A		Photo of Shea Love's injuries - Three Scratches on Inner Thigh
R37B		Photo of Shea Love's injuries - Bruise and Three Scratches on Left Shoulder Underneath Tattoo
R37C		Photo of Shea Love's injuries - Knot on Right Leg Underneath Knee
R37D		Photo of Shea Love's injuries - Left Arm Scratch
R37E		Photo of Shea Love's injuries - Lower Back, Six Scratches
R37F		Photo of Shea Love's injuries - Scratches on Right Side of Face
R37G		Photo of Shea Love's injuries - Bruise on Right Shoulder and Arm
R37H		Photo of Shea Love's injuries - Bruise Under Chin
R38		Resignation letter of Vernon Badger
R39		Credentials of Steve Davenport
R40		Return of Service on Subpoena for Shea Love
R41		Subpoena for Shea Love
R42	5-22-00	Temporary Job Assignment Modification
R43	6-23-00	Statement from Vernon Badger's Doctor
R44		Subpoena and Return of Service for Timothy Durham
R45	11-24-97	Written warning to Victor Garnett
R46	8-30-00	Statement of Sean Thompson
R47	10-20-97	Letter of notice to Victor Garnett
R48	7-28-98	Letter of counseling to Victor Garnett
R49	9-8-98	Internal investigation

WITNESSES

For Petitioner: Petitioner, Victor Garnett and Christian Boston, Sean Thompson, and David Chester.

For Respondent: David Chester, Steve Davenport, Sean Thompson, Michael Lamm, Janet Barnes, Vertie Roland, Daryl White, Nancy Cantey, Kevin Barnes, Darrell Lawrence, and Kevin Lee.

APPLICABLE STATUTES, RULES AND POLICIES

42 U.S.C § 2000 et seq.
N.C. Gen. Stat. § 126 et seq.
N.C. Office of State Personnel, Personnel Manual
N.C. Department of Correction, Personnel Manual

ISSUES

1. Was Petitioner's dismissal from his employment at the Craven Correctional Institution an act of discrimination based on Petitioner's race and/or was race a motivating factor for the adverse employment practice, even though other factors also motivated the practice?
2. Was Petitioner, Victor Garnett, dismissed from his employment at the Craven Correctional Institution for just cause where discrimination based on race was not part of a mixed motive?

BASED UPON careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed the evidence and has assessed the credibility of the witnesses by taking into account the appropriate and traditional factors for judging credibility, such as the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner was employed by the North Carolina Department of Correction ("NCDOC") at Craven Correctional Institution ("CCI") as a correctional officer ("C/O") from June 24, 1996, until January 8, 2001. At the time Petitioner began working at CCI, he was 21 years old and earned approximately \$20,000 per year. (Tr. 21, 22). In each of his four (and a half) years of employment, Petitioner received an increase in pay. At the time of his dismissal Petitioner earned \$24,600 per year. (Tr. 23).
2. On January 8, 2001, Petitioner was dismissed by CCI for unacceptable personal conduct based on an incident occurring on August 25, 2000. Specifically, the dismissal letter stated that the investigation revealed that Petitioner "did observe an unauthorized use of force against inmate Shea Love on August 25, 2000," and that Petitioner "failed to report this incident as directed by Division of Prisons policy." Petitioner was notified of his dismissal by Superintendent David Chester in person and by letter. (Transcript pp. 19-21, Res. Ex. 21).
3. On August 25, 2000, Petitioner, Victor Garnett, was assigned to Albemarle Unit on first shift, which is a segregation unit. Petitioner was in charge of Blocks A3 and A4. Inmate Shea Love was housed in block A3, cell 5 ("A3-5"). Inmate Timothy Durham was next to him in Block A3, cell 4 ("A3-4"). Petitioner reported for work at 5:45 a.m. and left at 2:00 p.m. on August 25, 2000. C/O Vernon Badger and C/O Sean Thompson worked first shift in the same cellblocks as Petitioner on August 25, 2000. Petitioner and C/O Badger are both black. C/O Thompson is Caucasian. (Transcript pp. 52-53, 55-58, 68, 78).
4. Being assigned to A-B unit was a privilege and a coveted position among officers. Petitioner did not request to be assigned to A-B unit but was approached by Michael Lamm who informed Petitioner that he was being assigned to A-B unit due to several factors, including, his rapport with inmates, his work record, his TAP appraisals and performance, and the belief that Petitioner would be an asset to the unit. (Tr. 27).
5. Inmate Shea Love made an allegation that he was physically assaulted by C/O Badger in his cell on August 25, 2000 between 1:30 p.m. and 1:35 p.m. Love alleged that just prior to the assault, Garnett came into his cell and they talked "for a little bit" and then Garnett went out to the entrance of Love's door. Love alleged that C/O Thompson was "already at my door" (alleging he was at the door before Garnett went in) and that Badger "came to the door" and "look(ed) in on" Love. Love alleged that Garnett told Badger that Inmate Love wanted him and that Badger "began to take off" his equipment. Love alleged that Badger said to "close the door" and that he (Love) said, "yeah, shut the door." Love alleged that Garnett told the control station to shut the door to Inmate Love's cell. Inmate Love alleged that C/O Badger "pick(ed) him up above his shoulders and slam(med) him to the (concrete) floor." Inmate Love solicited Inmate Durham's advice who was in the cell beside him and that Durham told him to talk to Daryl Lawrence. Love spoke to C/O Daryl Lawrence at approximately 3:30 p.m. which was some 2 hours after the alleged incident and was taken to a medical area for examination. (Res. Exs. 2, 8, 9). Daryl Lawrence testified that while making his rounds at approximately 3:30 pm that Love reported that he had been assaulted. He testified that he did not observe any injuries to Love at that time. Further C/O Lawrence stated that Love did not tell him who allegedly assaulted him or that there had been anybody watching. (Tr. 566-67). Love's allegations are by writing in August of 2000. He did not appear at the hearing even though he was subpoenaed and was not at any time from August 2000 through the hearing date available for cross-examination in any forum.
6. Verdie Roland, Staff Nurse, saw Inmate Love on August 25, 2000, at approximately 4:00 p.m. He was not bleeding and his injuries were superficial. Among her comments was the Love had multiple red areas noted to chest under hair and that Love himself told her he had "been scratching" his chest. The bruises on Inmate Love's inner thigh looked like fingernail scratches. They looked like scratches that were caused by a hand around the thigh. Also, Nurse Roland observed scratches to Love's left arm and lower back. (Transcript p. 484-85). The treatment of Inmate Love's injuries consisted of cleaning the abrasions with peroxide, an ace bandage was wrapped around his right wrist, and ice pack was used on his right wrist, and he was given Tylenol for pain. Love was "returned to segregation ambulatory with handcuffs intact in no apparent distress." (Transcript pp. 481-492).

7. All inmates that Nurse Roland had seen injure themselves prior to this had slashed their wrist or swallowed multiple pills. Roland stated that she could not be sure what it would look like if somebody self-inflicted injuries which were less than suicidal injuries as every inmate she had come into contact with self-inflicted injuries had involved suicide attempts. Inmate Love did not look like he had self-injured himself to commit suicide. Pursuant to the Undersigned's questioning Roland believed that the scratches appeared to look the same on Love's thigh and face as they did on his chest and back. Roland believed that that the red marks of scratching would be different depending on the degree of pressure if done directly to the skin as opposed to through a shirt. Love had admitted that he had been scratching his own chest but did not describe the assault as involving scratching. When asked for her medical opinion Roland stated that she did not know whether the scratch marks, other than those to the chest, were caused Love or by someone else. (Transcript pp. 481-492).

8. Nurse Roland in her written statement and testimony recalled Inmate Love stating to her that C/O Badger took off his equipment and handed it to Garnett and that C/O Thompson closed Love's cell door. (Transcript pp. 490-492, Res. Ex. 6).

