

NORTH CAROLINA

IN THIS ISSUE

REGISTER



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
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18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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		61 Respiratory Care	
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Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2005 – December 2005

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

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 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
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed 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

**EXECUTIVE ORDER NO. 90
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY HURRICANE OPHELIA**

WHEREAS, I have proclaimed that a State of Emergency exists in North Carolina due to Hurricane Ophelia, and

WHEREAS, under the provisions of N.C.G.S. §§166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing FOOD, FUEL, EQUIPMENT, AND SUPPLIES to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. §20-86.1 and N.C.G.S. §20-382, fuel tax requirements of N.C.G.S. §105-449.47, and the size and weight requirements of N.C.G.S. §20-116 and N.C.G.S. §20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. §166-A-4(3),

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED**;

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive the requirements of 49 CFR Parts 390-398 (Federal Motor Carrier Safety Regulations) and certain size and weight restrictions and penalties therefore arising under N.C.G.S. §20-116 and N.C.G.S. §20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting FOOD, FUEL, EQUIPMENT, AND SUPPLIES along North Carolina roadways to our grief stricken counties.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. §20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. §20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. §136-72.

Section 5. The waiver of regulations under 49 CFR Parts 390-398 (Federal Motor Carrier Safety Regulations) **does not apply** to the Controlled Substances and Alcohol use and testing requirements (49 CFR Part 382), the Commercial Drivers License requirements (49 CFR Part 383 and N.C.G.S. §20-37.12) and the Financial Responsibility (Insurance) Requirements (49 CFR Part 387 and N.C.G.S. §20-309(a1)). This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Ophelia.

EXECUTIVE ORDER

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 15th day of September, 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

Note from the Codifier: 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.

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

Community Resource Exchange, Inc.

Pursuant to N.C.G.S. § 130A-310.34, Community Resource Exchange, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") Notice of Intent to Redevelop a Brownfields Property ("Property") in Rocky Mount, Nash County, North Carolina. The Property, which is the site of a former Schlage Lock manufacturing facility, consists of 49.15 acres located at 3551 N. Wesleyan Blvd, Nash County, Rocky Mount North Carolina.

Environmental contamination exists on the Property in soil and ground water. Community Resource Exchange, Inc. has committed itself to allow no use of the majority of the Property other than for commercial and light industrial purposes, with high density residential use allowed on the southernmost portion of the property if and when remediation being overseen by DENR's Hazardous Waste Section is complete. Moreover, no construction may occur on the site without DENR's prior written approval. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Community Resource Exchange, Inc., which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at Braswell Memorial Library, 727 N. Grace Street, Rocky Mount, NC 27804 by contacting Jane Blackburn at (252) 442-1951 Ext. 227 or jblackburn@braswell-library.org; or at N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Community Resource Exchange, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on October 18, 2005. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

Five Six Five, LLC

Pursuant to N.C.G.S. § 130A-310.34, Five Six Five, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Davidson, Mecklenburg County, North Carolina. The Property has a combined area of approximately 14.232 acres and is comprised of portions of two contiguous parcels. One parcel is known as the former Elox site and consists of approximately 6 acres located at 565 Griffith Street. The other parcel is known as the former IDC site and consists of approximately 8 acres located at 536 Jetton Street. Environmental contamination exists on the Property in groundwater and soil. Five Six Five, LLC has committed itself to redevelop the Property for no uses other than residential, retail, commercial and school uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Five Six Five, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte-Mecklenburg County - Davidson Branch, by contacting Nancy Dishman at 704-892-8557 or by mail at 119 S. Main Street, P.O. Box 1630, Davidson, NC 28078; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Five Six Five, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on October 18, 2005. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

Statesville Partnership, LLC

Pursuant to N.C.G.S. § 130A-310.34, Statesville Partnership, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Statesville, Iredell County, North Carolina. The Property, which is known as the former Jantzen/Vanity Fair facility, consists of 5.99 acres and is located at 224 Wilson Park Road. Environmental contamination exists on the Property in soil and groundwater. Statesville Partnership, LLC has committed itself to allow no use of the Property other than light industrial and commercial. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Statesville Partnership, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Iredell County Public Library, 201 North Tradd Street, Statesville, North Carolina, by contacting Mr. Steve Messick, Library Director, at 135 Water Street, Statesville, NC 28677, at 704-878-3090 or at smessick@iredell.lib.nc.us; or at the N.C. Brownfields Program’s offices (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), 401 Oberlin Road, Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net or at (919) 508-8411.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Statesville Partnership, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on October 18, 2005. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

U.S. Department of Justice

Civil Rights Division

JKT:MSR:ALP:maf
DJ 166-012-3
2005-2438

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

September 14, 2005

Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, NC 27802-0353

Dear Mr. Rose:

This refers to four annexations (Ordinance Nos. 2004-54, 2004-55, 2005-31 and 2005-39) and their designation to districts; and the creation of one stop absentee voting locations and the conduct of absentee voting by Edgecombe and Nash Counties for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on July 18, 2005.

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 changes. Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John Tanner
Chief, Voting Section

STATE BOARD OF ELECTIONS
6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

Mailing Address
PO Box 27255
Raleigh, NC 27611-7255

September 22, 2005

Mr. Dennis E. McCollum
Chairman, Union County Republican Party
1431 Helms Shortcut Road
Monroe, NC 28112

Dear Mr. McCollum:

This letter contains an opinion of the Executive Director of the State Board of Elections pursuant to N.C. Gen. Stat. 163-278.23.

In your request, you seek an opinion as to whether an individual obtaining a credit card that earns "reward dollars" could direct such dollars be sent "to their named political party." Further, you have inquired about the requirements of any such credit card agreement and a statement as to whether this method of contributing would be deemed a corporate contribution.

It is my opinion that this method of contributing is permissible and would not be deemed a corporate or business contribution as long as the individual, the political party committee, and the credit card company each comply with requirements to ensure compliance with Article 22A of Chapter 163 of the North Carolina General Statutes. Based on the scenario you have provided, if an individual is able to obtain documentation from the credit card company that the "reward dollars" are in fact earned by the individual and would be directed to the individual, and that the credit card company will direct only the amount earned by the individual to the political party committee, then the individual can direct such contribution to the political party committee. Additionally, the individual would be required to provide a letter to the political party committee setting forth their intention to contribute their "reward dollars" to the political party committee, along with all required disclosure information. The political party committee must be able to obtain from the credit card company detailed information regarding each contribution made by an individual and the specific date of each contribution. If the credit card company is unable to provide this information to the political party committee within seven days of the financial transaction, the contribution may not be received by the political party committee.

Proper documentation by all parties must be maintained and available for inspection upon request. If any party involved in the financial transaction fails to provide the aforementioned documentation, the contribution(s) would not be allowed.

This opinion is based upon the information provided in your letter dated August 8, 2005. If the facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes or case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Please feel free to contact Kim Strach, Deputy Director-Campaign Finance, with any questions you may have concerning this or any other campaign finance matter. Your interest in complying with the campaign finance regulations is greatly appreciated.

Sincerely,

Gary O. Bartlett
Executive Director

cc. Julian Mann III, Codifier of Rules

**The 2006 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. INTRODUCTION

The 2006 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of federal low-income housing tax credits:
 - 1. Project location and site suitability.
 - 2. Market demand and local housing needs.
 - 3. Serving the lowest income tenants.
 - 4. Serving qualified tenants for the longest periods.
 - 5. Design and quality of construction.
 - 6. Financial structure and long-term viability.
 - 7. Use of federal project-based rental assistance.
 - 8. Use of mortgage subsidies.
 - 9. Experience of development team and management agent(s).
 - 10. Serving persons with disabilities and the homeless.
 - 11. Willingness to solicit referrals from public housing waiting lists.
 - 12. Tenant populations of individuals with children.
 - 13. Projects intended for eventual tenant ownership.
 - 14. Projects that are part of a Community Revitalization Plan.
- B. Threshold, underwriting and process requirements for project applications and tax credit awards.
- C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

An allocation of tax credits does not constitute a representation or warranty that the ownership entity or its owners will qualify for or be able to use the tax credits. The Agency's interpretation of the Code is not binding on the Internal Revenue Service (the IRS), and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the Internal Revenue Service will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

In the process of administering the low-income housing tax credit and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations.

II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

No county will be awarded tax credits for new construction exceeding \$1.5 million unless doing so is necessary to meet another set-aside requirement of this Plan. Forward commitments will count towards this limit in the year they are allocated. No county will be awarded more than two projects under the rehabilitation set-aside. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies (such as HOPE VI) or implementation of a disaster relief plan.

The Agency may allocate 2006 tax credits outside of the normal process to projects that: 1) address the loss of housing due to the effects of a natural disaster, 2) allow the Agency to comply with U.S. Department of Housing and Urban Development (HUD) regulations regarding timely commitment of funds, 3) prevent the loss of federal investment, 4) provide housing for underserved populations or 5) are part of a settlement agreement of legal action brought against a local government. The total amount of such allocation(s) shall not exceed \$1,000,000. The Agency may also make a forward commitment of the next year's tax credits in an

amount necessary to fully fund projects with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan in the year credits are to be allocated. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

The limitations on awards listed above and those contained in Sections II(A), II(B) and II(E)(1) may be exceeded in order to completely fund a project request.

A. REHABILITATION SET-ASIDE

The Agency will award up to the lesser of the following amounts to projects proposing rehabilitation of existing housing: 1) twenty percent (20%) of the state's total federal tax credit ceiling, or 2) the amount required for ten projects. Rehabilitation projects will not be eligible for tax credits other than in this set-aside. These awards will be based on the criteria listed in Section IV(H) and are not subject to the geographic set-asides. Adaptive re-use projects and entirely vacant residential buildings will be considered new construction.

B. USDA RURAL DEVELOPMENT 515 SET-ASIDE

The Agency will award up to \$500,000 in tax credits to proposals involving the U.S. Department of Agriculture, Rural Development (RD) Section 515 program. In order to be eligible for this set-aside, applications must demonstrate both:

1. existing RD 515 financing or a commitment that meets the requirements of Section VI(B)(6)(b), and
2. project-based rental assistance for at least fifty percent (50%) of the units.

The Agency will determine whether eligible applications are considered in this set-aside or either Section II(A) or Section II(C)(2). New construction applications have priority over rehabilitation. All relevant threshold requirements and selection criteria will apply, with the exceptions of Sections IV(H)(1)(c) and (d), which the Agency may waive where appropriate.

C. NEW CONSTRUCTION SET-ASIDES

1. HOPE VI PROJECTS

- (a) The Agency will make forward commitments of 2007 tax credits to HOPE VI projects that apply in the 2006 cycle, provided such proposals meet all Plan requirements. HOPE VI applications submitted in 2007 will compete in the Metro set-aside.
- (b) The Agency may set conditions for the awards and forward commitments that exceed those described in the Plan. (Examples include timing of phases and making improvements to surrounding property.)
- (c) The Agency will determine what qualifies as a HOPE VI project under this Section II(C)(1). The relevant factors for this determination include, but are not limited to:
 - (i) the proposal's need for mixed-finance approval from HUD,
 - (ii) participation by entities involved in the overall HOPE VI effort
 - (iii) proximity to the site of former public housing,
 - (iv) being in the HUD-approved HOPE VI plan, and
 - (v) potential loss of federal resources.

2. OTHER NEW CONSTRUCTION PROJECTS

Tax credits remaining after awards described above will be awarded to other new construction projects, starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside.

NEW CONSTRUCTION GEOGRAPHIC SET-ASIDES

WEST: 20%	CENTRAL: 35%	METRO: 20%	EAST: 25%
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WEST		CENTRAL		METRO	EAST	
Alexander	Jackson	Alamance	Montgomery	Buncombe	Beaufort	Johnston
Alleghany	Lincoln	Anson	Moore	Cumberland	Bertie	Jones
Ashe	Macon	Cabarrus	Orange	Durham	Bladen	Lenoir
Avery	Madison	Caswell	Person	Forsyth	Brunswick	Martin
Burke	McDowell	Chatham	Randolph	Guilford	Camden	Nash
Caldwell	Mitchell	Davidson	Richmond	Mecklenburg	Carteret	New Hanover
Catawba	Polk	Davie	Rockingham	Wake	Chowan	Northampton
Cherokee	Rutherford	Franklin	Rowan		Columbus	Onslow
Clay	Surry	Granville	Scotland		Craven	Pamlico
Cleveland	Swain	Harnett	Stanly		Currituck	Pasquotank
Gaston	Transylvania	Hoke	Stokes		Dare	Pender
Graham	Watauga	Iredell	Union		Duplin	Perquimans
Haywood	Wilkes	Lee	Vance		Edgecombe	Pitt
Henderson	Yadkin		Warren		Gates	Robeson
	Yancey				Greene	Sampson
					Halifax	Tyrrell
					Hertford	Washington
					Hyde	Wayne
						Wilson

The remaining credits from all four geographic set-asides are then awarded to one or more of the following: (a) the next highest scoring new construction application(s) statewide, (b) outside the normal process as described above, or (c) one or more rehabilitation applications that meet the requirements of Section IV(H). The Agency may also carry forward any amount of tax credits to the next year.

D. NONPROFIT AND CHDO SET-ASIDES

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s).

In order to qualify under subsection (D)(1) above, an application must either not involve any for-profit Principals or comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2). In order to qualify under subsection (D)(2) above, an application must meet the requirements of subsection (D)(1) above, 24 CFR 92.300(a)(1) and any other regulation regarding the federal CHDO set-aside. The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing this subsection.

E. LIMITATION OF AWARDS

- Any Principal will be limited to an award of \$1,000,000 in tax credits, including all set-asides. Forward commitments will count towards the maximum applicable in the year they are allocated.
- The maximum award to any one project will be the lesser of (a) \$850,000 or (b) \$8,500 per qualified low-income unit.

F. COUNTY INCOME DESIGNATIONS

Pursuant to N.C.G.S. § 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination:

1. County median income
2. Poverty rate
3. Percent of population in rural areas
4. Regional growth patterns
5. Enterprise area tier (one through five)

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Henderson	Alleghany	Graham	Pasquotank
Cabarrus	Brunswick	Lee	Anson	Greene	Pender
Catawba	Buncombe	Lincoln	Ashe	Halifax	Perquimans
Chatham	Burke	Moore	Avery	Hertford	Richmond
Durham	Caldwell	Nash	Beaufort	Hoke	Robeson
Forsyth	Carteret	Onslow	Bertie	Hyde	Rockingham
Guilford	Cleveland	Person	Bladen	Jackson	Rutherford
Iredell	Craven	Pitt	Camden	Jones	Sampson
Johnston	Cumberland	Polk	Caswell	Lenoir	Scotland
Mecklenburg	Dare	Randolph	Cherokee	Macon	Surry
New Hanover	Davidson	Rowan	Chowan	Madison	Swain
Orange	Davie	Stanly	Clay	Martin	Tyrrell
Union	Franklin	Stokes	Columbus	McDowell	Vance
Wake	Gaston	Transylvania	Currituck	Mitchell	Warren
	Granville	Watauga	Duplin	Montgomery	Washington
	Harnett	Wayne	Edgecombe	Northampton	Wilkes
	Haywood	Wilson	Gates	Pamlico	Yancey
		Yadkin			

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2006 application process for 9% tax credits. Applicants seeking a tax exempt bond allocation and 4% tax credits should refer to the application schedule in **Appendix G**, which includes one application round for both new construction and rehabilitation (starting in July).