9. Sergeant Janet Barnes took pictures of Inmate Love on August 25, 2000, between 4:00 p.m. and 4:30 p.m. He had scratches on his lower left side, bruises on his upper inner thigh, three scratches on his left shoulder underneath tattoos on his back, a knot on his right leg under his knee, a scratch on the inside of his left arm, six marks on his lower back, two scratches four inches in length on the right side of his face, a bruise on his right shoulder, a bruise approximately two inches on his chin. (Transcript pp. 454-470, Exhibits 37A-37H). The scratches on the inside of Inmate Love's left arm looked like fingernail scratches. (Transcript pp. 457, 462-463). Petitioner had a beard. It was difficult to see the scratches through his beard. (Transcript pp. 466-467). Inmate Love's beard covered the bruises on his chin. (Transcript p. 470). Janet Barnes testified that Vertie Roland made the comment that upon his arrival in medical following the alleged assault that Love had "too many scars to note on her sheet." (Tr. 454). Sgt. Barnes testified that the inmates that she had seen injure themselves had cut their wrist or put a bag over their head to try to commit suicide. Their injuries were more severe than Inmate Love's injuries. It didn't look like that Inmate Love had tried to self-injure himself. It appeared he had been involved in a scuffle, however Love's injuries were not consistent with the other inmates Barnes had seen who were involved in a use of force (because of lack of handcuff marks). (Transcript p. 472). Respondents photographs of Love have alleged injury are blurry and inconclusive as to what they purport to identify. (Tr. 454-475).

10. Sgt. Barnes (and Nurse Roland) stated that if Inmate Love had been sitting on his bed and he was six to eight feet away, wearing a T-shirt and shorts, they would not have been able to tell he was injured. (Transcript p. 471, 483). Sgt Barnes described C/O Badger as between 5'9" to 6' tall and between 200 and 210 pounds. She described Inmate Love as "similar to JJ on Good times, real skinny."

11. Captain (then Lt.) Kevin Barnes reviewed the photographs of Love's alleged injuries. In response to the first picture Barnes viewed he stated "You probably can't really see this up here in the face because of his facial hair. It's sort of like a scruffed up type area here in his facial area here." (Tr. 555). Barnes then stated that it appeared from the photos that Love has a pretty long thumbnail. (Tr. 556). Looking at Ex. 37G Barnes stated "It looks like a lump to me." When asked to read the caption on the bottom of the photo he stated "It says right shoulder bruise" and that the lump could possible just be part of Love's shoulder bone. (Tr. 557). Looking at Ex. 37E Barnes stated that "The only thing, it looks like a back to me. Whether upper or lower, it doesn't really - I can't really tell. (Tr. 558).

12. C/O Thompson had seen and heard of inmates self-inflicting injuries upon themselves by "cutting themselves or trying to cut themselves, putting a trash bag over their head, trying to hang themselves." He admitted that he had heard stories of inmates just bruising and scraping themselves for the sake of receiving attention. (Tr. 338, 339). The Undersigned asked Thompson whether, considering all of the factors involved, whether this was the type of injury or incident which could be fabricated or made up, to which Thompson responded "He could - he very could have - very possibly have done that." (Tr. 384.) Superintendent Chester testified that he found it unusual that Love did not report the alleged assault until 3:30 pm. (Tr. 164). Chester testified that non-reporting of an alleged injury for one and one half to two hours after the alleged incident could suggest the possibility that the injuries were self-inflicted. (Tr. 165). Chester stated that it was not infrequent that inmates will accuse somebody of assault. (Tr. 157).

13. All inmates in A-B unit have emergency call buttons in their individual cells which can be utilized to report any emergency situation. Inmate Love did not utilize his call button on August 25, 2000. (Tr. 119). Shift change takes place at 2:00 pm, seven days per week at Craven. Inmates are aware of what time shift change takes place and shift change does not vary. (Tr. 119 and 167). C/O Garnett, the Petitioner left CCI at the end of his shift.

14. Inmate Timothy L. Durham made written allegations. He claims to have observed Officers Garnett and Thompson go to Love's cell, with Garnett entering the cell for a few seconds before exiting while "Officer Thompson remained on the outside." Durham alleges that C/O Badger entered the A3 Block and that Garnett told Badger that Inmate Love "had threatened him." Durham alleges that Badger entered Inmate Love's cell after Garnett made the call to open it. Durham alleges that Garnett "closed the cell door," and Inmate Durham claims to have heard scuffling. Durham alleges that Thompson told Garnett, "you'll (sic) had better stop" to which Garnett replied, "oh, they alright." Durham then alleges that a few seconds after that, Garnett looked in the cell and that

Thompson “stood off to the side.” Durham claims to have observed Garnett’s facial expressions and then claims to have heard Garnett say, “oh shit,” and call for Love’s cell door to be opened. (Res. Ex. 11). Durham’s allegations are by writing in August of 2000. He did not appear at the hearing even though he was subpoenaed and was not at any time from August 2000 through the hearing date available for cross-examination in any forum.

15. Superintendent Chester stated that inmate Timothy Durham was not a good inmate and, that he thought Durham “had a couple of dozen rule violations during his prison incarceration.” Durham actually had 63 rules violation through October 20, 2000. (Tr. 167, Petitioners Ex. B). Moreover, according to C/O Thompson, Durham “was always cussing us out.” Disobeying orders from correctional officers. Also in July of 1997 he was “charged with self-injury.” (Tr.339-42). When asked if it would be common for an inmate like Durham to make things up, Superintendent Chester responded “No. Timothy Durham probably is – would make stuff up, I’m sure.” Chester further stated that it would be possible that Durham coached Love into making up the assault allegations as Durham had been punished for similar actions in the past. (Tr. 176). C/O Thompson opined that if Durham had testified at the hearing of this matter that Durham would probably not make a credible witness due to his “history and everything.” (Tr.342).

16. Petitioner stated that he smelled smoke around Inmate Love’s cell around 1:30 p.m. on August 25, 2000, and initiated a cell search. Petitioner testified that he had Inmate Love place his hands through the track of his cell door and he placed handcuffs on him. Petitioner testified that C/O Badger came into Block A3 from Block A4 and C/O Thompson was already in Block A3. Petitioner radioed the control room C/O to open Inmate Love’s cell door. Petitioner testified that once the door was open he ordered Inmate Love to step out and C/O Badger entered Inmate Love’s cell. Petitioner then ordered the control station C/O to close Inmate Love’s cell door. Then Petitioner ordered that the door to Inmate Love’s cell be opened and C/O Badger exited the cell. Petitioner testified that C/O Thompson did not participate in handcuffing Inmate Love, nor going in his cell and searching. Petitioner initiated a cell search, found no contraband and left the vicinity. Petitioner did not report to anybody on the next shift or any Sgt. that he smelled smoke in Inmate Love’s cell or that he did a cell search. Inmates in disciplinary segregation aren’t allowed to have tobacco products. Petitioner testified that he did not report the cell search to anyone because “when I made my statement, you don’t have to report cell searches.” (Transcript pp. 78-82, 93-94, 114-118, Res. Ex. 16).

17. Superintendent Chester reported that when officers do a cell search they are required to report that the cell search was done on “the 141 or daily log segregation.” (Transcript pp. 206). On the DC-141, the Daily Report for Inmate Love for August 25, 2000, there were only two log entries during the period that Petitioner worked on August 25, 2000. C/O Badger wrote that Inmate Love rec’d lunch at 11:28 a.m. There is no entry saying a cell search was done on Inmate Love’s cell or that anyone smelled smoke in Inmate Love’s cell. There is also the cell search report that indicates the cells that are searched that day. Petitioner testified that they have to document three cell searches each day. Superintendent Chester informed the Undersigned that the cell search report for August 25, 2000, could not be located. (Transcript pp. 102, 209-210). (Transcript pp. 82, 93, 104-105, 204-210, Exhibit 36).