- January 6 Deadline for submission of preliminary applications (12:00 noon)
- February 27 Market analysts will mail studies to the Agency and applicants
- March 10 Notification of final site scores
- March 17 Deadline for market-related project revisions
- March 27 Market analysts will mail comments on revisions to the Agency and applicants
- April 14 Notification of market scores and initial evaluation of rehabilitation projects

May 5 Deadline for full applications (12:00 noon)

August Notification of tax credit awards

The Agency reserves the right to change the schedule as necessary.

B. APPLICATION AND ALLOCATION FEES

1. All applicants are required to pay a nonrefundable fee of \$5,280 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,080 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All applicants are required to pay a nonrefundable processing fee of \$1,080 upon submission of the full application.
3. Entities receiving 9% tax credit awards are required to pay a nonrefundable allocation fee equal to the greater of:
 - (a) 0.55% of the project's total qualified basis (line 58 on the Project Development Costs page) or,
 - (b) seventy-five hundred dollars (\$7,500).

The allocation fee must be paid to the Agency upon the earlier of return of the reservation letter or carryover allocation agreement. Failure to return the required documentation (such as ownership entity information) and fee by the date specified may result in cancellation of the tax credit reservation. The fee for entities receiving tax-exempt bond volume is specified in **Appendix G**.

4. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
5. The Agency may assess applicants or owners a fee of up to \$500 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed.

NOTE: The nonrefundable processing fee will be increased by two percent (2%) each year.

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require applicants to submit any information, letter or representation relating to Plan requirements or point scoring as part of the application process. Unless otherwise noted, the Agency may elect to not consider information submitted after the relevant deadline.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. The Agency may elect to treat applications involving more than one site or population type (family/elderly) as separate for purposes of the Agency's preliminary application process. Each application would require a separate initial application fee. Projects may be considered as one application in the full application submission if all sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of the tax credit allocation.
4. The Agency will notify the appropriate unit of government about the project after submission of the full application. The Agency reserves the right to reject applications opposed in writing by the chief elected official (supported by the council or board), but is not obligated to do so.

D. MONITORING FEES

The following must be paid prior to the issuance of a federal form 8609:

Project Type	
Tax credit projects without an Agency loan, including projects using tax-exempt bond financing and 4% credits	\$525 per unit
Projects receiving an RPP loan.	\$625 per unit

The monitoring fee is applied to **all units in a project**, including all market rate units and units reserved for managers or other personnel.

NOTE: These fees will increase by twenty five dollars (\$25) each year.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Each new construction project will be ranked and evaluated using the points and criteria described in Sections IV(A), IV(B), IV(C), IV(D), IV(E), IV(F) and IV(G) below. The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

Applications must meet all threshold requirements and receive 200 points to be considered for award and funding. Projects applying under Section II(C)(1) (the HOPE VI set-aside) must receive 220 points. The minimum point threshold for tax-exempt bond financing applications is 160 points. Even with an allocation of bond authority, projects must meet the minimum score and threshold requirements to be eligible for tax credits. Rehabilitation projects will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2006 cycle.

A. SITE AND MARKET EVALUATION (MAXIMUM 155 POINTS)

1. SITE EVALUATION (MAXIMUM 140 POINTS)

- (a) Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. Evaluation of sites will involve a relative comparison with other applications in the same geographic set-aside, with an emphasis on those the Agency considers to be within the same market area. Criteria involving consideration of land uses will focus on the area within approximately one-half mile. The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. Where appropriate, the score for a particular category will reflect the project's tenant type (family/elderly/special needs).
- (i) **NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 40 POINTS)**
- Trend and direction of real estate development and area economic health.
 - Physical condition of buildings and improvements.
 - Concentration of affordable housing.
- (ii) **SURROUNDING LAND USES AND AMENITIES (MAXIMUM 65 POINTS)**
- Suitability of surrounding development
 - Land use pattern is residential in character (single and multifamily housing) with a balance of other uses (particularly retail and amenities).
 - Availability, quality and proximity of services, amenities and features: grocery store; mall/strip center; gas/convenience; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center, basketball/tennis courts, fitness/nature trails, public swimming pool, restaurants, bank/credit union, medical offices, professional services, movie theater, video rental, public safety (fire/police).
 - Effect of industrial, large-scale institutional or other incompatible uses, including but not limited to: wastewater treatment facilities, high traffic corridors, junkyards, prisons, landfills, large swamps, distribution facilities, frequently used railroad tracks, power transmission lines and towers, factories or similar operations, sources of excessive noise, and sites with environmental concerns (such as odors or pollution).

- Amount and character of vacant, undeveloped land.
- (iii) **SITE SUITABILITY (MAXIMUM 35 POINTS)**
- Adequate traffic controls (stop lights, speed limits, turn lanes, etc.).
 - Burden on public facilities (particularly roads).
 - Access to mass transit (if applicable).
 - Degree of on-site negative features and physical barriers that will impede project construction or adversely affect future tenants; for example: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects- suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition).
 - Similarity of scale and aesthetics/architecture between project and surroundings.
 - Visibility of buildings and location of project sign(s) in relation to traffic corridors.
- (b) **General Site Requirements**
- (i) Sites must be sized to accommodate the number and type of units proposed. Required zoning must be in place by the full application submission date, including any special use permits, traffic studies, conditional use permits and other land use requirements.
- (ii) The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by a valid option, contract or warranty deed. The documentation of site control must include a plot plan.
- (iii) Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the applicant's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage, as well as document the applicant's right to perform such work through, for example, language in the real estate option/contract, separate contract or consent by the city or town.

2. **MARKET ANALYSIS (MAXIMUM 15 POINTS)**

- (a) The Agency will contract directly with market analysts to perform studies for new construction projects. Applicants may interact with market analysts regarding appropriate project design and targeting adjustments. Applicants will have an opportunity to revise their project (unit mix, targeting) based on the market analyst's recommendations; such revisions may increase the market score. Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the applicant for the full application.
- (b) The Agency **WILL NOT ACCEPT A FULL APPLICATION** in a primary market area containing one or more projects with 9% tax credits or Agency loans which have:
- (i) a history of high vacancy rates, or
 - (ii) not reached stabilized occupancy.
- The Agency may waive this limitation if the existing project has a different population type (family/elderly). The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) A maximum of fifteen (15) points may be awarded to applications for new construction projects using the following four criteria, each of which will also serve as a threshold requirement.
- (i) The project's required market share, or the percent of income qualified households seeking housing that the project would need to capture to achieve stabilized occupancy.
 - (ii) The number of months between project completion and stabilized occupancy.

- (iii) The vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances).
- (iv) The project's affect on existing or awarded properties with 9% tax credits or Agency loans.

Projects with market-rate units will not be eligible for points in this subsection (A)(2)(c).

- (d) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this Section. For rehabilitation and 100% special needs projects, the applicant must submit a market study that meets the requirements of Section 42(m)(1)(A)(iii) of the Code prior to issuance of a carryover allocation (unless the Agency requires an earlier submission date).
- (e) Projects may not give preferences to potential tenants based on residing in the jurisdiction of a particular local government.

B. RENT AFFORDABILITY (MAXIMUM 45 POINTS)

1. FEDERAL RENTAL ASSISTANCE

- (a) Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as funding source under Section VI(B)(6)(c); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the PHA's Annual Plan, selection policy, and approval for advertising.
- (b) Applicants must include a written agreement between the owner and all PHAs and Section 8 providers with jurisdiction inside the project's primary market area (referred to collectively in this subsection (B)(1)(b) as PHAs). The agreement must commit the PHAs to include the development in any listing of housing opportunities where households with tenant-based subsidies are welcome, and the project's management agent to actively seek referrals from the PHAs to apply for units at the proposed development. If one or more of the PHAs refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA(s). This requirement does not apply to projects with rental assistance provided through RD.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 30 POINTS)

- (a) Only loans from the following sources will qualify for points under subsection (B)(2)(c) below:
 - (i) the local PHA,
 - (ii) Community Development Block Grant (CDBG) program funds (for on-site improvements only),
 - (iii) HUD Section 202 or 811,
 - (iv) Federal Home Loan Bank Affordable Housing Program (AHP),
 - (v) local government housing development funds, and
 - (vi) RD Section 515.

Other sources of public funding may qualify **PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE** by the Agency. (Approval of a particular source in prior years does not meet this requirement.) Applications including market-rate units will be ineligible for points under subsection (B)(2)(c).

- (b) In order to qualify for points, loans must be listed as a source in the full application, comply with the requirements of Section VI(B)(6)(b), and either:

- (i) have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%) or
- (ii) have a term of at least forty (40) years, an interest rate of the long-term applicable federal rate (AFR) and a source that is a "below market federal loan" under Section 42(i)(2) of the Code.

Adjustments to the purchase price of the land by the seller, uncommitted RPP funds or other Agency loans, state credits and bond financing are not considered sources of mortgage subsidy.

- (c) Applications will be awarded ten (10) points for having a commitment of at least \$100,000 in qualifying mortgage subsidy funds. Projects will earn a greater amount of points based on the total amount of qualifying funds committed per unit, as described below:

Funds/Unit	Points	Funds/Unit	Points
\$6,000	12	\$11,000	22
\$7,000	14	\$12,000	24
\$8,000	16	\$13,000	26
\$9,000	18	\$14,000	28
\$10,000	20	\$15,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount of subsidy provided by a local government will be reduced by the amount that the project budget includes the following: any impact, tap or related fees charged by that local government and the cost of land sold by that local government. The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.

- (d) Projects funded entirely with equity and state tax credits (no grants or debt sources other than deferred developer fees) will be awarded fifteen (15) points. Any deferred fee must comply with Section VI(B)(5). These points and those awarded under subsection (B)(2)(c) above are mutually exclusive.
- (e) Applications for NC Division of Community Assistance (DCA) CDBG funds must be submitted at the same time as the Agency's full application deadline and must be committed by June 12, 2006. Commitment of other local government funds may be delayed with prior approval by the Agency.

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

Applicants should understand that electing to meet the requirements of this Section will reduce the number of potential tenants for certain units, which may be reflected in the market score. The application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
 - Ten (10) points will be awarded if at least twenty-five percent (25%) of qualified units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
 - Five (5) points will be awarded if at least fifty percent (50%) of qualified units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection (3)(a) are mutually exclusive.)

- (b) If the project is in a Moderate Income county:
 - Fifteen (15) points will be awarded if at least twenty-five percent (25%) of qualified units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
 - Ten (10) points will be awarded if at least fifty percent (50%) of qualified units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(The two options for point scoring in this subsection (3)(b) are mutually exclusive.)

- (c) If the project is in a Low Income county, fifteen (15) points will be awarded for projects in which at least forty percent (40%) of qualified units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (d) In order to be eligible for tax credits, applications for new construction tax exempt bond projects must meet one of the following requirements:
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- (e) Ten (10) points will be awarded to applications for new construction tax exempt bond projects that meet one of the following requirements:
 - at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.(The two options for point scoring in this subsection (3)(e) are mutually exclusive.)

4. COMMITMENT TO EXTEND LOW-INCOME OCCUPANCY

Applicants must agree to record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner (a) will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code, (b) will not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder, and (c) will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the project application. The Extended Use Agreement may also contain other provisions as determined by the Agency.

C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

1. MAXIMUM PROJECT DEVELOPMENT COSTS

- (a) Full applications for new construction projects must have less than \$87,000 per unit in total replacement costs to be eligible for an award of tax credits. Projects with the following characteristics will be allowed \$100,000 per unit:
 - (i) a total of twenty five (25) units or less of detached single family houses or duplexes,
 - (ii) qualify as HOPE VI under Section II(C)(1),
 - (iii) development challenges resulting from being within or adjacent to a central business district,
 - (iv) utilization of historic rehabilitation tax credits, or
 - (v) building(s) with both steel and concrete construction and at least four (4) stories of housing.The Agency may accept evidence, such as a bid from a third party construction company, for costs in excess of these amounts.
- (b) The following will be excluded from the calculation of total replacement costs in subsection (C)(1)(a) above:
 - (i) land costs (the lesser of the appraised value or amount in the evidence of site control),
 - (ii) reasonable reserves,
 - (iii) water and sewer tap fees and impact fees (provided that the applicant has included documentation from the local government verifying the amount of fees required), and

- (iv) the costs directly associated with a Community Service Facility.
- (c) The Agency will compare project development costs shown in full applications submitted in 2004 and 2005 with the actual cost of construction as reflected in the final cost certification. In the event that a project's actual costs would have resulted in negative points that were not assessed in the applicable cycle, those points may be applied to the application(s) of any Principal involved in the current cycle.

2. RESTRICTIONS ON RPP AWARDS

Projects requesting RPP funds may not:

- (a) have total replacement costs (less reasonable reserves) per unit in excess of \$95,000,
- (b) request RPP loan funds in excess of the following amounts per unit- \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
- (c) include market-rate units, or
- (d) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999.

The total RPP loan amount cannot exceed \$1 million per project.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) At least one Principal must have successfully developed, operated and maintained in compliance either one North Carolina low-income housing tax credit development or six separate low-income housing tax credit developments totaling in excess of 200 units. The development(s) must have been placed in service between December 1, 2000 and January 1, 2005. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:
 - (i) be identified in the preliminary application,
 - (ii) become a general partner or managing member of the ownership entity, and
 - (iii) remain responsible for overseeing the development and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals **must** disclose all previous participation in the low-income housing tax credit program. Additionally, all owners and Principals that have participated in an out of state tax credit allocation must complete the Authorization for Release of Information form and send it to each state identified.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of this Section due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must have at least (a) one similar tax credit project in their current portfolio and (b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist. Such certification must be from an organization accepted by the Agency (refer to the list in **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material

or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past 10 years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on an FHA-insured project, an RD funded rental project, a tax-exempt bond funded mortgage, an Agency loan, a tax credit project or any other publicly subsidized project (resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing disqualification);
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits (this includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed);
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits in 2002 or earlier for which either the permanent financing or equity investment has not closed;
- (i) has been involved in any project awarded tax credits in 2002 or earlier for which the final cost certification requirements have not been met by December 22, 2005;
- (j) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (k) would be removed from the ownership of a property that is the subject of an application for rehabilitation tax credits in the current cycle (including the RD 515 set-aside); or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2006 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

- 1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where, as of the full application, the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible.

2. New construction 9% tax credit projects may not exceed 100 units.
3. New construction bond financed projects may not exceed 180 units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines.

F. SPECIAL CRITERIA AND TIEBREAKERS (MAXIMUM 25 POINTS)

1. HUD PROGRAMS (MAXIMUM 15 POINTS)

Fifteen (15) points will be awarded to projects that have an obligation of funds from the HUD 202 or 811 programs, including project based rental assistance appropriate for the project.

2. COMMUNITY REVITALIZATION PLANS (MAXIMUM 10 POINTS)

Ten (10) points will be awarded to applications if all of the following apply:

- (a) the project is within the area identified by a community revitalization plan (CRP);
- (b) the project is in a Qualified Census Tract or the CRP is primarily focused on an existing residential neighborhood;
- (c) the project is consistent with and contributes to the CRP; and
- (d) meets one of the following sets of criteria-
 - (i) the CRP was officially adopted by a local government after January 1, 1998, there is a specific timetable and funding commitment; and some of the progress or improvement described in the CRP is visibly evident,
 - (ii) the activities described in the CRP are well underway, with at least some having been completed, or
 - (iii) the proposed project includes a Community Service Facility.

The CRP must be included with the preliminary application to be eligible for points in this subsection.

3. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must:

- (a) be fully accessible according to the standards set forth in Volume 1-C (1999) of the North Carolina State Building Code, (Chapter 30, Multi-Family Dwellings),
- (b) have at least one bathroom with a toilet located in a five foot by five foot clear floor space (may overlap with the five foot turning diameter described in Chapter 30), with no overlapping elements or fixtures; the toilet must be positioned in a corner with the centerline of the toilet bowl 18 inches from the sidewall, and
- (c) have at least one bathroom with a 36 inch by 60 inch (minimum size) curbless, roll-in shower. Such showers must also meet the requirements for accessible controls as required by Volume 1-C.

At least one unit in each class of fully accessible units must meet the above requirements. Unit classes are measured by the number of bedrooms, pursuant to Volume 1-C (1999) of the North Carolina State Building Code (Chapter 30, Section 30.3.2.) **THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES).**

4. TARGETING PLANS

All projects will be required to target the greater of five (5) units or ten percent (10%) of the total units to persons with disabilities or homeless populations. (The five unit minimum does not apply to applications without federal project-based rental assistance.) Projects that are targeting units under this Section are not required to provide onsite supportive services or a service coordinator. Project owners must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS).

At a minimum, Targeting Plans must include:

- (a) A description of how the development will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include-
 - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
 - (ii) The referral and screening process that will be used to refer tenants to the development, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the development.
 - (iii) A communications plan between the development management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the development and the local lead agency for the duration of the compliance period.
- (d) Certification that participation in supportive services will not be a condition of tenancy (not required for projects where all of the units are providing transitional housing for the homeless).
- (e) Agreement that for a period of ninety (90) days after the initial rent-up period begins, the number of units specified in the application for persons with disabilities will be held vacant other than for such population(s).
- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, based upon the minimum number of units specified in the application.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.

The requirements of this Section IV(F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A detailed description of the elements to be addressed in the Targeting Plan is included in **Appendix D** (incorporated herein by reference). Applicants will agree to complete the requirements of this Section IV(F)(4) and **Appendix D** by the earlier of July 28, 2007 or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This subsection (F)(4) does not apply to tax-exempt bond applications.

5. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.
- (b) Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Developments will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (c) Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such developments must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS (MAXIMUM 80 POINTS)

All proposed measures must be shown on the plans or in specifications in the application in order to receive points.

1. A maximum of eighty (80) points will be awarded for new construction projects based on the following criteria.

- (a) Site plan considerations: A maximum of fifteen (15) points will be given for projects which include:
 - (i) an attractive, scattered building layout focusing on visual appeal and privacy;
 - (ii) exterior amenities, including resident garden plots; playground; tot lot; basketball court; volleyball court; walking trails; fitness stations; gazebo/arbor; picnic area with tables/grilles; horseshoe pit; shuffleboard; car care area with vacuum; fenced ball field; swimming pool; covered drive-through at entry; flag pole; sitting areas; covered drop off at entry; large fountain; tennis court; irrigated lawns; garages/covered parking; bike racks; bus shelter; creating accessible walks linking buildings to each other, to common areas and to parking; having large open spaces for recreational activities, having a well-designed entry to the site with attractive signage, lighting and landscaping;
 - (iii) interior amenities, including screened porch; sunroom with chairs; exercise room; exam room; reading room/library; game/craft room; resident computer center; TV room; beauty salon; vending area; storage for elderly projects; a Community Service Facility; providing high-speed Internet access (involves both a data connection in the living area of each unit that is separate from the cable/telephone connection and support from a project-wide network or a functional equivalent).

Other amenities may be used, but will require Agency approval prior to full application. In order to receive points, the items listed above must be clearly indicated on the site drawings.

- (b) Building and floor plan design: A maximum of forty-five (45) points will be given for projects which include:
 - (i) creative and versatile architectural designs (examples of exterior building designs include broken roof lines, front gables, dormers or front extended facades, wide banding and vertical and horizontal siding applications, some brick veneer, front porches and attractive deck rail patterns);
 - (ii) open, flowing floor plans (examples include spacious kitchens, bathrooms, living rooms and dining rooms, dwelling units that exceed minimum square footages, bedrooms that exceed minimum square footages, bathrooms that are large with vanities and open floor spaces, kitchens that provide an abundance of counter top working space and cabinets, availability of storage space other than bedroom closets, and the adequacy of closet space, including large walk-in closets).

- (c) Construction characteristics: A maximum of twenty (20) points will be given to projects which include:
 - (i) low maintenance, high durability, energy efficient products, and quality components (examples include high-grade vinyl or VC tile in kitchens, bathrooms, entryways, and laundry areas;
 - (ii) energy efficient components that exceed Agency or building code minimum standards;
 - (iii) measures to provide good attic and roof ventilation, use vinyl or aluminum windows and steel insulated exterior doors;
 - (iv) to use quality exterior siding, such as vinyl, hardiplank, or brick veneer and have pre-finished aluminum exterior trim, including fascia, soffit, and porch posts.

- 2. Completion of previously approved projects: Negative points will be assessed for projects with owners or Principals of prior project(s) that were not built in accordance with the plans and specifications on which such prior project(s)' Design Standards score was based, if deviation from such plans and specifications results in conditions that would justify a reduction in that prior project(s) original Design Standards score(s). The number of negative points assessed to the project in the current year will be equal to the cumulative number of points by which each such prior project's original Design Standards score would have been so reduced to reflect the deviation, adjusted to reflect any change in the scale of the Design Standards scoring. For example, if the reduction in the prior project's Design Standards score as a result of the deviation from its plans and specifications is determined to be 10 points based on a scale of 50 maximum Design Standards points at the time such prior project was awarded tax credits, if there is a current scale of 100 maximum Design Standards points, the negative points assessed to the current project based on that prior project's deviation from its plans and specifications would be 20 points. Design and construction changes approved in writing by the Agency will not result in any negative points assessed under this Section.

- 3. The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding. These minimum requirements include, but are not limited to, standards in the following areas: on-site postal and laundry facilities; community/office space; on-site parking and refuse collection areas; exterior and interior building design; plumbing and electrical provisions; heating, ventilating and air conditioning provisions; sitework; bedrooms, bathrooms and kitchens; provisions for all elderly housing; provisions for sight and hearing impaired residents; Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements; and additional architectural requirements for renovation of existing apartment projects.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. THRESHOLD REQUIREMENTS

In order to be eligible for funding under Section II(A), a project must:

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit, (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 1990,
- (c) require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five (5) years,
- (g) not be deteriorated to the point of requiring demolition, and
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program).

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the Project Development Cost Description.

The thresholds and criteria for rehabilitation applications utilizing tax exempt bonds are in **Appendix G**.

2. EVALUATION CRITERIA

The Agency will evaluate applications based on the following criteria, which are listed in order of importance. Each one will serve both to determine allocations and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (h) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed existing housing, particularly buildings with accessibility or life, health and safety problems.
- (b) The Agency will give priority to applications that propose a scope of work appropriate to the building(s), as reflected in the Physical Needs Assessment. (Proposals may not involve unnecessary work.) Specifically, proposals should involve the following:
 - (i) Making "common areas" handicap accessible, creating or improving sidewalks, installing new roof shingles, adding gutters, sealing brick veneers, applying exterior paint, and resurfacing or re-paving parking areas.
 - (ii) Improving site and exterior dwelling lighting, landscaping/fencing, and installing high-quality vinyl or hardiplank siding.
 - (iii) Adding gables, porches, dormers or roof sheds.
 - (iv) Use energy-efficient related products to replace inferior ones, including insulated windows and doors, and adding additional insulation.
 - (v) Improving heating and cooling units, plumbing fixtures, water heaters, toilets, sinks, faucets and tub/shower units.
 - (vi) Improving quality of interior conditions and fixtures, including carpet, vinyl, interior doors, painting, drywall repairs, cabinets, appliances, light fixtures and mini-blinds.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above three criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While allocation of rehabilitation tax credits is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. PRIORITY FOR ALLOCATION OF BOND CAP

Applicants proposing to use tax-exempt bonds with 4% tax credits must meet all of the requirements of the Plan and **Appendix G** (incorporated herein by reference) to claim such credits. The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

- A. Projects that serve as a component of an overall HOPE VI revitalization effort.
- B. Rehabilitation projects.
- C. Adaptive re-use projects.
- D. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, allocation priority will be based on the relevant scoring and threshold requirements of Section IV.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

- 1. **Projects with Historic Tax Credits:** Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.
- 2. **Nonprofit Set-Aside:** For purposes of being considered as a nonprofit sponsored application under Section II(D), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must: (a) be qualified under Section 501(c)(3) or (4) of the Code, (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period, (c) have as one of its exempt purposes the fostering of low-income housing, (d) own, directly or indirectly, an equity interest in the applicant and (e) be a managing member or general partner of the applicant.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

- 3. **Environmental Hazards:** All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- 4. **Appraisals:** The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. Any project budgeting more than \$15,000 per acre toward land costs must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may require appraisals where cost per acre is below this amount. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.
- 5. **Concentration:** Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.
- 6. **Displacement:** For rehabilitation projects and in every other instance of tenant displacement, including temporary, the applicant must supply with the full application a plan describing how displaced persons will be relocated,

including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project's development budget. Applicants must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. Tax Information Authorization: Applicants and Principals must submit an executed IRS Form 8821 with their full applications; every owner should submit a separate form.
8. Feasibility: The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding.

1. Loan Underwriting Standards:

- (a) Projects applying for tax credits only will be underwritten with rents escalating at three percent (3%) and operating expenses escalating at four percent (4%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. Projects with less than forty (40) units must also demonstrate \$150 per unit per year of net cash flow for the first fifteen (15) years. This does not apply to projects with rental assistance provided through RD.
- (c) RPP loans will be underwritten using a twenty (20) year term and a two percent (2%) interest rate. The Agency may alter these terms to ensure project feasibility. Rents for projects utilizing HOME funds will not exceed the Fair Market Rents established by HUD. Underwriting of applications with a commitment from RD will incorporate the requirements of that program, and any RPP loan will have a 30 year term (fully amortizing) and zero percent (0%) interest.
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. Operating Expenses:

- (a) New construction (excluding adaptive re-use): \$2,300 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): \$2,500 per unit per year not including taxes, reserves and resident support services.
- (c) Owner projected operating expenses will be used if they are higher than Agency minimums. The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. Equity Pricing:

The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the applicant's projection.

Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. Reserves:

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the project development costs. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency 90 days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses, and must be maintained for the duration of the low-income use period.

Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits.

The operating reserve can be funded by deferring the developer's fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD, and the replacement reserve will not escalate annually.

Funds remaining in the operating and replacement reserve accounts at the end of the RPP loan term must be used for project maintenance costs approved by the Agency or applied against the loan.

5. Deferred Developer Fees:

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within ten (10) years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

6. Financing Commitment:

- (a) For all projects proposing **private** permanent financing, a letter of intent is required. This letter must clearly state the term of the permanent loan is at least eighteen (18) years, how the interest rate will be

indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for eighteen (18) years. The bank must complete a cover letter using the format approved by the Agency, and submit it with the letter of intent. Applicants must submit a letter of commitment for financing within 90 days of receiving an award of tax credits.

- (b) Other than as stated in Section IV(B)(2)(e), all projects proposing **public** permanent financing, binding commitments are required to be submitted by the full application due date. All loans must have a fixed interest rate and no balloon payments for at least eighteen (18) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility.

7. Developer/Builder Fees:

- (a) Developer's fees shall be a maximum of fifteen percent (15%), or a lesser percentage adjusted for project size as described below. The Agency calculates developer's fees by adding lines 2-37 less lines 8 and 9 from the Project Development Cost Description in the application and multiplying by the applicable percentage to determine the maximum allowable developer fee.

up to 64 units	15%
65-112 units	12.5%
113 units plus	10%

In addition to the fees described above, a maximum developer's fee of four percent (4%) is allowed on the acquisition cost of buildings (not including land value/cost) unless there is an identity of interest between the seller and one or more Principal(s).

- (b) Builder's general requirements shall be limited to six percent (6%) of hard costs.
 - (c) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) OF TOTAL HARD COSTS including general requirements.
 - (d) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).
8. Consulting Fees: Consulting fees for a project must be paid out of developer fees, so that the aggregate of any consulting fees and developer fees is no more than the maximum developer fee allowed to that project.
9. Architects' Fees: The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the Project Development Cost Description).
10. Investor Services Fees: Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.
11. Project Contingency Funding: All new construction projects shall have a hard cost contingency line item of NO MORE THAN three percent (3%) of total hard costs, including general requirements, builder profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of NO MORE THAN six percent (6%) of total hard costs.
12. Project Ownership: There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. Section 8 Project-Based Rental Assistance: For all projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the Project Development Costs page. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. GENERAL REQUIREMENTS

1. The tax credit reservation amount will be the total anticipated qualified basis amount multiplied by eight and one half percent (8.5%), or three and three quarters percent (3.75%) for the 4% tax credit. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable federal rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code.
2. Ownership entities must a) expend ten percent (10%) of the project's reasonably expected basis by a date to be determined by the Agency and b) submit to the Agency a completed carryover agreement and cost certification by a date to be determined by the Agency. (This requirement also applies to projects with partial allocations.) Failure to meet these deadlines will preclude the project from participation in the state credit program. Pursuant to Section VI(B)(6), the Agency may determine that an awarded application listing state tax credits as a source of funding is ineligible for allocation due to failure to comply with the requirements of this Section. Projects will be required to elect a project-based allocation.
3. Once approved, the ownership entity will proceed to acquire, construct or rehabilitate the project. The ownership entity is required to update the Agency on the progress of development by submitting a Project Status Report. Sixty days prior to occupancy, the Agency must be notified in writing of the targeted project completion date. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a completed Final Cost Certification form. The cost certification must include all project costs along with a certification for any subsidies the project will receive. IRS Section 1.42-17 Regulations effective January 1, 2001 require that the taxpayer of all projects in excess of ten units, which are placed in service after January 1, 2001, regardless of the year of tax credit allocation, submit a schedule of project costs accompanied by a Certified Public Accountant's (CPA) audit report that details the project's total costs as well as those that may qualify for inclusion in eligible basis under Section 42(d) of the Code. A third party CPA verification is required for cost certification on two or more units. The Agency may require an independent cost analysis.
4. Projects must meet all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act; the Agency may treat any failure to do so as a violation of the Plan.
5. Allocated tax credits may also be returned to the Agency under the following conditions as further described in Treasury Regulation Section 1.42-14: (a) credits have been allocated to a project building that is not a qualified building within the time period required by the Code, for example, because it is not placed in service within the period required under the Code, (b) credits have been allocated to a building that does not comply with the terms of its allocation agreement, (c) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (d) by mutual written agreement between the allocation recipient and the Agency. Returned credits may include credits previously allocated to project that fails to meet the 10% test under Section 42(b)(1)(E)(ii) of the Code after close of calendar year in which allocation was made. Credits that are returned before October 1 in any calendar year are treated as credits returned in that calendar year, and all or a portion of such credits will be reallocated to the next highest ranked project(s) without a full allocation in that region and in that calendar year, pursuant to the terms of the Plan or, in the Agency's discretion, when appropriate and possible, carried over for allocation in the next calendar year. With respect to credits that are returned after September 30 in any calendar year, all or a portion of such credits may also be reallocated to the next ranked project(s) without a full allocation in

that calendar year pursuant to the terms of the Plan, or all or a portion of such credits may be treated by the Agency, in its discretion, where appropriate and possible, as credits that are returned on January 1 of the succeeding calendar year to be allocated in that year.

By the time of the earlier of the date the project is placed in service, in the case of a carryover allocation, or by the 10% cost certification qualifying expenditures must have been incurred in the ownership entity's name or incurred by the ownership entity pursuant to a reimbursement agreement with a third party and such third party has incurred such expenditures by the time of 10% cost certification.