18. Petitioner stated that he was aware that if he watched another officer assault an inmate he should report it. Every incident of use of force should be reported whether it is excessive or not. No one had been dismissed for failure to report use of force before and Superintendent Chester was unaware of another incident of unreported use of force. (Transcript pp. 88, 260, Exhibits 25, 26)

19. Correctional officers are required to be familiar with the post orders. A post order for officers assigned to the Albemarle Unit provides on page 6 of 9: “(i) Block officers will be responsible for maintaining individual DC-141’s on all assigned inmates. All pertinent information to include, but not limited to, counts, exercise, showers, and searches will be documented as they occur.” (Res. Ex. 35).

20. C/O Thompson didn’t smell smoke on August 25, 2000, near Inmate Love’s cell. Neither Petitioner nor C/O Badger told C/O Thompson that they smelled smoke on August 25, 2000. They did not tell C/O Thompson that they were doing a cell search. (Transcript pp. 377-378).

21. Initially, Petitioner, C/O Badger, and C/O Thompson stated that a proper cell search was performed on Inmate Love’s cell on August 25, 2000. C/O Thompson signed his statement on August 26, 2000. When C/O Thompson was told that he might be “subject(ed)” to a polygraph examination he changed his story. Petitioner and C/O Badger maintained that a proper cell search was performed. C/O Badger resigned on November 11, 2000. (Transcript p.367, Exhibits 13, 38).

22. C/O Thompson testified that Petitioner was standing at the door looking in the window while C/O Badger was in the cell alone with Inmate Love. C/O Thompson contended that he was six feet away under the stairwell and he couldn’t see in the window to Inmate Love’s cell. (Transcript pp. 315-316, 378). Right after Petitioner and C/O Badger left block A3 C/O Thompson looked inside Inmate Love’s cell and saw Love sitting on his bed “in a relaxed position. He wasn’t holding his face or holding an arm or leg or anything like that. And I asked him – I said, is everything all right? And he said, yeah, everything is cool.” (316, 317). . The door is about 8 feet from Inmate Love’s bed. C/O Thompson looked at Inmate Love for approximately 5 to 10 seconds when he asked him if everything was okay. Inmate Love was wearing boxers and a T-shirt. (Transcript pp. 316-317, 338, 376-377). C/O Thompson stated 10 seconds was a pretty long time and that it gave him a good opportunity to observe physical injury. (Transcript pp. 338). Thompson testified that nothing unusual happened during shift change on August 25, 2000 and that shift change went according to

policy. He then stated that while leaving Craven following that shift change that he had no discussions with Petitioner or Badger whatsoever. (Tr. 318). Thompson heard nothing to lead him to believe that any sort of fighting was taking place during the cell search on August 25, 2000. (Tr. 323). Thompson stated that if he had suspected that Love had been physically assaulted in any way that he would have filed a report. (Tr. 334). Thompson stated that at no point during the alleged incident did Badger ever hand him his equipment and agreed that it would be fair to say that Love was lying about that particular statement. "(Tr. 363).

23. C/O Thompson alleged he "had been contacted by C/O Garnett on several occasions by phone to apologize for involving him in this." On August 28, 2000, C/O Badger contacted C/O Thompson in A3 Block while he was in master control. C/O Badger told C/O Thompson to tell Lt. Kevin Lee that what happened was a cell search. According to Thompson, Badger was the only person that tried to influence him and that Garnett "never tried to say that this happened or that happened." (Transcript pp. 342-345, 353).

24. C/O Nancy Cantey worked from 5:45 a.m. to 2:00 p.m. on August 25, 2000. She was asked to open and close the door to Inmate Love's cell. Two to three minutes later she was asked to open and shut the door to Inmate Love's cell. The person at the control station is ordinarily the only person that can open and close the door to the inmates' cells in block A3. C/O Cantey looked before she open the door to Inmate Love's cell the second time because a search usually takes longer and she wanted to make sure she opened the right cell door. When C/O Cantey looked in cellblock A3 she saw Petitioner near the door to Inmate Love's cell and C/O Thompson was near the stairs. She did not see C/O Badger or Inmate Love in cellblock A3. Cantey stated that she never saw Garnett enter Love's cell on August 25, 2000. (Tr. 519, 523). C/O Cantey did not observe Inmate Love outside the cell when she opened his cell door the second time. Petitioner has stated that he had given the order to have Inmate Love's cell door opened and closed twice. (Transcript pp. 208, 517, 519-527). When questioned by the Undersigned, Captain Kevin Barnes stated with certainty that Inmate Love relayed to him that around 3:30 pm to 4:00 pm that "Badger had went into his cell while C/O Garnett and C/O Thompson stood outside the cell," and that Garnett and Thompson "watched and laughed about it." (Transcript pp. 546-47). When questioned by Respondent's attorney, Barnes stated Love did not mention any kind of actions referencing Thompson like "laughed about it or he encouraged it or anything like that." (Transcript pp. 553-54).

25. On August 25, 2000, around 12:00 pm Captain Kevin Barnes "was walking down the hallway near the side of the kitchen when (he) observed C/O Garnett involved in a conversation" with an inmate. The inmate said that Inmate Love wanted Garnett or something to that effect. "C/O Garnett replied that he didn't want him. He wanted C/O Badger." (Transcript pp. 538-543).

26. Inmate Love alleged in a statement written on August 30, 2000, that on August 24, 2000, he was taken to taken to the shower by Badger and Garnett and after finishing, he had to wait in the shower another 30 to 45 minutes. He allegedly told Garnett that he had no respect. Garnett replied that they (Garnett and Badger) had "got busy." Later when talking to Badger, Love alleged that when he told Badger that he had no respect and that he was lazy, that Badger replied, "if I wanted to leave you in here another hour there's nothing you can do about (it)." (Res. Ex. 10). When referred to Love's statement of August 30, 2000 regarding the alleged incident which occurred on August 24, 2000, Superintendent Chester admitted that the alleged incident in the shower area could have given Love the incentive to create an allegation of assault against Petitioner and Badger. (Tr. 179, Respondents Ex. 10).

27. On August 26, 2000, Petitioner was called to the Office of Lt. Lee where he was "in his office pretty much that day." Two days later Petitioner was removed from the Albemarle-Bogue Unit and he and C/O Badger were reassigned. Thompson remained assigned to A-B unit. Petitioner and Badger are black men. Thompson is a white man. (Tr. 64, 67, 68, Respondents Ex. 19, Petitioners Ex. D). Thompson confirmed that he alone was assigned to A-B unit A3-A4 on September 1, 2000, one week after the alleged assault took place and while the investigation was underway. C/O Thompson testified that he found it inappropriate that he was given that particular assignment. (Tr. 366).

28. On September 14, 2000 Petitioner received written notice of his prior administrative reassignment. In that letter Superintendent Chester stated that "this period of administrative status is not considered a disciplinary action and may not be appealed." The letter further stated that "this action is necessary to investigate allegations that you were involved in unnecessary and unauthorized use of force against inmate Shea Love on August 25, 2000." Three sentences later Chester stated that "upon further investigation, we have determined that you were involved in the use of force against inmate Shae Love on August 25, 2000 that appears to have been unnecessary and unauthorized." (Tr. 65, Respondents Ex. 19).

29. Captain (then Lt.) Kevin Scott Lee was the investigating officer regarding the alleged assault on August 25, 2000. Capt Lee concluded that "force was used on Shae Love unauthorized by Officer Badger, that Officer Thompson and Garnett were witness to it or were aware of it and failed to report it." Lee stated that Thompson was still assigned to Albemarle-Bogue after August 29th and that he could have had access to Love and could have had a one-on-one conversation while standing at Love's cell door. (Tr. 576-581). When asked whether a two-hour delay in reporting of an assault was unusual Lee responded that the delay was because Love stated he was "scared for his life reporting it to start with." When asked where in the body of evidence there existed a report or statement suggesting that Love reported being scared for his life he responded "I don't recall... I don't recall it being on paper." Lee had never investigated an assault like this before. (Tr. 583-84). Again, as found previously, all inmates in A-B unit have emergency call buttons in their individual cells which can be utilized to report any emergency situation. Inmate Love did not utilize his call button on August 25, 2000. (Tr. 119).

30. Darlyn White, Operations Manager for the Eastern Region of the NC Department of Correction, was “called down to do an investigation” regarding the Shae Love incident. (Tr. 496-97) and prepared a memo dated October 2, 2000. White stated that she felt the officer “that actually did the assault” was Badger and that he should have been dismissed had he not resigned. She recommended all officers involved take a polygraph test as well as the inmate. Chester did not have Love take a polygraph examination. When asked to clarify the statement that “they should get a written warning if it’s determined that they lied” would include Petitioner, White affirmed that it would. White stated that she believed “they all may have lied at some point in the investigation.” Though White felt Garnett should have gotten a written warning, she stated her recommendations are just that and the superintendent did not have to go by her recommendation (Tr. 503-4, Res. Ex. 22). Chester did not follow the recommendation that those who lied during the investigation should be written up and the officer involved should be dismissed. White stated she had “no question about the assault,” when writing the report but testified that she now could not say whether Love’s injuries were self-inflicted or not. (Tr. 512) When asked whether she requested or had knowledge of a doctor who was asked to examine the patient or review the medical records to give an opinion as to whether Love’s wounds were self-inflicted, White responded “I am not sure.” When asked whether such an examination would have been prudent she responded “I’m sure the facility did.” No evidence has been presented that a medical doctor examined Love. When asked how she could explain that Thompson testified that he never saw any assault of any type, White’s response was “I can’t.” (Tr. 513).

31. Steve Davenport, a private polygraph examiner and an expert in polygraph examination, gave a polygraph examination to Petitioner on October 23, 2000 and to C/O Thompson on December 7, 2000.

32. The Petitioner and C/O Thompson were asked different relevant questions. The questions or areas of concern are suggested by Respondent. During Petitioner’s polygraph examination he was asked the following questions: 1.-Did you see inmate Shea Love’s cell door open when he was not cuffed? 2.-Did you see Officer Badger and inmate Shea Love locked in Shea Love’s cell together? 3.-Did you see Officer Badger and inmate Shea Love involved in a physical confrontation? During his polygraph examination C/O Thompson was asked the following questions: 1.-Was Inmate Shea Love handcuffed before C/O Badger entered his cell? 2.-Was C/O Badger the only officer in the locked cell with inmate Shea Love? 3.-Was C/O Garnett looking through the cell window while C/O Badger and Inmate Shea Love were in the cell together? (Transcript pp. 284-295).

33. No questions were designed or asked regarding C/O Thompson’s role in the matter including the fact that C/O Thompson was not asked were you looking through the cell window while Badger and Love were in the cell. Also no questions were asked regarding whether an assault took place or whether there was injury to Inmate Love. Inmate Love and C/O Badger were not given Polygraph examinations. (Transcript pp. 284-292).

34. Petitioner answered no to all three of his relevant questions. C/O Thompson answered no to his first relevant question (see above) and yes to the next two. The analysis and numerical evaluation for Petitioner’s questions showed deception indicated. The analysis of C/O Thompson’s reaction to his questions indicated there was no deception indicated. (Tr. pp. 284-289).

35. Steve Davenport stated and in fact, polygraph examinations have not been admissible in North Carolina courts since 1983, over 18 years. This is because a defendant in a particular case had taken two polygraph examinations given by the same examiner. The first examination resulted in inconclusive results. Several days later a subsequent examination showed deception indicated. Therefore the North Carolina Courts decided to exclude polygraph examinations. Polygraph test structure only allows 3 relevant questions. If there are more, separate examinations would need to take place. (Tr. 290-96).

36. Assistant Superintendent Michael Lamm stated that if C/O’s received “Below Good” ratings that he would “somehow salvage them and try to make them better officers.” Petitioner has never received a “Below Good” rating. All of Petitioner’s ratings have been “Good” or “Very Good.” (Tr. 428, 429, Petitioners Ex. A). Lamm testified that he was convicted of Driving While Under the Influence while employed by The Department of Corrections as Assistant Superintendent. He was given a written warning. When asked if he felt that it was fair that he received a written warning for a DWI conviction while Petitioner was terminated for allegedly being involved in Aiding and Abetting Simple Assault he responded “I have no answer.” (Tr. 439, 430). Lamm stated that “if I had determined that Badger did not use force on Love then I would not have recommended dismissal.” (Tr. 441). When asked about Love’s late reporting of the alleged assault Lamm testified that he did not take the two-hour discrepancy into consideration. (Tr. 446). Lamm stated that he was not aware as to whether or not Thompson asked Love whether he was okay or not. Lamm then stated that it would have been important to his investigation. (Tr. 447).

37. David Chester has been the Correctional Superintendent for CCI since March 1, 1999. He has been employed with the NCDoc since January 8, 1974. (Transcript p. 145).

38. Superintendent Chester testified that from the investigation he determined that three officers were in cellblock A3 on August 25, 2000. He stated Garnett was recommended for dismissal because he (Chester) felt that Garnett was directly involved in the situation in that he had given direction to open and close the door and was standing by. As such, Chester felt that Petitioner and C/O

Badger were directly involved in the use of force. Chester believed there had been some “bantering” back and forth between Petitioner, C/O Badger, and Inmate Love before the incident. (Transcript p. 174-175, 199, 237-238).

39. Superintendent Chester stated that he looked at the conclusions of the investigating officer, Lt. Lee, all the witnesses’ statements, and in this case he interviewed Petitioner. Petitioner’s statement was not consistent with the other officers and inmates. Chester stated that he recognized that there probably was elaboration of what occurred by Inmate Love, perhaps even Inmate Timothy Durham, but felt the essence of the overall statements indicated that something happened that day. Chester believed that they were consistent and believable. (Transcript p. 240, 248-249, 252, 255, 257, Exhibit 1). Love alleged that C/O Thompson was “already at my door” (alleging he was at the door before Garnett went in) and that Badger ‘came to the door” and “look(ed) in on” Love. Inmate Timothy L. Durham claimed to have observed Officers Garnett and Thompson go to Love’s cell, with Garnett entering the cell for a few seconds before exiting while “Officer Thompson remained on the outside.” Durham alleges that Thompson told Garnett, “you’ll (sic) had better stop” to which Garnett replied, “oh, they alright.” (Resp. Ex. 11).

40. Chester received various investigative reports concerning the incident sometime in October. He “had some pretty strong conclusions at the time I presented what I had to my supervisor, Mr. Loftin. And because Badger and others had written various people, I guess, complaining about my management and how they were being discriminated against and had filed an EEO complaint, there was a request that Ms. White come out and review some of the findings to help form a conclusion.” (Tr. 268). Again, Regional Manager White recommended all officers involved take a polygraph test as well as the inmate. Ms. White stated her final outcome was based on the fact that “they all may have lied at some point of the investigation.” Ms. White recommended that if proven, the officer involved in the assault should be dismissed and that the others should get a written warning. (Res. Ex. 22).

41. Chester testified that “There have been a number of times when I have had to sit and listen to Officer – Mr. Garnett make statements about my management style, my discrimination, my character, certainly before the ESC officer recently...Frankly I tried...very hard not to hold those allegations against him.” Superintendent Chester stated he may have notes of the date of meeting Garnett but “I (Chester) don’t think I would say Officer Garnett said this to me or not.” (Tr. 272-73).