6. The Agency may conduct construction inspections for adherence to approved final plans and specifications.
7. The owner of the project must sign and record the Extended Use Agreement in the county in which the project is located by the end of the first year after the tax credits are allocated. The owner must have good and marketable title at that time, and must obtain the consent of any lienholder on the project property recorded prior to the Extended Use Agreement (other than a lienholder relative to the financing of the construction of the project that by its terms will be cancelled within one year of the last building in the project being placed in service) to be bound by the terms of this Extended Use Agreement.
8. The Agency may revoke tax credits after the project has been placed in service in accordance with the Code if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction.
9. Federal form 8609 will not be issued until:
 - (a) the owner and management company produces evidence of attending a low-income housing tax credit compliance seminar sponsored either by the Agency or a sponsor acceptable to the Agency within the last 12 months;
 - (b) the Agency confirms that the monitoring fees have been paid and that the project has adhered to all representations made in the application (including design elements); and
 - (c) the project demonstrates that it will meet all relevant Plan requirements.

The Agency may require evidence of escrowed funds to complete landscaping.

10. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria used to award bonus points, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in the Code and from time to time amended.

NOTE: Applicants are advised that some portion or all of a project's application may be subject to disclosure to the public under the North Carolina Public Records Act.

B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under N.C.G.S. § 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to N.C.G.S. § 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.

2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under N.C.G.S. § 105-129.42(g)(1) will not occur until all of the following requirements have been met:
 - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
 - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
 - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, including Section VII(A)(2), to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

C. COMPLIANCE MONITORING

1. Basic Requirements: Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, local codes, the Plan, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements.
2. Agency Requirements: The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity that is applying for the tax credits and/or any RPP loan funds, as applicable.

Community Service Facility: Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person or such person's personal property from their current residence.

Elderly Housing: Owners may choose one of the established definitions recognized under federal Fair Housing Law. Owners should read the law and obtain legal guidance to determine compliance.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Homeless Populations: People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or supportive housing but originally came from places not meant for habitation or emergency shelters.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the development, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the **lesser of twenty-five percent (25%)** of the development fee for such project or **\$100,000**, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the **lesser of twenty-five percent 25%** of the development fee for such project or **\$100,000**. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rehabilitation: Replacement of one or more major building components in one or more residential buildings. Major building components include roof structures, wall or floor structures, foundation, plumbing system, electrical system, central heating and cooling systems.

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing administered and serviced by the Agency.

Stabilized Occupancy: Maintenance of at least ninety-three percent (93%) occupancy for six consecutive months.

APPENDIX B

Design Quality Standards and Requirements

These **minimum** requirements are to be followed when developing **full applications** for affordable housing tax credit allocation and/or RPP funding. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

I. DESIGN DOCUMENT STANDARDS

A. SITE PLAN

1. Plans must be to scale.
2. Show existing locations of buildings, roadways, and parking areas.
3. Show existing site and zoning restrictions including set backs, right of ways, boundary lines, wetlands and any flood plains.
4. Show all proposed changes to existing and proposed buildings, parking, utilities, and landscaping.
5. Show existing and proposed topography of site.
6. Show finished floor height elevations where flood plains are present on-site.
7. Show landscaping and planting areas. A plant list is not necessary. If existing site timber or natural areas are to remain throughout construction, the area must be marked as such on the site plans. If not we will assume that all existing trees and natural areas will be cleared during the site work phase of construction.
8. Show locations of playground(s), gazebos, walking trails, garden spots, tennis and basketball courts, swimming pool, refuse collection areas, postal facilities, site entrance signage, or other site amenities.
9. Show all entry signage.

B. FLOOR PLANS

1. Show all unit floor plans using a scale of 1/4"= 1 foot or larger for typical units. Building layout may be 1/8" or 1/16" scale. All drawings must be on 24 x 36 paper.
2. Show room/space layout using a 1/4" scale. Include dimensions of halls, living areas, bedrooms, bathrooms, kitchen, and dining area.
3. Show net building square footage and paint- to-paint square footage. See Definitions in this Appendix.
4. For projects involving removal of asbestos and/or lead based paint removal show general notes identifying location and procedures for removal.
5. Show building floor layouts on multi-story buildings. Include all common use areas.
6. For projects involving renovation and/or demolition of existing structures, show proposed changes to building components and design identifying removal and new construction methods.

C. ELEVATIONS FOR NEW CONSTRUCTION

1. Use scale of 1/16"= 1 foot or larger. Include front, rear and side elevations of all building types.
2. Identify all materials to be used on building exteriors.
3. Elevations should clearly indicate all areas covered with brick veneer.

II. HOUSING DESIGN AND QUALITY STANDARDS

A. ON-SITE PLAYGROUND AREAS

1. Play areas and playgrounds for children should be located away from high automobile traffic patterns, and situated so that the play area is visible from the maximum number of dwelling units possible (for safety).
2. Designated play areas and playgrounds are considered "common areas", and must be on an accessible route per accessibility codes.
3. A bench must be provided at playgrounds to allow a child's supervisor to sit and rest comfortably. The bench must be anchored permanently, must be on an accessible route, and must be weather resistant. All benches must have a back.
4. A "warning" sign must be posted to advise residents that children that play at the playground will be doing so at their own risk. The sign must be posted at a visible location, and use contrasting colors for better identification.

B. ON-SITE POSTAL FACILITIES

1. Tenants should be able to collect and send mail without obstructing traffic. Locate on-site postal facilities where parking is available.
2. Provide one postal box per dwelling unit plus a larger box for the office. Include an "outgoing mail" drop box.

3. On-site postal facilities must have a roof cover to prevent rainwater from contacting the mailboxes. The roof cover should offer a resident ample protection from the rain while gathering their mail.
4. The on-site postal facilities must be located on an accessible walkway and route, including proper turn around spaces in front of the mailboxes (48 inches) to meet accessibility codes.
5. The lower row of mailboxes must be installed no higher than forty-five inches above the finished sidewalk level to accommodate a disabled resident. The lower level of mailboxes must be reserved for the residents of the fully accessible (ADA) designated dwelling units.
6. The on-site postal facilities must have adequate lighting for easy mailbox identification and to ensure the residents' security while gathering their mail. The lighting must be operational daily from dusk to dawn.

C. ON-SITE LAUNDRY FACILITIES

1. Laundry facilities are required at all developments with twenty or more residential dwelling units.
2. There must be a minimum of one washer and one dryer per twelve dwelling units if washer/dryer hookups are not available in each dwelling unit. If hookups are available in each dwelling unit, there must be a minimum of one washer and one dryer per twenty dwelling units.
3. Laundry facilities must be located on an accessible route per accessibility codes.
4. The entrance must have a minimum roof covering of 20 square feet.
5. The threshold height of the entrance door to the laundry room must not exceed one-half inch above finished interior grade level to accommodate a disabled resident.
6. A "folding" table or countertop must be installed. The working surface should be 28 to 34 inches above the floor, and must have a 27-inch high clear knee space below. The working surface must be a minimum 48 inches long, requiring a 30-inch by 48 inch clear floor space around it.
7. The primary entrance door to the laundry must be of solid construction, and include a full height tempered glassed panel to allow residents a greater view of the outside/inside for security purposes.
8. The laundry room must be positioned on the site to allow for a high level of visibility from dwelling units or the community building/office. This provides for a safer environment and helps deter vandalism.
9. The laundry room must have adequate entrance lighting that must be on from dusk to dawn to assist in greater security during evening hours.
10. If the development has only one laundry facility, it should be adjacent to the community building/office (if provided) to allow easy access and provide a handicap parking space(s).
11. On-site laundry facilities must comply with all other federal, state, and local laws and codes.
12. One washer and one dryer must be front loading and usable by residents with mobility impairments (front loading), including at least a 30-inch by 48-inch clear floor space in front of each.

D. COMMUNITY / OFFICE SPACE

1. All developments must have an office on site of at least 200 square feet (inclusive of handicapped toilet facility) and a maintenance room of at least 100 square feet.
2. Developments with twenty four (24) or more units and more than one residential building must have a separate community building.
3. The community building must contain a both a handicapped toilet facility and kitchenette that includes a refrigerator and sink. The bathroom and kitchenette must comply with ADA accessibility guidelines.

4. The community building must be on an accessible route, have an accessible entrance, and be accessible throughout its interior per ADA accessibility guidelines.
5. If the community building houses the office, the office must be situated in the building as to allow the site manager a prominent view of the dwelling units, playground, entrances/exits, and vehicular traffic for the security of the residents.
6. The community building/office must be clearly marked as such by exterior signs, placed at a visible location close to the building. The signs must use contrasting colors and large letters and numbers. This will keep visitors from confusing the building from dwelling units, and will help residents and visitors locate the rental office.
7. The community building/space, excluding maintenance room and site office, must contain a minimum of seven (7) square feet for each residential dwelling unit (including toilet facilities and kitchenette).

E. ON-SITE PARKING

1. On-site accessible parking spaces on an accessible route must be provided for residents and visitors.
2. For residential developments with community facilities located in a building separate from the living area, there shall be parking designated for disabled/handicapped persons adjacent to such facilities. Parking shall be equal to two percent, or a minimum of one, of the total number of residences.
3. Required parking signs that denote spaces reserved for disabled/handicapped persons shall comply with all federal, state, and local building codes.
4. For each fully accessible residence built, the accessible parking space, including access aisle and signs per accessibility guidelines, must be closest to the fully accessible dwelling unit (type "A") as possible.
5. Parking spaces identified for use by disabled/handicapped persons shall be at least 96 inches wide and shall have an adjacent access aisle that shall be a minimum of 60 inches wide.
6. Exterior ramps designated for disabled/handicapped persons at parking areas shall have a minimum clear width of 48 inches.
7. A minimum of two parking spaces per dwelling unit required for family developments. Elderly developments require a minimum of two-thirds (2/3) parking space per dwelling unit. If local guidelines require less parking, the number of parking spaces required by the Agency may be reduced to meet those standards.
8. The maximum slope of handicap parking spaces and access isles is 2% in any direction.

F. ON-SITE REFUSE COLLECTION AREAS

1. Refuse collection areas must be on an accessible route per accessibility guidelines.
2. The refuse container(s) must be usable to those with disabilities per accessibility guidelines.
3. Fencing which is consistent with the appearance of the dwelling units must screen the collection area.
4. The pad for the refuse collection area must be concrete, not asphalt.
5. The approach pad to the refuse collection areas must also be concrete, not asphalt.
6. The refuse collection areas must provide proper screening and access, and should not be at the entrances or exits of the development.
7. The fencing must be made of PVC or salt treated lumber, and is to be constructed for permanent use.
8. Signs must be at all refuse collection areas to prohibit parking in front of collection facilities.

9. A concrete parking bumper, pipe ballards or 8" x 8" treated timber must be installed behind dumpsters. This will keep the refuse collection driver from pushing the dumpster through the fencing.

G. EXTERIOR BUILDING DESIGN

1. Walkways should connect each building to the street, parking and all common site facilities such as playgrounds, swimming pools, tennis/basketball courts, mailboxes and refuse collection facilities.
2. Exterior stairs leading to multi-story dwelling units must have a minimum clear width of 40 inches (measured inside of handrails).
3. All exterior stairs must be constructed in a manner that prohibits water from pooling on or around the steps.
4. Exterior railings must be made of vinyl, aluminum, or steel (no wood).
5. All primary entries should be within a breezeway or have a minimum roof covering of 3 feet deep by 5 feet wide, including a corresponding concrete stoop or pad. The concrete stoop or pad must slope away from the entrance at no more than 1/4 inch per foot.
6. Breezeway and stairwell ceilings must not have exposed sheetrock.
7. Buildings and dwelling units should be individually marked with visible, contrasting identifying devices that would enhance the response time for receiving aid by police and/or emergency personnel. The building identifying devices must be well lighted from dusk till dawn.
8. Buildings should have different roof planes and contours to "break" up roof lines. Wide window and door trim should be used to better accent siding. If horizontal banding is used between floor levels, use separate color tones for upper and lower levels. If possible, use horizontal and vertical siding applications to add detail to dormers, gables, and extended front facade areas. Try to use five or six different accenting colors on exterior to enhance curb appeal.
9. All building foundations shall have a minimum of 12 inches exposed brick veneer above finished grade level (after landscaping).
10. All wood exterior trim must be free and clear of knots, checks, and other defects.
11. Single lever deadbolts and eye viewers are required on all entry doors to residential units.
12. Insulated, double pane, vinyl windows with low-E glazing are required for new construction. Wood windows with insulated glass will be considered for renovation construction.
13. Windows must not be located over tub or shower units.
14. High durability insulated exterior doors (such as steel and fiberglass) are required. Wood doors will be considered for renovation construction only. Exterior doors for units designed to comply with state and federal handicap-accessibility requirements (including QAP Section IV(F)(3)) must have spring hinge doors.
15. Anti-fungal shingles with 25-year warranty or better are required for all shingle roof applications.
16. For new construction, the use of no or very low maintenance materials is required for exterior building coverings. These include high quality vinyl siding, brick, or fiber cement siding. Prefinished fascia and soffit are required to reduce painting needs. Prefinished seamless gutters are required.
17. The use of metal siding is prohibited.
18. Vinyl siding must be solid, without fillers, and shall be a minimum of .044 inch in thickness.
19. Wood clapboard siding is permissible only when required by the State Historic Preservation Office.

20. Roof and gable vents should be made of either no or very low maintenance materials (such as aluminum or vinyl).

H. INTERIOR BUILDING DESIGN

1. All residential dwelling units must meet minimum unit size requirements. The square footage measurements below will be for heated square feet only. They are measured interior wall to interior wall, and do not include exterior wall square footage. All unheated areas such as patios, decks, porches, stoops, or storage rooms cannot be included.

Single Room Occupancy	250 square feet
Studio	375 square feet
Efficiency	450 square feet
1 Bedroom	600 square feet
2 Bedroom	800 square feet
3 Bedroom	1,000 square feet
4 Bedroom	1,200 square feet

For additional requirements see the "Definitions" section at the end of this Appendix.

2. All units must have a separate dining area, except for SRO, Studio and Efficiency units (See "Definitions" for description). This dining area shall not be floored with carpeting.
3. Newly constructed residential units containing two (2) or more bedrooms must have an exterior storage closet with a minimum of 16 unobstructed square feet. The square footage utilized by a water heater in the exterior storage closet may not be included in the 16 square foot calculation. Elderly developments are exempt.
4. Carpet and pad must meet FHA minimum standards.
5. Interior entrances of exterior doors must have vinyl, VCT or other non-carpet flooring.
6. Interior hallways of residential dwelling units must have a minimum 40 inch width.
7. For new construction, interior passage doors must be constructed of six panel hardboard, solid core birch or solid core lauan. Hollow core wood doors are prohibited.
8. Bi-fold, pocket and by-pass doors are prohibited.
9. Provide door bumpers at all doors, interior and exterior, as applicable.
10. Fireplaces are prohibited.
11. A pantry cabinet or closet in or near each kitchen must be provided (does not include studio or efficiency units).
12. Residential floors must be separated by sound insulation.

I. PLUMBING PROVISIONS

1. Zero to two bedroom units require at least 1 full bathroom.
2. Three bedroom units require at least 1.75 bathrooms (including one bath with upright shower and one bath with full tub).
3. Four bedroom units require at least 2 full bathrooms.
4. All tub and shower units are to be provided with a slip resistant floor.
5. All water heater tanks must be placed in an overflow pan, and be piped to the exterior, regardless of location and floor level. The temperature and relief valve must also be piped to the exterior.
6. Whirlpool baths or spas are prohibited.

7. A frost-proof exterior faucet must be installed on an exterior wall of the community/office building.
8. All tub/shower bathing fixtures must have offset controls.
9. Roll-In showers may not have a curb or threshold, per the North Carolina State Accessibility Code.

J. ELECTRICAL PROVISIONS

1. For new construction or adaptive re-use developments, overhead lighting is required in each bedroom.
2. Walk-in closets must have a switched overhead light.
3. Switches and thermostats must not be located more than 48 inches above finished floor height.
4. Receptacles, telephone jacks and cable jacks must not be located less than 16 inches above finished floor height.
5. Exterior lighting is required at each dwelling unit entry door.
6. Additional exterior light fixtures not specific to a dwelling unit will be wired to a "house" panel. The fixtures will be activated by a photo cell placed on the east or north side of the buildings.
7. All exterior stairways must have light fixtures wired to a "house" panel and activated by a photo cell placed on the east or north side of the buildings.
8. Electric baseboard heating systems are not permitted in residential dwelling units.
9. All non-residential and residential spaces must have separate electrical systems.
10. Provide ceiling fans, telephone jacks and a cable connection in every bedroom and living room.

K. HEATING, VENTILATING AND AIR CONDITIONING PROVISIONS

1. Through the wall HVAC units are prohibited in all but Studio, Efficiency and Single Room Occupancy dwelling units. They are allowed in laundry rooms and management offices where provided.
2. HVAC systems, including the air handler, must be 13.0 seer or greater and properly sized for the unit.
3. All non-residential and residential units must have their own separate heating and air conditioning systems.
4. Kitchen range hood must be 100 CFM and vented with hard ductwork to the outside on the shortest run possible.
5. Connections in duct system sealed with mastic and fiberglass mesh (Duct Leakage Threshold).
6. Seal all duct work after installation to keep out construction debris

L. SITWORK

1. Minimum landscaping budgets of \$300 per residential dwelling unit are required. This allowance is for plants and trees only. It may not be used for fine grading, seeding and straw or sod.
2. Provide positive drainage of all driveways, parking areas, ramps, walkways and dumpster pads to prevent standing water.
3. Lots must be graded so as to drain surface water away from foundation walls. The grade away from foundation walls shall fall a minimum of six inches within the first ten feet.
4. Outdoor benches must have backs.
5. Plant material must be indigenous to the climate and area and non-poisonous.

6. All plants shall be mulched within two days after planting by covering entire planting area with a 4-inch layer of mulch.
7. Landscaping must comply with all applicable local ordinances.
8. Trees at streetscape must be at least 2-1/2 inch caliper. Trees sited for building landscaping must be at least 2-inch caliper.
9. All shrubs must be a minimum size of 2 gallons.
10. Provide a non-skid finish to all walkways.
11. Do not plant any trees or shrubs in the direct projection of gutter downspouts.
12. Foundation plantings should be spaced an appropriate distance away from buildings to assure proper maintenance and growth.
13. Burying construction waste on-site is prohibited.
14. Leave no part of the disturbed site uncovered or unstabilized once construction is complete.
15. Pipe all water from roof system away from building.

M. BEDROOMS

1. The master bedroom must have at least 120 square feet, excluding the closet(s).
2. Secondary bedrooms must have at least 100 square feet, excluding the closet(s).
3. Every bedroom must have a closet with a shelf, closet rod and door.

N. BATHROOMS

1. A medicine cabinet must be installed in every full bathroom in each residential dwelling unit.
2. Mirrors in bathrooms must be low enough to reach the counter backsplashes.
3. All bathrooms must be mechanically ventilated to the outside using hard ductwork.
4. For ceramic tile applications, provide cement backer board.
5. Provide a 50 CFM exhaust fan that has a humidistat inside the fixture in all bathrooms.
6. All new construction projects must comply with QAP Section IV(F)(3) regarding additional accessible bathrooms, including roll-in showers.

O. KITCHENS

1. New cabinets must include dual side tracks on drawers. Door fronts, styles, and drawer fronts must be made with solid wood or wood/plastic veneer products. Particle board or hardboard doors, stiles, and drawer fronts are prohibited.
2. The minimum aisle width between cabinets and/or appliances is 42 inches.
3. All residential dwelling units must have a dry chemical fire extinguisher mounted and readily visible and accessible in every kitchen, including kitchen in community building if present.
4. Each kitchen must have at the least the following minimum lineal footage of countertop, excluding the sink space (only include countertops that are at or below 36 inches in height above finished floor):

Single Room Occupancy	4.5 lineal feet
Studio	5.0 lineal feet
Efficiency	5.0 lineal feet
1 Bedroom	6.0 lineal feet
2 Bedroom	7.0 lineal feet
3 Bedroom	8.0 lineal feet
4 Bedroom	8.0 lineal feet

5. For one and two bedroom dwelling units, provide a minimum of a 14 cubic foot frost free refrigerator with a freezer compartment. For three-bedroom dwelling units, provide a minimum of a 16 cubic foot frost-free refrigerator with a freezer compartment. For four-bedroom dwelling units, provide a minimum of an 18 cubic foot frost-free refrigerator.

P. PROVISIONS FOR ALL ELDERLY HOUSING

1. All elderly dwelling units must be equipped with emergency pull chains in the master bedroom and full bathroom. The pull chains will be wired to an exterior warning device which consists of a strobe light and an audible alarm.
2. Provide loop or "D" shape handles on cabinet doors and drawers.
3. Provide lever faucet controls for the kitchen sink and bathroom lavatory.
4. Exhaust vents and lighting above ranges must be wired to an independent switch near the range in an accessible location.
5. All tub/shower control knobs must be single lever handled and offset towards the front of tub/shower to allow for shorter reaching distances.
6. Provide solid blocking beside and behind all water closets and tub/shower units for grab bar installation.
7. Provide a grab bar in all tub/shower units at a minimum. The grab bar will be installed on the wall opposite the controls. This will enable greater ease in accessing the tub or shower.
8. All swinging passage doors to have lever type hardware.
9. Corridors, if provided, must have a continuous suitable handrail on one side mounted 34 inches above finished floor, and be 1-1/4 inches in diameter.
10. All passage doors to habitable rooms must have a minimum 2'-10" door.
11. Hallways must have a minimum width of 42 inches.
12. For each entry door, provide a handicap threshold with a maximum rise of 1/2 inch.

Q. BUILDING ENVELOPE AND INSULATION

1. Buildings with residential units must be wrapped with an exterior air and water infiltration barrier.
2. Framing must provide for complete building insulation. That is to include the use of insulated headers on all exterior walls, using energy heels of 6 inches or more on trusses to allow additional insulation over top plate, and framing all corners and wall intersections to allow for insulation.
1. Seal at doors, windows, plumbing and electrical penetrations against moisture and air leaks.
2. Insure that all framing elements are at or below 13% moisture content before installing insulation and drywall.

R. PROVISIONS FOR SIGHT AND HEARING IMPAIRED RESIDENTS

Applies ONLY to projects using Rental Production Program funds. See Section 504 of the Rehabilitation Act of 1973.

1. Two percent of the total number of units constructed, or a minimum of one, must be able to be equipped for residents with sight and hearing impairments.
2. The unit must be roughed in to allow for smoke alarms with strobe lights in every bedroom and living area.
3. Must have a receptacle next to phone jacks in dwelling units for future installation of TTY devices.
4. Each overhead light fixture and receptacle must be wired to accommodate a 150 watt load. This is to aid residents with visual impairments that need brighter lighting.
5. Unit designated must meet Fair Housing Amendments Act requirements.

III. ADDITIONAL REQUIREMENTS FOR RENOVATION OF EXISTING HOUSING

The following items must be used as guidance in developing full applications for projects that include rehabilitation of existing units. Replacement of materials and methods during rehabilitation must comply with the design standards for new construction.

1. Show all proposed changes to existing and proposed buildings, parking, utilities, and landscaping. An architect or engineer must prepare the proposed changes.
2. All renovation projects must submit a hazardous material report that provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCB's), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFC's), and other hazardous materials. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
3. Include an engineer's report assessing the structural integrity of the building(s) being renovated.
4. Include a current termite inspection report.
5. Include a Physical Needs Analysis that details the immediate needed repairs. The Analysis must include the inspection of at least twenty five percent of the total number of units. A licensed engineer or architect must perform the inspections. The Physical Needs Analysis must include costs of immediate need repairs and a projection of scheduled repairs and replacements using reserve dollars over the following 20 years. The PNA must include a projection of the remaining useful life of building components over a 20 year period.
6. Show adequate "reserves for replacements" for existing conditions not being replaced during rehabilitation.

IV. ADDITIONAL REQUIREMENTS FOR ADAPTIVE RE-USE

1. Mechanical Systems: All mechanical systems (including HVAC, plumbing, electrical, fire suppression, security system, etc.) are to be completely enclosed and concealed. This may be achieved by utilizing existing spaces in walls, floors, and ceilings, constructing mechanical chases or soffits, dropping ceilings in portions of units, or other means that may be necessary. Where structural or other significant limitations make complete enclosure and concealment impossible, NCHFA should be consulted prior to installation of affected systems.
2. Windows: Every effort should be taken to retain original window sashes, frames, and trim where possible. All original sashes must be repaired and otherwise upgraded to insure that all gaps and spaces are sealed so as to be weather tight. All damaged or broken window panes are to be replaced. Where original window sashes cannot be retained, it is preferred that replacement sashes be installed into existing frames. In all cases, windows should be finished with a complete coating of paint.
3. Floors: All wood flooring is to be restored as closely to original condition as possible. Where repairs are necessary, it is preferred that flooring salvaged from other areas of the building be utilized as fill material. Where salvaged wood is not available, flooring of similar dimension and species should be used. All repairs should be made by feathering in replacement flooring so as to make the repair as discreet as possible. Cutting out and replacing square sections of flooring is not acceptable. Where original flooring has gaps in excess of one eighth of one inch (1/8"), the gaps should be filled with an appropriate filler material prior to the application of final finish.

V. FAIR HOUSING AMENDMENTS ACT - DESIGN GUIDELINES

A. GENERAL INFORMATION

All new construction projects are required by law to meet the handicap-accessibility standards outlined in the Fair Housing Laws, including the Federal Fair Housing Amendments Act of 1988 (the "Act"). The law provides that failure to design and construct certain residential dwelling units to include certain features of accessible design will be regarded as unlawful discrimination. Renovation projects may be exempt from design guidelines.

The law applies to all housing built after March 13, 1991 with four or more units. All units in buildings with four or more units must meet the requirements of the law if the buildings have one or more elevators. All ground floor units in other buildings containing four or more units must meet the requirements of the law. Certain sites with steep terrain may have some exclusions.

B. SUMMARY OF LEGAL REQUIREMENTS

The following summary is provided as a courtesy and **DOES NOT GUARANTEE COMPLIANCE WITH THE ACT**. Developers and their architects are advised to be knowledgeable of the law themselves. However, the Agency will require all developers to meet the following minimum requirements:

1. Units covered under this law as described above must have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site (there are strict tests to meet this waiver). For all such dwellings with a building entrance on an accessible route the following additional six requirements apply.
2. All public and common areas must be readily accessible and usable by handicapped persons. This includes parking areas, tot lots, laundry rooms, dumpsters, offices and community buildings.
3. All doors designed to allow passage into and within all premises covered under the Act must be sufficiently wide to allow passage by persons in wheelchairs.
4. There must be an accessible route into and through the dwelling units, providing access for people with disabilities throughout the unit.
5. All areas within the dwelling units must contain light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. All premises within units must contain reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided.
7. Dwelling units must contain usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. The turning radius will vary with the design of the kitchen and baths. HUD provides guidance in the publication referenced below.

The Agency recommends project owners and architects refer to the *Fair Housing Design Manual*, US Department of HUD; Office of Fair Housing and Equal Opportunity; Office of Housing; August, 1996. To order this book, telephone: (800) 767-7468. This free publication will provide significantly more guidance on how to meet the requirements of the law.

VI. THE AMERICANS WITH DISABILITIES ACT - DESIGN GUIDELINES

A. GENERAL INFORMATION

All projects are required by law to meet the handicap accessibility standards outlined in the Americans With Disabilities Act (ADA). The law provides that failure to design and construct certain public accommodations to include certain features of accessible design will be regarded as unlawful discrimination.

ADA Legislation became effective on July 26, 1992. Title III deals with non-discrimination on the basis of disability by public accommodations and in commercial facilities. Public accommodations include all new construction effective January 26, 1993 and impacts any rental office, model unit, public bathroom, building entrances, or any other public or common use

area. Existing public accommodations must be retrofitted or altered beginning January 26, 1992, unless a financial or administrative burden exists.

The ADA guidelines do not affect residential units, since these are covered under Fair Housing and Section 504 laws.

B. SUMMARY OF LEGAL REQUIREMENTS

The following summary is provided as a courtesy to developers, and DOES NOT GUARANTEE COMPLIANCE WITH THE ACT. Developers and their architects are advised to be knowledgeable of the law themselves. However, the Agency will require all developers to meet the following minimum requirements:

1. Public use areas such as a leasing/rental office, model unit, community building, site laundry rooms, on site postal facilities, and refuse collection areas (dumpsters) must be located on an accessible route. All walks, halls, corridors, aisles, and other spaces within these public use areas must meet or exceed ADA guidelines. Sidewalks and landings may require handrails and/or edge protectors. Ramp surfaces, slopes, and cross slopes must be considered.
2. Special parking and passenger loading zones are required. These parking areas must include proper display signage, curb and aisle painting for identification, curb cuts, ramps, and marked crossings.
3. Interior and exterior doorways in public use areas must meet minimum width measurements. Threshold heights through these doorways must comply.
4. Elevators, if present, must have certain accessible features. These may include cars which can self-level, has call buttons that have visual signals, raised and Braille characters for floor designations, door protective and reopening devices, certain illumination levels, have special floor surfaces or coverings, and emergency communications equipment provided.
5. Drinking fountains, if present, must be made accessible. Spout height and location must be considered. It must have special front or side mounted controls. Correct water cooler mounting heights are essential.
6. In public use bathrooms all usable devices such as water closets, urinals, lavatories and mirrors, faucets, bathtubs, showers, toilet stalls, flush controls, grab bars, hardware, and entry/exit doors must comply with ADA guidelines.

VII. NORTH CAROLINA STATE ACCESSIBILITY CODE

A. GENERAL INFORMATION

All projects are required by law to meet the handicap accessibility standards as outlined in the North Carolina State Building Code. State and/or local building code officials enforce the design and construction guidelines. Compliance with these guidelines is mandatory in order to receive a Certificate of Occupancy for your proposed development.

A main feature of the state accessibility code is the provision requiring all multifamily residential projects intended as full time residences for rent or lease that have eleven or more living units to have a minimum of five percent of the units, or a minimum of one, that meet the requirements. These fully accessible designated units must also be distributed throughout the project, and not placed all in one building or just in one area of the site.

B. SUMMARY OF LEGAL REQUIREMENTS

The following summary is provided as a courtesy to developers, and DOES NOT GUARANTEE COMPLIANCE WITH STATE ACCESSIBILITY CODES. Developers and their architects are advised to be knowledgeable of the law themselves.

1. Site development must be considered in order to access all public use areas. This includes providing an accessible entrance to public transportation stops, parking areas, and walkways to dwelling units, office/community building(s), laundry room(s), and other accessible site amenities. This includes the proper grading and construction of ramps, walks, lifts, and bridges.