42. When asked if any inmate on A-B unit had been interviewed regarding the incident Chester responded “I can’t answer that, sir. I know they interviewed Love and Durham. I would think they interviewed others, and they either indicated they didn’t hear anything or wouldn’t make any statement.” Chester stated that Timothy Durham “probably is – would make stuff up, I’m sure.” Chester also stated it was not uncommon to have inmates just deny seeing anything (Tr. 175-76). Chester was also aware that Inmate Love was upset with Badger and Garnett the day before the incident over waiting in the shower area 30 minutes after his shower when Garnett and Badger “got busy.” Chester stated that could give Love the incentive to make up a story or an allegation against Petitioner. (Tr. 178-79).

43. Superintendent Chester testified that he considered Petitioner’s previous work performance and years of experience with the NCDOC when he made his decision to recommend dismissal. Superintendent Chester testified that the decision to dismiss Petitioner was based on one event. Superintendent Chester found he couldn’t support Petitioner’s position that the assault did not occur, and he found Petitioner to be untruthful and uncooperative in the investigation. Superintendent Chester didn’t believe that he as a manager or any of the supervisors would be able to work with Petitioner or place any confidence in him in the future. He didn’t think Petitioner was salvageable. (Transcript pp. 171-172, 200-201, 264-266).

44. Petitioner received a written warning on November 24, 1997, for leaving his post without being properly relieved and for failure to secure his security equipment which jeopardized the safety of the inmates and the staff. Captain Gary Brinkley issued Petitioner a counseling for taking a meal from the dining hall and not paying for it on July 28, 1998. Lt. Hal Pilgreen issued Petitioner a letter of notice regarding his driving a state vehicle. He nearly caused an accident by changing lanes without a signal. In November 1998, Petitioner was issued a letter of counseling for playing cards with inmates while on a duty post. However, Petitioner testified that he did not have any coaching sessions or a written warning while working at CCI. (Transcript pp. 38, 48, 391, 411-414, 416, Exhibits 45, 47, 48, 49).

45. Petitioner’s TAP’s from May 31, 1997 through May 31, 2000 indicate ratings of “Good” and “Very Good.” Petitioner has never received a rating of “Below Good” or “Unsatisfactory.” On his December 21, 1999 Performance Notation, his supervisor wrote, “C/O Garnett has done a solid job since being assigned to Special Housing, keeps neat and accurate logs. He conducts cell searches in accordance to policy, communicates well with both staff and inmates, keeps good accounting of equipment.” (Petitioners Ex. A, Tr. 154). On his March 19, 2000 Performance Notation, a supervisor indicated that “C/O Garnett is a strong officer who has the ability to lead other staff and can set the example. C/O Garnett is starting to mature as an officer and has a good knowledge of policy and procedures.” (Petitioners Ex. A, Tr. 31, 32, 34, 35, 36, 39, 40, 41, 42, 43, 429). Petitioner had never been written up or disciplined for conducting an improper cell search prior to the alleged incident of August 25, 2000. (Petitioners Ex. A, Tr. 45).

46. Christian Boston, a black C/O at Craven Correctional Institution was called as a witness. He has been at CCI for 5 years. Witness Christian Boston opined that Petitioner was one of the best and most respected C/O’s at Craven. Boston stated the Petitioner had a good rapport with the inmates and that he had never seen Petitioner strike an inmate, threaten an inmate, or express a

desire to strike an inmate. (Tr. 123, 124). Boston testified that he had "had the opportunity to work with a lot of staff members at Craven Correctional Institution. And Officer Garnett commanded respect not only from inmates but also from staff members, as far as supervisors as well. I can't think of anything negatively about his job performance, his attendance, his appearance, anything like that." (Tr. 124, 125).

47. Witness C/O Thompson testified that Petitioner was an excellent corrections officer and that he had never known Petitioner to assault an inmate or threaten to assault an inmate. Thompson further stated that Petitioner has never violated any policy or procedure and that Petitioner has always acted in a professional and courteous manner toward him, other C/O's and inmates. (Tr. 314, 315).

48. Inmate Love was allowed to file criminal assault charges against Petitioner. As of October 27, 2000 any and all charges against Petitioner had been voluntarily dismissed by the Craven County District Attorney. (Tr. 117). Boston could not recall there ever being another inmate, other than inmate Love, that was afforded the opportunity to take out criminal charges on a staff member. (Tr. 128). Boston testified that, in his experience at Craven, that Petitioner would not have eventually been dismissed following the allegations if he was a white C/O. (Tr. 129).

49. C/O Thompson received a written warning on November 2, 2000, for failure to promptly report the unauthorized entry of a C/O into an inmates cell and for hindering an investigation by providing misleading statements. The written warning prevents C/O Thompson from getting a promotion for 18 months. C/O Thompson didn't have any prior disciplinary action. Although C/O Thompson gave misleading and false information the first time, when confronted with inconsistencies, he indicated that he had not been truthful. Superintendent Chester testified that he did not assume that everything that C/O Thompson told him was true, but his statements were consistent with the other evidence, and the polygraph examination results indicated that he was not deceptive. Superintendent determined that C/O Thompson was salvageable. (Transcript pp. 174, 197-198, 237-238, 250, 279, 373, Exhibit 20).

50. When asked if there were racial problems at Craven, C/O Boston responded that "I definitely think there is a separation of racial equality at Craven Correctional Institution, yes." He further stated that the problem "stems form management downward." And finally, that "there are definitely cases that have been handled differently as far as white staff members and concerning black staff members." (Tr. 126, 127).

STANDARDS OF REVIEW

Employment discrimination law recognizes that discrimination in employment cases fall within one of two categories: 'pretext' cases and 'mixed-motives' cases. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989). Pretext cases represent the typical disparate treatment action. They take their name from the analysis developed in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). In pretext cases, the plaintiff seeks to prove that the defendant's proffered non-racial reason for an adverse employment action was, in reality, a pretext for a racially motivated decision. Once the parties satisfy their relatively modest obligations the trier of fact proceeds to decide the ultimate question: whether plaintiff has proven that the defendant discriminated against him because of his race. By contrast, if plaintiffs can present sufficiently direct evidence of discrimination, they qualify for the more advantageous standards of liability applicable in mixed-motive cases. The Civil Rights Act of 1991 modified the *Price Waterhouse* scheme making mixed-motive treatment more favorable to plaintiffs. Under the Act, an employer can no longer avoid liability by proving that it would have made the same decision for nondiscriminatory reasons. Instead, liability now attaches whenever race "was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U.S.C § 2000e-2(m). Thus, employers now violate the Act when race plays an actual role in an employment decision, regardless of other considerations that may independently explain the outcome. *Preston v. Virginia ex rel. New River Community Coll.*, 31 F.3d 203 (4th Cir. 1994).

In employment discrimination cases proceeding on *Price Waterhouse* (1989) "mixed motives" theory, direct proof of discriminatory animus (based on statements or conduct) leaves an employer only an affirmative defense on the question of "but for" cause or cause in fact. See *Starceski*. The employer must prove the mixed- motive defense by a preponderance of the evidence. 42 U.S.C § 2000 et seq. Currently, under the Civil Rights Act of 1991 as amended, an unlawful employment practice is established when the complaining party establishes that race, color, national origin, or sex was a motivating factor for any employment practice, *even though* other factors also motivated the practice. If an employer can demonstrate that it would have taken the same action in the absence of the impermissible motivating factor, the plaintiff's relief is limited to injunctive and declaratory relief, costs, and attorneys' fees. 42 U.S.C § 2000 et seq and *Buchanan v. City of San Antonio*, 85 F.3d 196 (5th Cir. 1990).