2. Parking lots provided for residents must have designated areas or spaces solely for use by disabled/handicapped persons. This includes proper line striping and painting, proper signage, and proper ramps and curb cuts. The minimum number of designated parking spaces must be adhered to.
3. Exterior and interior passage doors for public use buildings must have certain clear width openings. They must also be on an accessible route. Threshold heights must be considered. Doors where operable hardware is provided shall be equipped with handles, pulls, latches, locks or other operating hardware devices having a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching or any wrist-twisting motion to operate. Dwelling units that are designated by the five percent rule must also comply.
4. Toilet facilities, where provided in public and common buildings, must have at least one toilet fixture of each type required that meets accessibility codes. These toilet facilities must also be on an accessible route. The dwelling units that were designated by the five percent rule must also comply. Bathroom facilities must include grab bars around tubs/showers units where provided, and toilets. Toilets must have a certain clear space around them to allow access. The toilet seat must be high enough for easier access. Sinks must have clear floor space around and under them to allow greater access, and also must be mounted a specified distance above finished floor. Toilet compartments must follow size related codes. Toilet accessories must be placed per code. A five-foot clear floor space must be provided for maneuverability.
5. Kitchens, where provided, must also include accessible features. Kitchen cabinets must have pulls that are easy to operate. Cabinet countertop must be a certain height and removable fronts on sink cabinets are required to allow better access. Appliances must have front controls. The fan/light fixture above the range must be wired so that the switch is in an accessible position. A five-foot clear floor span is required. Kitchens in the dwelling units that are designated by the five percent rule must also comply.

DEFINITIONS

Efficiency Apartment: A dwelling unit with a minimum of 450 net square footage (assuming new construction) in which the bedroom and living area are contained in the same room. Each unit has a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, full size refrigerator) that is located in a separate room.

One Bedroom Apartment: A dwelling unit of at least 600 net square feet (assuming new construction), meeting state and local building code requirements, containing at least four separate rooms including a living/dining room, full kitchen, a bedroom and full bathroom.

Single Room Occupancy (SRO) Unit: A single room dwelling unit with a minimum of 250 net square feet (assuming new construction) that is the primary residence of its occupant(s). The unit must contain either food preparation or sanitary facilities. At least one component of either a full bathroom (shower, water closet, lavatory) and/or a full kitchen (refrigerator, stove top and oven, sink) is missing. A SRO may serve a special population and may also have targeted supportive services on site or at an appropriately convenient location. There are shared common areas in each building that contain elements of food preparation and/or sanitary facilities that are missing in the individual units.

Studio Apartment: A dwelling unit with a minimum of 375 net square feet (assuming new construction) in which the bedroom, living area and kitchenette are contained in the same room. Each unit has components of a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, refrigerator).

Three Bedroom Apartment: A dwelling unit with a minimum of 1,000 net square feet (assuming new construction), meeting state and local building code requirements containing at least seven separate rooms including a living/dining room, full kitchen, three bedrooms and 1.75 bathrooms, with each unit including a minimum of one bath with a full tub and one bath with an upright shower stall.

Two Bedroom Apartment: A dwelling unit with a minimum of 800 net square feet (assuming new construction), meeting state and local building code requirements containing at least five separate rooms including a living/dining room, full kitchen, two bedrooms and full bathroom.

Appendix F

Monitoring Compliance with Low-Income Housing Tax Credit Requirements

- (a) **General.**

Owners of low-income housing tax credit properties must comply with the following rules and procedures.

(b) Recordkeeping and record retention.

- (1) *Recordkeeping.* Owners must keep records for each qualified low-income building in the project that show for each year in the compliance period—
 - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
 - (ii) the percentage of residential rental units in the building that are low-income units;
 - (iii) the rent charged on each residential rental unit in the building (including any utility allowances);
 - (iv) the number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2);
 - (v) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 - (vi) the annual income certification of each low-income tenant per unit (for an exception to this requirement, see Section 42(g)(8)(B));
 - (vii) documentation to support each low-income tenant's income certification (other than as covered by the special rule for a 100 percent low-income building) as determined under Section 8 or by a public housing authority;
 - (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
 - (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).
- (2) *Record retention.* Owners must retain the records described in paragraph (b)(1) of this section for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- (3) *Inspection record retention.* Owners must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) Certification and review.

- (1) *Certification.* Owners must certify at least annually to the Agency that, for the preceding twelve (12) month period—
 - (i) the project met the requirements of the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), whichever is applicable to the project;
 - (ii) there was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;
 - (iii) the owner has received an annual income certification from each low-income tenant, and documentation to support that certification consistent with paragraph (b)(1)(vii) of this section;
 - (iv) each low-income unit in the project was rent-restricted under Section 42(g)(2);
 - (v) all units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project (meaning an adverse final decision by HUD, a substantially equivalent state or local fair housing agency or federal court);
 - (vi) the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project (owners must attach any violation report or notice to its annual certification and state whether the violation has been corrected);
 - (vii) there was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or if there was a change, the nature of the change;
 - (viii) all tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;
 - (ix) if a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

- (x) if the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and
- (xi) an extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
- (xii) all low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));
- (xiii) no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42;
- (xiv) the ownership entity meets the requirements of the nonprofit set-aside if the project was allocated as such; and
- (xv) no unauthorized changes in ownership or management agent(s) have occurred.

(2) **Review.**

- (i) The Agency will review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of Section 42.
 - (ii) With respect to each tax credit project—
 - (A) the Agency will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and
 - (B) at least once every three (3) years, the Agency will conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
 - (iii) The Agency will randomly select low-income units and tenant records to be inspected and reviewed.
- (3) *Frequency and form of certification.* The certifications and reviews of paragraph (c)(1) and (2) of this section will be made annually covering each year of the fifteen (15) year compliance period under Section 42(i)(1). The owner certifications will be made under penalty of perjury.

(d) **Inspections.**

- (1) *In general.* The Agency has the right to perform an on-site inspection of any tax credit project at least through the end of the extended use period.
- (2) *Inspection standard.* For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency will review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) in order to determine whether—
 - (i) the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or
 - (ii) the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A tax credit project under Section 42 must continue to satisfy these codes. The Agency will report any violation of these codes to the Service.

(e) **Notification-of-noncompliance.**

- (1) *In general.* The Agency will give the notice described in paragraph (e)(2) of this section to the owner of a tax credit project and the notice described in paragraph (e)(3) of this section to the Service.
- (2) *Notice to owner.* The Agency will provide prompt written notice to the owner of a tax credit project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- (3) *Notice to Internal Revenue Service.*
 - (i) In general. The Agency will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Service no later than 45 days after the end of the correction period (as described

in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance that will be reported to the Service under this paragraph (e)(3). If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the Agency will file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

(ii) Agency retention of records. The Agency will retain records of noncompliance or failure to certify for six (6) years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency will retain the certifications and records described in paragraph (c) of this section for three (3) years from the end of the calendar year the Agency receives the certifications and records.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period is not to exceed ninety (90) days from the date of the notice to the owner described in paragraph (e)(2) of this section. The Agency may extend the correction period for up to six (6) months for good cause.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
Statutory reference: G.S. 150B-21.2.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office for Historically Underutilized Businesses intends to adopt the rules cited as 01 NCAC 30I .0301-.0310 with changes from the proposed text noticed in the Register, Volume 19, Issue 22, pages 1761-1764.

Proposed Effective Date: February 1, 2006

Reason for Proposed Action: Compliance with G.S. 143-128.3(e) which requires the Secretary to adopt rules for State entities, the University of North Carolina, and Community Colleges to implement the provisions of G.S. 143-128.2 entitled Minority Business participation goals.

Procedure by which a person can object to the agency on a proposed rule: By November 1, 2005 contact Bridget Wall, Assistant to the Secretary for Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336, telephone (919) 807-2330 or fax (919) 807-2335 to request a public hearing.

Written comments may be submitted to: Bridget Wall, Assistant to the Secretary for Historically Underutilized Businesses. Objections may be received by mail, delivery service, hand delivery or facsimile transmission to 1336 Mail Service Center, Raleigh, NC 27699-1336, phone (919) 807-2330, fax (919) 807-2335.

Comment period ends: December 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact
 State

- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 30 - STATE CONSTRUCTION OFFICE

SUBCHAPTER 30I - MINORITY BUSINESS PARTICIPATION GOALS

SECTION .0300 - RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN PUBLIC CONSTRUCTION CONTRACTS

01 NCAC 30I .0301 SCOPE

These Rules apply to minority business participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State and local government construction projects as defined in G.S. 143-128.2(a).

Authority G.S. 143-128.3(e); 143-128.2.

01 NCAC 30I .0302 DEFINITIONS

As used in this Section and G.S. 143-128.2 and G.S. 143-128.3:

- (1) "Bidder" means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- (2) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
- (3) "Contractor" means any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
- (4) "Designer" means any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering work.
- (5) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Businesses.
- (6) "Owner" means the State of North Carolina, through the Agency/Institution and public entities named in the contract.
- (7) "Public Entity" means the State of North Carolina and all public subdivisions and local governmental units thereof.

- (8) "SCO" means the North Carolina Department of Administration State Construction Office.
- (9) "State Construction Project" means all projects within the jurisdiction of the State Construction Office pursuant to G.S. 143-341(3); including any State Agency project, Community College's project in the amount of three hundred thousand dollars (\$300,000) or more, and University System's project in the excess of two million dollars (\$2,000,000).
- (10) "Subcontractor" means a firm under contract with the prime contractor or construction manager at risk for supplying materials, labor, or materials and labor.

Authority G.S. 143-128.3(e).

01 NCAC 30I .0303 ADJUSTMENTS TO GOAL

The Secretary shall use the preceding year's minority business participation and the availability of businesses in each category as indicated by the firms identified as minority businesses by the Department of Administration in identifying appropriate percentage goals as required by G.S. 143-128.2(a).

Authority G.S. 143-128.3(e); 143-128.2(a).

01 NCAC 30I .0304 OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES RESPONSIBILITIES

(a) Interested businesses may register as a minority business as defined in G.S. 143-128.2(g). The information provided by the minority business shall be used by the HUB Office to:

- (1) Identify those areas of work for which there are minority businesses, and assist those public entities who are in the process of developing a minority business outreach plan for a particular project.
- (2) Make available to interested parties a list of registered minority business contractors and subcontractors.
- (3) Maintain a current list of minority businesses based upon information provided by the minority businesses.

(b) The HUB Office shall also:

- (1) Provide training and technical assistance to minority businesses on how to identify and obtain contracting and subcontracting opportunities through the State Construction Office and other public entities.
- (2) Provide training and technical assistance to public entities on how to identify and obtain minority contractor and subcontractor participation on projects subject to the goal requirements of G.S. 143-128.2.
- (3) Develop positive relationships with North Carolina trade and professional organizations by providing periodic meetings, such as networking and information sessions, obtaining input and feedback regarding minority business issues, legislation and policies, to improve the ability of minority

businesses to participate in State construction projects.

- (4) Monitor public entity compliance with the goal requirements of G.S. 143-128.2.
- (5) Review and monitor corrective action plans for those public entities found to be out of compliance with G.S. 143-128.2.

Authority G.S. 143-128.3(e); 143-128.2.

01 NCAC 30I .0305 STATE CONSTRUCTION OFFICE RESPONSIBILITIES

On State Construction Projects, the State Construction Office shall:

- (1) Attend the scheduled prebid conference, if requested, to clarify requirements of the General Statutes regarding minority-business participation, including the bidders' responsibilities.
- (2) Review the apparent low bidders' statutory compliance with the requirements listed in the proposal, if the bid is to be considered as responsive, prior to award of contracts. The State may reject any or all bids and waive informalities pursuant to G.S. 143-129.
- (3) Review of minority business requirements at the Preconstruction conference.
- (4) Monitor contractors' compliance with minority business requirements in the contract documents during construction.
- (5) Resolve protests and disputes arising from implementation of the minority business participation outreach plan, in conjunction with the HUB Office.

Authority G.S. 143-128.3(e).

01 NCAC 30I .0306 OWNER REQUIREMENTS

(a) Before awarding a contract, an owner shall:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and implement outreach efforts to encourage minority business participation in these projects. The plan shall include education, recruitment, and interaction between minority businesses and non-minority businesses.
- (2) Attend the scheduled prebid conference and explain the minority goals and objectives of the State and specific to the owner.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office for Historically Underutilized Businesses an interest in the type of work being bid or the

PROPOSED RULES

potential contracting opportunities listed in the proposal. The notification shall include:

- (A) A description of the work for which the bid is being solicited.
- (B) The date, time, and location where bids are to be submitted.
- (C) The name of the individual within the owner's organization who will be available to answer questions about the project.
- (D) Where bid documents may be reviewed.
- (E) Any special requirements that may exist.

- (4) Utilize media likely to inform potential minority businesses of the bid being sought.
- (5) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- (6) Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
- (7) Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
- (8) Forward documentation showing evidence of implementation of Owner's requirements, Subparagraphs (a)(1) through (a)(7) of this Rule, to the State Construction Office and the HUB Office upon request.

(b) After a contract has been awarded an owner shall:

- (1) Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- (2) Submit the report to the HUB Office as required by G.S. 143-128.3(a).

(c) All public entities that contract with a construction manager at risk shall report to the Office for Historically Underutilized Businesses the items enumerated in G.S. 143-64.31(b). The report shall include:

- (1) The owner approved minority business outreach plan of the construction manager at risk selected; and
- (2) Documentation regarding the means by which minority businesses were contacted to solicit their participation in bid proposals if the 10% goal is not achieved.

Authority G.S. 143-64.31(b); 143-128.3(e); 143-128.2(e).

01 NCAC 301 .0307 DESIGNER REQUIREMENTS

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer shall:

- (1) Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.

- (2) Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities and provide documentation of this assistance for the owner's records.
- (3) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals and forward the documentation to the owner in support of meeting the requirements.
- (4) Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) prior to recommendation of award.
- (5) During construction phase of the project, review payment applications for compliance with minority business utilization commitments and submit documentation that identifies payments to minority businesses along with monthly pay applications to the owner. Additionally, on State Construction Projects, forward copies to the State Construction Office.
- (6) Forward documentation showing evidence of implementation of Designer's requirements Items (1) through (5) of this Rule to the owner, State Construction Office and HUB Office upon request.

Authority G.S. 143-128.3(e); 143-128.2.

01 NCAC 301 .0308 CONTRACTOR REQUIREMENTS

This Rule applies to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods. These requirements apply to all contractors performing as contractors and first-tier subcontractors under construction manager at risk on state projects. The contractors shall:

- (1) Attend the scheduled prebid conference.
- (2) Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification shall include:
 - (A) A description of the work for which the bid is being solicited.
 - (B) The date, time and location where bids are to be submitted.
 - (C) The name of the individual within the company who shall be available to answer questions about the project.
 - (D) Where bid documents may be reviewed.

(E) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify no less than three minority businesses within a 75 mile radius of the project.

(4) During the bidding process, comply with the contractor(s) requirements listed in the owner's minority business participation outreach plan.

(5) Identify on the bid, the minority businesses that will be utilized on the project with the corresponding total dollar value of the bid and an affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

(6) Forward documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor requirements to the State Construction Office and HUB Office upon request.

(7) Upon being named the apparent low bidder, the Bidder shall provide one of the following to the Public Owner:

(A) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or

(B) if the percentage is not equal to the applicable goal, then an affidavit of all good faith efforts taken to meet the goal.

Failure to comply with the requirements of this Item shall be grounds for rejection of the bid and award to the next lowest responsible responsive bidder.

(8) During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. Additionally, on State Construction Projects, notify the State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make good faith efforts to replace a minority business subcontractor with another minority business subcontractor.