A plaintiff must satisfy the evidentiary burden necessary to make out a mixed-motive case. This requires "direct evidence that decision makers placed substantial negative reliance on an illegitimate criterion." See *Price Waterhouse*(1989) and *Wilson v. Firestone Tire & Rubber*, 932 F.2d 510 (6th Cir. 1991). ".). What is required is evidence of conduct or statements that both reflect directly the alleged discriminatory attitude and that bear directly on the contested employment decision. *Starceski v. Westinghouse Elec. Corp.*, 54 F.3d 1089 (3d Cir. 1995). A charge on a "mixed-motives" theory of employment discrimination requires conduct or statements by persons involved in the decision making process that may be viewed as directly reflecting the alleged discriminatory attitude. *Ezold v Wolf, Block, Schorr and Solis-Cohen*, 983 F.2d 509 (3d Cir. 1992), *cert. denied*, 510 U.S. 826, 126 L.Ed.2d 56

CONTESTED CASE DECISIONS

(1993). Whether a plaintiff has satisfied this evidentiary threshold is a decision for the district court after it has reviewed the evidence. See *Price Waterhouse*. Thus, whether a case is a pretext or mixed-motive case is a question for the court once all the evidence has been received and ultimately lies in the kind of proof the employee produces on the issue of bias. *Starceski and Ostrowski v. Atlantic Mutual Insurance Companies*, 968 F.2d 171 (2d Cir. 1992).. As such, a plaintiff need not decide at the outset whether to classify his case as a "pretext" or a "mixed-motive" case. Instead, the district judge makes this determination after evaluating the evidence. *Armbruster v. Unisys Corp.*, 32 F.3d 768 (3d Cir. 1994) *on remand* 914 F.Supp. 1153 (1996).

Section 126-35 of the North Carolina General Statutes provides that "no career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." The State Personnel Manual divides "just cause" into two categories: (1) unsatisfactory job performance and (2) personal conduct detrimental to State service. The difference is important because an employee must receive certain warnings before being terminated for unsatisfactory job performance, while no warnings are required for termination based on personal misconduct. However, "the categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case." N.C. Admin. Code tit. 25, r. 1J.0604 (June 2000).

Unacceptable personal conduct refers to: (1) conduct for which no reasonable person should expect to receive prior warnings; (2) job-related conduct which constitutes a violation of state or federal law; (3) conviction of a felony or an offense involving moral turpitude; (4) the willful violation of known or written work rules; or (5) conduct unbecoming a state employee that is detrimental to state service. Among the examples of "unacceptable personal conduct" listed in the Department of Corrections (DOC) Manual are willful acts that would endanger the lives and property of others, leaving an assigned post without specific authorization from a superior, failure to remain alert while on duty (threatening the security and safety of the State, department, citizens, employees, inmates, probationers, or parolees), engaging in activity which seriously jeopardizes the safety of fellow employees or inmates, and failure to follow established safety policies and procedures which results or could result in the endangerment of life and/or property.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to 150B of the North Carolina General Statutes.
2. At the time of his dismissal Petitioner was a "career State employee subject to the State Personnel Act," within the meaning of N.C.G.S. § 126-35.
3. In accordance with the United States Supreme Court, employment discrimination law recognizes that discrimination in employment cases fall within one of two categories: 'pretext' cases and 'mixed-motives' cases. If Petitioner presents sufficiently direct evidence of discrimination in the form of conduct and/or statements by persons involved in the decision making process that may be viewed as directly reflecting the alleged discriminatory attitude, he qualifies for the standards of liability applicable in mixed-motive cases. According to case law, whether a case is a pretext or mixed motive case is a question for the court once all the evidence has been received and ultimately lies in the kind of proof the employee produces on the issue of bias.
4. After reviewing all the evidence and upon reflection of the hearing process, including witness statements and demeanor, the Undersigned finds that Petitioner has satisfied the evidentiary threshold which entitles the decision in this case to be reviewed in the mixed-motives category. Conduct and/or statements that may be and are viewed as directly reflecting race as a motivating factor for Respondent's actions are set out in discussions in the subsequent paragraphs.
5. Three Officers and an Inmate were involved in some type of interaction on August 25, 2000. Respondent claims it was an assault. A black officer (the one alleged to have been directly involved) resigned and the inmate was released from the facility with neither testifying at this hearing. Of the two officers that allegedly observed the interaction, one was white and was issued a warning and the other was black (the Petitioner) and was dismissed. Superintendent Chester stated that the decision to dismiss Petitioner was based on this one event.
6. In the dismissal letter from Respondent dated January 8, 2001, it is stated that the investigation revealed that Petitioner "did observe an unauthorized use of force against inmate Shea Love on August 25, 2000," and that Petitioner "failed to report this incident as directed by Division of Prisons policy." Petitioner claims there was no use of force against Shea Love and the preponderance of the evidence supports that contention.
7. Inmate Love alleged that C/O Badger "pick(ed) him up above his shoulders and slam(med) him to the (concrete) floor." Inmate Love solicited Inmate Durham's advice who was in the cell beside him and Durham told him to talk to Daryl Lawrence. Love spoke to C/O Daryl Lawrence at approximate 3:30 p.m. which was some 2 hours after the alleged incident and reported that he had

been assaulted. He was taken to a medical area for examination. Daryl Lawrence stated that he did not observe any injuries to Love at that time. Further, right after Petitioner and C/O Badger left block A3 C/O Thompson looked inside Inmate Love's cell and saw Love sitting on his bed "in a relaxed position. He wasn't holding his face or holding an arm or leg or anything like that. And I (Thompson) asked him – I said, is everything all right? And he said, yeah, everything is cool." C/O Thompson looked at Inmate Love for approximately 5 to 10 seconds when he asked him if everything was okay. C/O Thompson stated 10 seconds was a pretty long time and that it gave him a good opportunity to observe physical injury. No sign of any trauma whatsoever is not consistent with a small-framed inmate who had just been picked up over the shoulders of a larger C/O and slammed to the concrete floor.

8. Verdie Roland, Staff Nurse, saw Inmate Love on August 25, 2000, at approximately 4:00 p.m. He was not bleeding and his injuries were superficial. Among her comments was the Love had multiple red areas noted to chest under hair and that Love himself told her he had "been scratching" his chest. The bruises on Inmate Love's inner thigh looked like fingernail scratches. They looked like scratches that were caused by a hand around the thigh. Also, Nurse Roland observed scratches to Love's left arm and lower back. Pursuant to the Undersigned's questioning Roland believed that the scratches appeared to look the same on Love's thigh and face as they did on his chest and back. Roland believed that that the red marks of scratching would be different depending on the degree of pressure if done directly to the skin as opposed to through a shirt. Love had admitted that he had been scratching his own chest but did not describe the assault as involving scratching. When asked for her medical opinion Roland stated that she did not know whether the scratch marks, other than those to the chest, were caused Love himself or by someone else.

9. The evidence at the hearing which was the same evidence as known or with modest diligence should have been known by Respondent shows that Inmate Love apparently inflicted scratches upon himself and thereby was untruthful or highly exaggerated an assault incident. This is supported first by the fact that he did not report any injuries for 2 hours or more despite the fact that his alleged assailant, C/O Badger had gone off duty over an hour and a half before and despite the fact that he like all inmates in that unit have individual emergency call buttons in their cells. In fact, when asked whether a two-hour delay in reporting of an assault was unusual Captain (then Lt.) Kevin Scott Lee, the investigating officer, responded that the delay was because Love stated he was "scared for his life reporting it to start with." Superintendent Chester testified that he found it unusual that Love did not report the alleged assault until 3:30 pm. And stated that non-reporting of an alleged injury for one and one half to two hours after the alleged incident could suggest the possibility that the injuries were self-inflicted. Chester stated that it was not infrequent that inmates will accuse somebody of assault.

10. Further, Inmate Love solicited Inmate Durham's advice who was in the cell beside him. Superintendent Chester stated that inmate Timothy Durham was not a good inmate. In fact, Durham actually had 63 rules violations through October 20, 2000 and Chester, himself, stated that it would be possible that Durham coached Love into making up the assault allegations as Durham had been punished for similar actions in the past. Moreover, according to C/O Thompson, Durham "was always cussing us out," and disobeying orders from correctional officers. Also in July of 1997 he was charged with self-injury. C/O Thompson opined that if Durham had testified at the hearing of this matter that Durham would probably not make a credible witness due to his "history and everything."

11. With the evidence known, Superintendent Chester still found that Petitioner observed an unauthorized use of force against Shea Love and further found that Petitioner's refusal to acknowledge that use of force during the internal investigation constituted unacceptable personal conduct. The evidence at the hearing supports neither.

12. Assistant Superintendent Michael Lamm stated that "if I had determined that Badger did not use force on Love then I would not have recommended dismissal." When asked about Love's late reporting of the alleged assault Lamm testified that he did not take the two-hour discrepancy into consideration. Lamm stated that he was not aware as to whether or not Thompson asked Love whether he was okay or not. Lamm then stated that it would have been important to his investigation.

13. Petitioner's dismissal involves a change of stories by one of the two C/Os, Sean Thompson, who was in the cellblock area of Inmate Love. The day after the alleged incident, C/O Thompson stated he observed C/O Badger enter Love's cell to look for contraband with Petitioner outside the cell with Love in restraints. Petitioner concurred in his statement several days later to this scenario. C/O Thompson makes no mention of his (Thompson's) involvement other than observing. Three days later, C/O Thompson made another statement that he observed C/O Badger go into Love's cell with the door being closed and Love and Badger in alone. Thompson stated he was 5 to 6 feet away and that Petitioner was at the door looking into the window. Petitioner concurred with his original statement. Respondent felt Petitioner who is black was untruthful and found his failure to provide complete and accurate information constituted unacceptable personal conduct. Believing Thompson who is white eventually was truthful, Respondent issued him a warning. The crux of the mixed motives lies within an examination of the treatment of Petitioner and C/O Thompson.

14. On August 26, 2000, Petitioner was called to the Office of Lt. Lee where he was "in his office pretty much that day." Two days later Petitioner was removed from the Albemarle-Bogue Unit and he and C/O Badger were reassigned. Thompson remained assigned to A-B unit. Petitioner and Badger are black men. Thompson is a white man. Thompson confirmed that he alone was assigned to A-B unit A3-A4 on September 1, 2000, one week after the alleged assault took place and while the investigation was underway. C/O Thompson testified that he found it inappropriate that he was given that particular assignment. Captain (then Lt.)

Kevin Scott Lee, the investigating officer, concluded that “force was used on Shae Love unauthorized by Officer Badger, that Officer Thompson and Garnett were witness to it or were aware of it and failed to report it.” Lee stated that Thompson was still assigned to Albemarle-Bogue after August 29th and that he could have had access to Love and could have had a one-on-one conversation while standing at Love’s cell door.

15. On September 14, 2000 Petitioner received written notice of his prior administrative reassignment. In that letter Superintendent Chester stated that “this period of administrative status is not considered a disciplinary action and may not be appealed.” The letter further stated that “this action is necessary to investigate allegations that you were involved in unnecessary and unauthorized use of force against inmate Shea Love on August 25, 2000.” Just three sentences later Chester stated that “upon further investigation, we have determined that you were involved in the use of force against inmate Shae Love on August 25, 2000 that appears to have been unnecessary and unauthorized.”

16. Respondent seems to have relied on polygraph examinations that were administered to Petitioner and Thompson. Neither C/O Badger who resigned, nor Inmate Love nor Inmate Durham took polygraphs. Several stark differences lie which reflect directly the alleged discriminatory animus and that bear directly on the contested employment decision regarding dismissal for Petitioner as opposed to a warning. Petitioner and Thompson were examined on different days, that were not just a few days or a week apart. Steve Davenport, a private polygraph examiner, gave a polygraph examination to Petitioner on October 23, 2000 and to C/O Thompson on December 7, 2000, over a month apart with Petitioner required to be first. Moreover, the Petitioner and C/O Thompson were asked different relevant questions all centered around the Petitioner. The questions or areas of concern are suggested by Respondent. No questions were designed by Respondent or asked regarding C/O Thompson’s role in the matter including the fact that C/O Thompson was not asked were you looking through the cell window while Badger and Love were in the cell. Also no questions were asked regarding whether an assault took place or whether there was injury to Inmate Love. The option was certainly available for Respondent to conduct several polygraph examinations but Respondent chose not to do so.

17. Superintendent Chester stated that he recognized that there probably was elaboration of what occurred by Inmate Love, perhaps even Inmate Timothy Durham, but felt the essence of the overall statements were consistent and believable. Given that, it is directly obvious that the statements regarding Thompson were ignored and the majority of the statements by Love and Durham regarding the Petitioner were relied upon in imposing different disciplines for their (Petitioner and Thompson) participation. Love alleged that C/O Thompson was “already at my door” (alleging he was at the door before Garnett went in) and that Badger “came to the door” and “look(ed) in on” Love. Inmate Timothy L. Durham claimed to have observed Officers Garnett and Thompson go to Love’s cell, with Garnett entering the cell for a few seconds before exiting while “Officer Thompson remained on the outside.” Durham alleges that Thompson told Garnett, “you’ll (sic) had better stop” to which Garnett replied, “oh, they alright.” In fact in one of Love’s verbal and/or written statements, he alleges that Badger handed Thompson his equipment or that equipment was handed to Petitioner with Thompson closing the door.

18. C/O Nancy Cantey was the person at the control station on August 25, 2000. C/O Cantey looked before she open the door to Inmate Love’s cell the second time and when she looked in cellblock A3 she saw Petitioner near the door to Inmate Love’s cell and Thompson was near the stairs. She did not see C/O Badger or Inmate Love. Cantey stated that she never saw Garnett enter Love’s cell and did not observe Inmate Love outside the cell when she opened his cell door the second time. Love, himself relayed conflicting information to various individuals. When questioned by the Undersigned, Captain Kevin Barnes stated with certainty that Inmate Love relayed to him that “Badger had went into his cell while C/O Garnett and C/O Thompson stood outside the cell,” and that Garnett and Thompson “watched and laughed about it.” When questioned by Respondent’s attorney, Barnes stated Love did not mention any kind of actions referencing Thompson like “laughed about it or he encouraged it or anything like that” but did state that Thompson was standing at the door.

19. Superintendent Chester reported that when officers do a cell search they are required to report that the cell search was done on “the 141 or daily log segregation.” On the DC-141, the Daily Report for Inmate Love for August 25, 2000, there were only two log entries during the period that Petitioner worked on August 25, 2000 which do not indicate a cell search was done on Inmate Love’s cell. There is also the cell search report that indicates the cells that are searched that day. Petitioner testified that they have to document three cell searches each day. Superintendent Chester informed the Undersigned that the cell search report for August 25, 2000, could not be located.

20. Superintendent Chester received various investigative reports concerning the incident sometime in October (several weeks after his September letter to Petitioner). He “had some pretty strong conclusions at the time I presented what I had to my supervisor” but because C/O Badger and others had gotten in touch with various people regarding his management and regarding racial discrimination by him, Chester requested that Ms. White come out and review the findings to help form a conclusion.

21. Darlyn White, Operations Manager for the Eastern Region of the NC Department of Correction, did indeed do an investigation regarding the Shae Love incident and prepared a memo dated October 2, 2000. Ms. White stated that she felt the officer “that actually did the assault” was Badger and that he should have been dismissed had he not resigned. She recommended all officers involved take a polygraph test as well as the inmate. White believed “they all may have lied at some point in the investigation” and

recommended the others should get a written warning which included Petitioner and Thompson. Though White felt Garnett should have gotten a written warning, she stated her recommendations are just that and the superintendent did not have to go by her recommendation. Chester did not follow the recommendation of Ms. White as it applied to Petitioner but did follow it as it applied to Thompson even though he was the one who called her down to help form a conclusion.