(9) If during the construction of a project additional subcontracting opportunities become available, make good faith efforts to solicit bids from minority businesses.

Authority G.S. 143-128.3(e); 143-128.2(c).

01 NCAC 30I .0309 MINORITY BUSINESS

RESPONSIBILITIES

(a) Minority businesses seeking to be counted toward the minority business participation goals of G.S. 143-128.2 shall be certified or designated as Historically Underutilized Business by the Department of Administration HUB Office or another certifying agency recognized by the HUB Office.

(b) Minority and HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

(1) Attending the scheduled prebid conference.

(2) Responding promptly whether or not they wish to submit a bid when contacted by owners or bidders.

(3) Attending training and contractor outreach sessions given by owners, contractors and state agencies, when feasible.

(4) Participating in Mentor/Protégé programs, training, or other business development programs offered by owners, contractors or state agencies.

(5) Negotiating in good faith with owners or contractors.

Authority G.S. 143-128.3(e).

01 NCAC 30I .0310 DISPUTE PROCEDURES

Any business disputes arising under these rules shall be resolved as set forth in G.S. 143-128(f).

Authority G.S. 143-128.3(e); 143-128(f1).

TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the USS North Carolina Battleship Commission intends to amend the rules cited as 07 NCAC 05 .0202-.0203.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: December 2, 2005

Time: 10:00 a.m.

Location: Battleship NORTH CAROLINA, Captain's Cabin, Eagles Island, Wilmington, NC

Reason for Proposed Action: *The USS North Carolina Battleship Commission has determined financial need to adjust the hours of operation and to increase the Admissions fee scheduled for the Battleship NORTH CAROLINA.*

Procedure by which a person can object to the agency on a proposed rule: *Provide written comments to Director, Battleship NORTH CAROLINA no later than December 16, 2005 to Capt. D. R. Scheu USN (Ret), Battleship NORTH CAROLINA, P.O. Box 480, Wilmington, NC 28402-0480.*

Written comments may be submitted to: *Capt. D. R. Scheu USN (Ret), Battleship NORTH CAROLINA, P.O. Box 480, Wilmington, NC 28402-0480, phone 910-251-5797, fax 910-251-5807, email ncb55@battleshipnc.com.*

Comment period ends: December 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 5 - U.S.S. NORTH CAROLINA BATTLESHIP COMMISSION

SECTION .0200 - USE REGULATIONS

07 NCAC 05 .0202 HOURS OF OPERATION

The U.S.S. North Carolina Battleship Memorial will be open during the following hours:

- (1) The memorial will be open every day at 8:00 a.m.
(2) Closing time will be 5:00 p.m. from September 16 through May 15 the day after Labor Day through the Thursday preceding the Memorial Day weekend and at 8:00 p.m. from May 16 through September 15. Friday of Memorial Day weekend through Labor Day.

Authority G.S. 143B-362; 143B-73.

07 NCAC 05 .0203 ADMISSION PRICES

The admission price for the U.S.S. North Carolina Battleship Memorial is nine dollars (\$9.00) twelve dollars (\$12.00) for persons age 12 and over, four dollars and fifty cents (\$4.50) six dollars (\$6.00) for children age 6 through 11, two dollars and twenty five cents (\$2.25) three dollars (\$3.00) per student for organized school groups in grades kindergarten through 6, and four dollars and fifty cents (\$4.50) six dollars (\$6.00) per student for organized school groups in grades 7 through 12.

Authority G.S. 143B-73.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rule cited as 11 NCAC 06A .0905 and amend the rules cited as 11 NCAC 06A .0901-.0902 and .0904.

Proposed Effective Date: February 1, 2006

Public Hearing:

Date: November 1, 2005

Time: 10:00 a.m.

Location: Dobbs Building, Room 4009, 430 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: The rules are intended to strengthen and clarify the ethical conduct requirements for public adjusters.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to these rules until the expiration date of the comment period on December 16, 2005.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone 919-733-4529, fax 919-733-6495, or email esprenke@ncdoi.net.

Comment period ends: December 16, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 06 - AGENT SERVICES DIVISION
SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0900 - PUBLIC ADJUSTERS

11 NCAC 06A .0901 DEFINITIONS

As used in this Section:

- (1) "Catastrophic disaster", according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries;

causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor.

(+)(2) "Public adjuster" means any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under G.S. 58-33-30 or who is authorized to adjust under G.S. 58-33-70; but does not mean an attorney at law, licensed to practice by the North Carolina State Bar, who adjusts insurance losses in the course of the practice of law.

(-)(3) "Public adjusting" means investigating, reporting to, and assisting an insured in relation to first party claims arising under insurance contracts, other than life or annuity, that insure the real or personal property, or both, of the insured; but does not include acting in any manner in relation to liability claims for personal injury or property damage, other third party claims, nor physical damage to motor vehicles.

Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70.

11 NCAC 06A .0902 TRANSACTIONS WITH INSUREDS

- (a) A public adjuster shall in all respects be fair and honest with an insured and in all communications with an insurer or its representatives.
- (b) A public adjuster shall have no financial interests in any aspect of an insured's claim, other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster.
- (c) A public adjuster shall not refer or direct any insured needing repairs or other services in connection with a loss to any person with whom the public adjuster has a financial interest; nor to any person who will or is reasonably anticipated to provide the public adjuster any direct or indirect compensation for the referral of any resulting business.
- (d) A public adjuster shall not prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person, regarding the settlement of the insured's claim.
- (e) The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified. Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified by type, with dollar estimates set forth in the contract. Compensation provisions in a public adjusting contract shall not

be redacted in any copy of the contract provided to an insurer. Such a redaction shall constitute the use of fraudulent, coercive or dishonest practices and the demonstration of untrustworthiness in the conduct of business in this State as described in G.S. 58-33-46(8).

- (f) Any choice of counsel to represent the insured shall be made solely by the insured.
- (g) A public adjuster may not settle a claim unless the terms and conditions of the settlement are approved by the insured.
- (h) All contracts for the services of public adjusters shall:
 - (1) Legibly state the full name, as specified in the Department's records, of the licensed public adjuster who is the other party to the contract.
 - (2) Be signed by the public adjuster who solicited or in whose name the contract was solicited.
 - (3) Show the insured's full name and street address, the address and description of the loss, and the name of the insured's insurance company and policy number, if available.
 - (4) Show the date on which the contract was actually signed by both parties.
 - (5) Clearly and conspicuously disclose the insured's right to cancel or revoke the contract as specified in 11 NCAC 6A .0904(e).
 - (6) Be in writing.
- (i) A public adjuster shall not acquire any interest in salvage property, except with the express written permission of the insured, after settlement with the insurer.

Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70; 58-33-76; 58-63-15(11).

11 NCAC 06A .0904 REGULATORY MATTERS

- (a) Only public adjusters shall solicit business from an insured who has sustained an insured loss.
- (b) All advertising by a public adjuster shall fairly and accurately describe the services to be rendered, shall not misrepresent either the public adjuster or the public adjuster's abilities, and shall comply with the following requirements:
 - (1) Except as authorized by this Subparagraph, only public adjusters residing in North Carolina licensed by the Department may advertise, whether in print, or in other media, within the State of North Carolina. Nonresident public adjusters licensed by the Department shall not advertise, unless such advertising complies with G.S. 58-63-15(2), and has been approved by the Department.
 - (2) An advertisement shall state the full name of the public adjuster and the public adjuster's firm.
- (c) No public adjuster shall solicit or enter into any agreement for the repair or replacement of damaged property on which the public adjuster has been engaged to adjust or settle claims.
- (d) If an insured enters into an agreement with a public adjuster to adjust a loss within three business days after the date of the loss, the insured shall have until the close of business on the third business day after the date of the loss to rescind the agreement.

PROPOSED RULES

(e) The exercise of the right to rescind the agreement by the insured must be in writing and delivered to the public adjuster at the address shown on the agreement.

(f) If the insured property that is the subject of the claim is not the primary residence of the insured or used by the insured primarily for personal, family, or household purposes, the insured may waive the right to rescind the agreement. The waiver shall be in writing and signed by the insured.

(g) If the insured rescinds the agreement with a public adjuster in accordance with this Rule, the public adjuster shall be entitled to payment by the insured for the reasonable value of the service rendered and any expenses incurred by the public adjuster prior to receiving notice of the rescission.

(h) Every public adjuster shall maintain all records of losses and claims adjusted for three years after the settlement or closing of each claim.

(i) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.

(j) A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy. Likewise, no insurer, independent adjuster, or company adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.

(k) No public adjuster shall knowingly enter into a contract to adjust a residential property claim subsequent to an insurer declaring the property a total loss, unless the services to be provided by the public adjuster can be proven to result in the claimant obtaining an insurance settlement, net of the adjuster's compensation, in excess of what the insured claimant would have obtained without the services of the public adjuster.

Authority G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-70; 58-33-76; 58-63-15(2),(11).

11 NCAC 06A.0905 CATASTROPHIC DISASTERS

(a) In addition to the rules in this Section, in the event of a catastrophic disaster, no public adjuster shall:

- (1) charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than 10% of any insurance settlement or proceeds; or
(2) require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

(b) Notwithstanding 11 NCAC 06A .0904(d), in the event of a catastrophic disaster, a public adjuster's contract with an insured or other client shall be revocable or cancelable by the insured or claimant, without penalty or obligation, for at least 14 business days after the contract is entered into.

(c) Notwithstanding 11 NCAC 06A .0904(f), in the event of a catastrophic disaster, waiver of the right to rescind is prohibited, any such waiver is void ab initio, and any knowing attempt by a public adjuster to secure such a waiver constitutes an unfair and deceptive trade practice.

Authority G.S. 58-2-40; 58-33-46; 58-33-70; 58-33-120; 58-63-10; 58-63-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Code Officials Qualification Board intends to adopt the rules cited as 11 NCAC 08 .0712-.0733 and amend the rules cited as 11 NCAC 08 .0507, .0709.

Proposed Effective Date: February 1, 2006

Public Hearing:

Date: November 1, 2005

Time: 2:00 p.m.

Location: Suite 200, 322 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action: The rules establish a continuing education program for code enforcement officials.

Procedure by which a person can object to the agency on a proposed rule: The Code Officials Qualification Board will accept written objections to these rules until the expiration of the comment period on December 16, 2005.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone 919-733-4529, fax 919-733-6495, or email esprenke@ncdoi.net.

Comment period ends: December 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
 Local
 Substantive (>=\$3,000,000)
 None

CHAPTER 8 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .0500 - QUALIFICATION BOARD-LIMITED CERTIFICATE

11 NCAC 08 .0507 RENEWAL

To remain effective, a limited certificate must be renewed annually on or before the first day of July. Applications for renewal shall be made in the same manner as the original application for the certificate, on forms furnished by the Board. A ten dollar (\$10.00) renewal fee shall accompany each such application. In the event that an application is not received by July 1, an additional late renewal fee of two dollars (\$2.00) shall be charged. In accordance with 11 NCAC 08.0712, continuing education requirements must be completed by June 30 for renewal of the limited certificate.

Authority G.S. 143-151.12(1); 143-151.13A(b); 143-151.16.

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0709 RENEWAL

To remain effective, a standard certificate must be renewed in accordance with G.S. 143-151.16(b). Applications for renewal shall be made on forms furnished by the Division of Engineering and Building Codes of the Department of Insurance. A ten dollar (\$10.00) renewal fee shall accompany each such application. In the event that an application for renewal is not received by July 1, an additional late-renewal fee of two dollars (\$2.00) shall be charged. Any person who fails to renew a certificate for a period of two consecutive years shall take and pass the same examination as unlicensed applicants for that type and level of certificate before ~~allowing~~ that person shall be allowed to renew the certificate. In accordance with 11 NCAC 08.0712, continuing education requirements must be completed by June 30 for renewal of the standard certificate.

Authority G.S. 143-151.13A(b); 143-151.16.

11 NCAC 08 .0712 CONTINUING EDUCATION – GENERAL

As a condition of certificate renewal, holders of active standard and limited certificates must meet continuing education (CE) requirements in accordance with 11 NCAC 08.0713 through 08.0733. Courses and sponsors must meet the requirements in 11 NCAC 08.0713 through 08 .0733.

Authority G.S. 143-151.13A(b).

11 NCAC 08 .0713 CONTINUING EDUCATION REQUIREMENTS

(a) To be eligible to renew a certificate, whether active standard or active limited, a Code Enforcement Official (CEO) shall have completed the requisite number of credit hours by June 30.

(b) A credit hour is 60 minutes of class contact course instruction or equivalent distance learning time.

(c) A CEO with an active limited certificate must complete six hours of continuing education courses per renewal year in each technical area for which the limited certificate is valid. A CEO with an active standard certificate must complete six hours of continuing education courses per renewal year for each standard certificate. A CEO with a limited and a standard certificate valid for the same technical area must complete only six hours for that technical area.

(d) A CEO with only a probationary certificate and no standard or limited certificate is not required to complete any continuing education courses.

(e) If a course exceeds the number of credit hours specified for renewal of a technical area certificate, the excess credit hours may be carried forward into the following renewal year of that technical area certificate. The number of carry over credit hours may not exceed six.

(f) The Board may require mandatory courses following revision to the Building Code, or whenever the Board determines that there is a specific need for training for CEOs.

Authority G.S. 143-151.13A(b); 143-151.13A(f)(1); 143-151.13A(f)(4); 143-151.13A(f)(5); 143-151.16(b).

11 NCAC 08 .0714 INACTIVE CODE ENFORCEMENT OFFICIALS

(a) A CEO either who is no longer employed by a city, county, or state inspection department or who remains employed by a city, county, or state inspection department but no longer has Code enforcement responsibility is deemed inactive. Inactive CEOs are neither subject to certificate renewal requirements nor continuing education requirements.

(b) When an inactive CEO wishes to become reemployed as an active CEO, the CEO must complete continuing education courses within one year after reemployment to re-activate certificates in addition to the courses required for renewal of certificates as follows:

- (1) A CEO who has been on inactive status for more than two years and who has not been continuously employed by a city, county, or state inspection department during the period of inactive status shall complete continuing education courses of 12 hours for each technical area in which the CEO is certified.
- (2) A CEO who has been on inactive status for more than two years and who has been continuously employed by a city, county, or state inspection department during the period of inactive status shall complete continuing education courses of six hours for each technical area in which the CEO is certified.
- (3) A CEO who has been on inactive status for two years or less shall complete CE courses of four hours for each technical area in which the CEO is certified.

Authority G.S. 143-151.13A(b); 143-151.13A(d); 143-151.15.

11 NCAC 08 .0715 FAILURE TO COMPLETE CONTINUING EDUCATION

Any active CEO who fails to complete the required continuing education courses by June 30 of the current renewal year shall have his or her certificates suspended until the CE requirement is met. A CEO without a currently valid certificate shall not perform Code enforcement.

Authority G.S. 143-151.13A(c)(7); 143-151.16(c).

11 NCAC 08 .0716 COMPLIANCE

(a) General CEO compliance with annual CE requirements may be determined through an audit process conducted by the Board's staff. Determination of individuals to be audited shall be accomplished either through a random selection process or based on information available to the Board's staff. Individuals selected for auditing shall provide the Board's staff with documentation of the CE activities claimed for the renewal period, including but not limited to attendance verification records in the form of transcripts, completion certificates, and any other documents supporting evidence of attendance.