22. Superintendent Chester testified that “there have been a number of times when I have had to sit and listen to Officer – Mr. Garnett make statements about my management style, my discrimination, my character, certainly before the ESC officer recently...Frankly I tried...very hard not to hold those allegations against him.” Superintendent Chester stated he may have notes of the date of meeting with Garnett but “I (Chester) don’t think I would say Officer Garnett said this to me or not.”

23. Under *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), in order to prove a mixed-motive defense the employer should be able to present some *objective* proof that the same decision would have been made (absent the impermissible treatment). The legitimate reason must have been present at the time the decision was made. It is not enough for the employer to demonstrate that the same decision would have been justified, but instead the employer must show that its legitimate reason standing alone would have produced the same decision and the employer must prove the mixed-motive defense by a preponderance of the evidence. Further, in 1991, Congress amended the holding in *Price Waterhouse* and currently an unlawful employment practice is established when the complaining party establishes that (in this case) race or color was a motivating factor for any employment practice, *even though* other factors also motivated the practice. 42 U.S.C § 2000e -2(m).

24. In the present case, Petitioner has presented evidence and established that race played an actual role in the employment decision of dismissal. The disparate treatment in the investigation and ultimate disciplinary decision between Petitioner and Thompson as cited in the paragraphs above is that evidence establishing race as a factor.

25. In attempting to produce evidence to show that a legitimate reason standing alone would have produced the same decision, Respondent fails by a faultiness of the evidence. There is not a preponderance of the evidence showing that Inmate Love was assaulted. In fact the evidence more likely shows he was not and his injuries, to what small amount they were, were self-inflicted. Petitioner is therefore correct when he states he did not see a use of force.

26. In this case there was indeed some interaction between C/O Badger and Inmate Love. However both C/O Garnett who is black and C/O Thompson who is white objectively stand on equal footing as for their truthfulness. Thompson, even in his changed story speaks little to none in his role despite statement by Inmates Love and Durham that he even perhaps observed, held equipment and even laughed about the incident. To discount this evidence to his favor but accept the statements of Love and Durham as correct as they apply to Petitioner is discriminatory and is explained by Petitioner’s discussions with Superintendent Chester regarding his management and such racial discrimination.

27. Chester was in fact concerned about his objectivity regarding Petitioner and called in a regional manager with the Department of Corrections, Ms. White to investigate and make recommendations. She investigated using the same evidence as before and/or available to Chester and recommended both the Petitioner and Thompson receive warnings. Chester followed her recommendation as it applied to Thompson but not as it applied to Petitioner.

28. At the hearing, evidence was presented showing that Petitioner had received a written warning on November 24, 1997, for leaving his post without being properly relieved and for failure to secure his security equipment. In July 1998, Petitioner was issued a letter of counseling for taking a meal from the dining hall and not paying for it and in November 1998, Petitioner was issued a letter of counseling for playing cards with inmates while on a duty post. He was also given a letter of notice regarding his driving a state vehicle where he nearly caused an accident by changing lanes without a signal. These would not however be sufficient reasons standing alone to have produced the same decision that was in sharp contrast to the discipline of C/O Thompson. First, Chester stated his decision was based on the one incident and second the reports for Petitioner’s Appraisal Process (TAP) occurring later show Petitioner as has never receiving a rating of “Below Good” or “Unsatisfactory.” On his December 21, 1999 Performance Notation, his supervisor wrote, “C/O Garnett has done a solid job since being assigned to Special Housing, keeps neat and accurate logs. He conducts cell searches in accordance to policy, communicates well with both staff and inmates, keeps good accounting of equipment.” On his March 19, 2000 Performance Notation, a supervisor indicated that “C/O Garnett is a strong officer who has the ability to lead other staff and can set the example. C/O Garnett is starting to mature as an officer and has a good knowledge of policy and procedures.” Even Assistant Superintendent Michael Lamm stated that if C/O’s received “Below Good” ratings that he would “somehow salvage them and try to make them better officers.” Petitioner had never received a “Below Good” rating.

29. The controlling statutory language permits a finding that an employer has committed an unlawful employment practice whenever an improper consideration is a motivating factor in an employment decision, irrespective of whether the employer would have taken the same action in the absence of the improper consideration. On a claim in which an individual proves a violation under 42 U.S.C § 2000e -2(m) and the Respondent demonstrates that the Respondent would have taken the same action in the absence of the impermissible motivating factor, the relief available may be limited. *Preston v. Virginia ex rel. New River Community Coll.*, 31 F.3d 203 (4th Cir. 1994). If the employer respondent cannot demonstrate that the employer would have taken the same action the relief is

not as limited.

30. Respondent's evidence is insufficient to sustain a mixed-motive defense under the *Price Waterhouse* standard and Petitioner prevails on the first issue regarding discrimination based on race. Further, the Respondent has not demonstrated through the evidence that the Respondent would have taken the same action in the absence of the impermissible motivating factor and the Petitioner prevails on the second issue of dismissal for just cause as Respondent has failed to set forth an objective "stand alone" reason that is independent of and stands alone from the bias and treatment analyzed above under the mixed-motives theory of discrimination.

31. 25 N.C.A.C. 1B.0434 provides: *In those cases in which the State Personnel Commission finds an act of discrimination or unlawful workplace harassment prohibited by G.S. 126-16, G.S. 126-36 or G.S. 126-36.1, the Commission may order reinstatement, back pay, transfer, promotion or other appropriate remedy. The Commission shall also have the authority in such cases to order other corrective remedies to ensure that the same or similar discriminatory acts do not recur.*

32. 25 N.C.A.C. 1B.0422 provides: *Front pay is the payment of an amount to an employee above his/her regular salary, such excess amount representing the difference between the employee's salary in his/her current position and a higher salary determined to be appropriate due to a finding of discrimination. Front pay shall be paid for such period as the agency is unable to hire, promote or reinstate the employee to a position at the level ordered by the Personnel Commission.*

33. State Personnel Commission rules provide the Commission with special legal and equitable powers when discrimination has been found. The SPC may order *a higher salary determined to be appropriate due to a finding of discrimination (.0422) ; it may order back pay, transfer, promotion or other appropriate remedy; and it may order other corrective remedies to ensure that the same or similar discriminatory acts do not recur. (.0422)*

34. The monetary loss directly attributable to the discrimination was the difference between the salary paid Petitioner and what he would have been paid had he not been discriminated against, plus Petitioner's litigation costs to correct this discriminatory practice.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the undersigned makes the following:

DECISION

There is sufficient direct evidence to properly and lawfully support Petitioner's claim of race based disparate treatment and Petitioner prevails upon his contention that Respondent engaged in an unlawful State employment practice constituting discrimination. Further, the Petitioner prevails on the issue of dismissal for just cause as Respondent has failed to set forth an objective reason that is independent of and stands alone from the bias and treatment analyzed above under the mixed-motives theory of discrimination.

It is the decision of the Undersigned that Respondent reinstate Petitioner to the position that he was in at the time of his dismissal and that Petitioner be given a letter of warning substantially similar to that given to Correctional Officer Sean Thompson with the same consequences as that received by C/O Thompson. Further, it is the finding of the Undersigned that Petitioner be awarded back pay and front pay, if necessary and all lost benefits (taking into account the consequences of a letter of warning). Further, Petitioner should be awarded reasonable attorney fees pursuant to 25 N.C.A.C. 1B.0414 upon submission by the Petitioner's counsel of a Petition for Attorney Fees with an accompanying itemized statement of the fees and costs incurred in representing the Petitioner.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina State Personnel Commission.

CONTESTED CASE DECISIONS

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, P. O Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with N.C. Gen. Stat. § 150B-36.

IT IS SO ORDERED.

This the 11th day of January, 2002.

Augustus B. Elkins II
Administrative Law Judge