(b) Attendance records shall be maintained by CEOs for a period of three years following the applicable certificate renewal date for audit verification purposes.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0717 EXTENSIONS OF TIME

Upon petition to the Board staff, extensions of time to complete continuing education courses shall be granted to CEOs for good cause only, such as military service, physical disability, illness, and similar hardship if the period of hardship exceeded 90 consecutive days. Supporting documentation such as military orders or a letter from a physician must be furnished to the Board's staff. The Board staff shall determine whether the extension shall be granted within 10 calendar days of receipt of the petition and shall notify the CEO of its determination.

Authority G.S. 143-151.13A (e).

11 NCAC 08 .0718 COURSE SPONSORS

(a) A course sponsor is an organization or individual that has submitted an application and has been approved by the Board to provide courses and instructors for continuing education. No retroactive approval of a sponsor shall be granted by the Board for any reason.

(b) A prospective sponsor of a CE course shall obtain written approval from the Board to conduct the course before offering or conducting the course and before advertising or otherwise representing that the course is or may be approved for continuing education credit.

(c) Sponsors may be, but are not limited to, community colleges; colleges and universities; CEO associations; trade associations; providers of self-paced or internet based training programs; city, county, and state inspection departments or other agencies; and private instructors. Community colleges, colleges, and universities which are accredited by a regional accrediting association shall be pre-approved as course sponsors. CEO professional organizations shall be pre-approved as course sponsors.

(d) Each course sponsor shall submit an application for continuing education course sponsor approval to the Board on a form provided by the Board. The application shall include:

- (1) the name of the sponsor;
- (2) the sponsor contact person, address and telephone number;
- (3) the course contact hours; and
- (4) the schedule of courses, if established, including dates, time and locations.

Authority G.S. 143-151.13A(f)(2).

11 NCAC 08 .0719 CONTINUING EDUCATION COORDINATOR

Each sponsor of a CE course shall designate one person to serve as the Continuing Education Coordinator for all Board-approved continuing education courses offered by the sponsor. The designated Coordinator shall serve as the official contact person for the sponsor and shall be responsible for signing the course completion certificates provided by the sponsor to CEOs completing courses and submitting to the Board's staff all required rosters, sign-in sheets, reports, and other information.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0720 APPROVED COURSES

(a) To be approved for credit in the continuing education program, a course must be directly related to State Building Codes, inspection, administration, or enforcement of State Building Codes, construction or design of buildings and electrical, mechanical, plumbing, and fire prevention systems or certification courses approved for Code enforcement officials.

(b) Credit shall be given only for courses that have been approved by the Board. Continuing education courses for other State occupational licenses must be specifically approved to satisfy the Board's continuing education requirements. Courses from preapproved sponsors must be specifically approved before being offered.

(c) Some courses shall be approved for credit in more than one area of certification. A CEO with multiple certificates may apply the credit to any certificate for which the course is approved. If the course hours are greater than required for one certificate, the remaining hours may be applied to other certificates for which the course is approved or the remaining hours may be carried over in accordance with 11 NCAC 08 .0713(e).

(d) A CEO shall only receive credit for the same course once within any three-year period.

Authority G.S. 143-151.13A(f)(1).

11 NCAC 08 .0721 COURSE ACCREDITATION REQUIREMENTS

(a) Sponsors of prospective CE courses shall apply for approval from the Board by submitting the following information to the Board's staff for consideration:

- (1) course title and outline;
- (2) nature and purpose of the course;
- (3) outline of the course, including the number of training hours for each segment; and
- (4) copies of handouts and materials to be furnished to students.

(b) To determine if a course is approved, the Board's staff shall review the course to determine if the course meets the requirements of 11 NCAC 08 .0720 and its stated objectives. The Board's staff shall issue written approval to the course sponsor for all courses deemed to be acceptable. The Board's staff shall notify the course sponsor of any course found not to be acceptable, providing specific reasons for the disapproval. A course sponsor may appeal the Board's staff's disapproval of a

course to the Board, and such appeal shall be heard at the next scheduled meeting of the Board.

Authority G.S. 143-151.13A(f)(2).

11 NCAC 08 .0722 DISTANCE EDUCATION COURSES

A distance education course is a continuing education course in which instruction is accomplished through the use of media and methods whereby instructor and student are separated by distance and sometimes by time. In addition to fulfilling all course accrediting requirements, a sponsor requesting approval of a distance education course must demonstrate that the proposed distance education course satisfies the following criteria:

- (1) The course shall be designed to assure that students have clearly defined learning objectives. If the nature of the subject matter is such that the learning objectives cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course must be designed to provide for such interaction.
- (2) A course that does not provide the opportunity for continuous audio and visual communication between instructor and all students during the course presentation shall utilize testing processes appropriate to assure student understanding of the subject material.
- (3) A course that involves students completing the course on a self-paced study basis shall be designed so that the time required for a student of average ability to complete the course will be equivalent to a similar course taught in a classroom setting. The sponsor shall utilize a system that assures that students have actually performed all tasks required for completion and understanding of the subject material.
- (4) The sponsor shall provide appropriate technical support to enable students to satisfactorily complete the course.
- (5) The course instructors shall be available to respond in a timely manner to student questions about the subject matter of the course. Instructors shall have appropriate training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other applicable equipment and systems.
- (6) The sponsor shall provide students with an information package containing all pertinent information regarding requirements unique to completing a distance education course, including but not limited to any special requirements with regard to computer hardware and software or other equipment, and outlining in detail the instructor and technical support that will be available when taking the course.

(7) The sponsor shall use procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed all the work required to complete the course. For courses that involve independent study by students, certification that the student personally completed all required course work shall be provided by the student to the sponsor, either by a signed statement (on a form provided by the sponsor) or, in the case of internet or computer based courses, by electronic means that are clearly indicated in the software or on the website. Signed course completion statements or records of electronic certification shall be retained by the sponsor together with any other course records required by these Rules.

(8) Sponsors seeking approval of distance education courses must submit to the Board's staff a complete copy of the course in the medium that is to be used, including all computer software that will be used in presenting the course and administering tests. If the course is to be internet based, the Board's staff must be provided access to the course via the internet and shall not be charged a fee for such access.

(9) Distance education courses shall comply with requirements for course completion reporting. Students shall not be reported for continuing education credit for distance education courses until the signed form from the student or electronic certification as described in Item (7) of this Rule has been received by the sponsor.

Authority G.S. 143-151.13A(f)(2); 143-151.13A(f)(3).

11 NCAC 08 .0723 DENIAL OR WITHDRAWAL OF APPROVAL OF SPONSOR OR COURSE

The Board is authorized to deny, suspend or terminate approval of sponsors or courses offered by a sponsor if the Board finds a failure to comply with the Board's rules, the course outline, incompetence or misconduct of faculty, or for misstatements as to content or participation.

Authority G.S. 143-151.13A(f)(7).

11 NCAC 08 .0724 SPONSOR AND COURSE CHANGES

(a) Course sponsors shall obtain prior approval from the Board's staff for any proposed changes in the content or number of hours for approved CE courses. Requests for approval of changes shall be in writing. The Board's staff shall approve the changes if they satisfy the accreditation requirements as provided in 11 NCAC 08 .0721. Changes in course content that are solely for the purpose of assuring that information provided in a course is current, such as updating to address code amendments or changes in regulations, need not be submitted for approval.

(b) Course sponsors shall give prior written notice to the Board's staff in writing of any change in business name, Continuing Education Coordinator, address, or business telephone number.

Authority G.S. 143-151.13A(f)(2).

11 NCAC 08 .0725 NOTICE OF SCHEDULED COURSES

(a) A sponsor shall provide the Board's staff with written notice of each scheduled course offering no later than 20 calendar days before a scheduled course date. The notice shall include the name and assigned number for the sponsor, the name and assigned number for the course, and the scheduled date, time, and location of the course.

(b) A sponsor shall notify any registered CEOs and the Board's staff of any schedule changes or course cancellations at least five calendar days before the original scheduled course date. If a change or cancellation becomes necessary after the five-day deadline, the sponsor shall notify the Board's staff and any registered CEOs as soon as the sponsor effects the change or cancellation.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0726 ADVERTISING AND PROVIDING COURSE INFORMATION

(a) Course sponsors shall not use false or misleading advertising.

(b) Any flyers, brochures, or other medium used to promote a CE course shall clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies.

(c) A sponsor of a CE course shall provide a description of the course content to the CEO.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0727 FEE FOR CE COURSES

The sponsor of an approved CE course shall establish the amount of any fee to be charged to CEOs taking the course. The fee shall be all-inclusive. No separate or additional fee shall be charged to CEOs for providing course materials, providing course completion certificates, reporting course completion to the Board's staff, or for recouping administrative expenses. The total amount of any fees to be charged shall be included in any advertising or promotional materials for the course.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0728 CANCELLATION AND REFUND POLICIES

If a scheduled course is canceled, a sponsor shall immediately notify preregistered CEOs of the cancellation. All prepaid fees received from preregistered CEOs shall be refunded within 30 days after the date of cancellation. Failure to provide a refund will result in revocation of sponsor approval.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0729 COURSE ATTENDANCE

(a) Course instructors shall monitor attendance to assure that all CEOs have satisfactorily completed the course. A CEO shall not be reported to the Board's staff as having completed a course unless the CEO satisfies the attendance requirement.

(b) Any CEO providing false information to a course sponsor shall not receive CE credits for the course, shall not be entitled to a refund of course fees, and may be subject to disciplinary action by the Board.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0730 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Course sponsors and instructors shall comply with the Americans with Disabilities Act or other laws requiring accommodation of persons with disabilities.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0731 COURSE COMPLETION REPORTING

(a) Each sponsor shall submit to the Board's staff a report verifying completion of a CE course for each CEO who satisfactorily completes the course. A sponsor shall submit this report to the Board's staff within 15 calendar days following the course completion. Reports shall be submitted electronically on forms provided by the Board. Reports shall include the name of the CEO who completed the course, the date of course completion, the course identifying number, the standard or limited certificate number to which to credit the course, the number of credit hours, and other information required by the Board.

(b) Course sponsors shall provide CEOs enrolled in each CE course an opportunity to complete an evaluation of each approved CE course. Sponsors shall submit the completed evaluation forms to the Board's staff. The evaluation form may be provided on the internet at the option of the provider.

(c) Course sponsors shall provide each CEO who satisfactorily completes an approved CE course with a course completion certificate. Sponsors shall provide the certificates to CEOs within 15 calendar days following the course completion. The certificate shall be retained for three years by the CEO as proof of having completed the course.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0732 RETENTION OF COURSE RECORDS

All course sponsors shall retain records of student registration, attendance, and course completion for CE courses for at least three years. All course sponsors shall make these records available to the Board's staff upon request.

Authority G.S. 143-151.13A(f).

11 NCAC 08 .0733 BOARD MONITORS

A course sponsor shall admit authorized representatives of the Board to monitor any CE class without prior notice. Board

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representatives shall not be required to register or pay any fee and shall not be reported as having completed the course.

Authority G.S. 143-151.13A(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Manufactured Housing Board intends to amend the rules cited as 11 NCAC 08 .0904 and .0911.

Proposed Effective Date: February 1, 2006

Public Hearing:

Date: November 2, 2005

Time: 9:00 a.m.

Location: Suite 200, 322 Chapanoke Road, Raleigh, NC

Reason for Proposed Action: The rules establish guidelines needed to comply with the requirements of G.S. 143.143-10a which require any applicant for licensure as a manufactured home manufacturer, dealer, salesperson, or set up contractor to consent to a criminal history record check.

Procedure by which a person can object to the agency on a proposed rule: The Manufactured Housing Board will accept written objections to these rules until the expiration of the comment period on December 16, 2005.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone 919-733-4529, fax 919-733-6495, or email esprenke@ncdoi.net.

Comment period ends: December 16, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 8 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .0900 - MANUFACTURED HOUSING BOARD

11 NCAC 08 .0904 FORMS

(a) The application for license as a manufactured housing manufacturer, dealer, and set-up contractor shall include the following:

- (1) The name of the person or business applicant;
(2) The business address of applicant;
(3) The state under whose laws the applicant firm or corporation is organized or incorporated;
(4) In order to establish the reputation of the applicant, a resume' of each owner, partner, or officer of the corporation. Each resume' shall include education and a complete job history, as well as a listing of residences for the last seven years.
(5) Type of license applied for;
(6) Signature of the person with authority to legally obligate the applicant;
(7) A statement that the appropriate bond is attached- attached; and
(8) A criminal history record check consent form signed by each owner, partner and officer of the corporation, and any other documentation or materials required by G.S. 143-143.10A.

(b) The application for license as a manufactured housing salesperson shall include the following:

- (1) The name of the applicant;
(2) The applicant's address;
(3) The name and business address of the dealer employing the applicant;
(4) The name and address of previous employers of applicant for the past three years;
(5) Three personal references;
(6) A recent wallet size photograph- photograph; and
(7) A criminal history record check consent form signed by each applicant, and any other documentation or materials required by G.S. 143-143.10A.

(c) Corporate surety bonds shall include the name of the applicant, the name of the surety, the amount of the bond, and the terms of cancellation specified in 11 NCAC 8 .0905.

(d) All license forms shall include the name and address of the licensee, the type of license being issued, the date of issuance, the date of expiration, the amount of the license fee, and the terms of the license.

(e) All applications for renewal of licenses shall include the name and address of the applicant, the type of license, the date the license expires, the amount of the license renewal fee, and instructions for completion.

(f) A request for cancellation of license shall include the name and address of the licensee, the effective date of the cancellation, the specific reason for the cancellation, and the signature of the person with authority to legally obligate the licensee.

(g) Each application form and criminal history record check form required by Paragraphs (a) and (b) of this Rule can be obtained from the North Carolina Manufactured Housing Board,

c/o North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202.

Authority G.S. 143-143.10; 143-143.11.

Authority G.S. 143-143.10 through G.S. 143-143.12.

11 NCAC 08 .0911 SALESMAN EXAM; TEMPORARY LICENSE; LICENSE TRANSFER; FEES

(a) A salesman's license shall be issued to any applicant after the Board has approved the applicant's criminal history record check upon receipt by the Board of a properly executed application, receipt of the applicant of a passing grade (70 percent of a possible 100 percent) on a written examination administered by the Board, and qualification of the applicant for licensure, except as follows:

- (1) Those persons holding a Registered Housing Specialist certification from the North Carolina Manufactured Housing Institute on or before June 30, 1992, are exempt from the examination requirement.
- (2) Any person holding a valid salesman's license on or before June 30, 1992, may renew his license each year until July 1, 1994, without examination, if he meets the requirements for license renewal and his renewal application is properly executed. If he allows his license to lapse, he must apply for a license under new license application requirements.
- (3) Any salesman who has been tested and licensed under this Section and whose license has lapsed is not required to be re-tested if he re-applies for licensing within 12 months after the expiration of the lapsed license.

(b) A temporary salesman's license will be issued prior to the Board's approval of the applicant's criminal history record check for a period of 90 days to a person upon request of the employing dealer. The holder of a valid salesman's or temporary salesman's license is authorized to sell manufactured homes only for the dealer with whom he is employed as shown on the application. A temporary salesman's license shall not be renewed.

(c) A salesman's license is valid only as long as the person remains employed with the dealer shown on the application. A salesman must apply for a new salesman's license if he changes or transfers from one dealer to another. In lieu of applying for a new license, the salesman may transfer his license from one dealership to another upon application from the new dealer and the salesman and approval of the Board. When a salesman leaves employment with a dealer, the dealer shall report this fact to the Board within 10 days thereafter.

(d) The fee for a salesman's or temporary salesman's license shall be twenty five dollars (\$25.00). The temporary salesman's license fee shall apply toward the salesman's license fee if both licenses are issued in the same license year. The fee for a salesman's license transfer application shall be fifteen dollars (\$15.00).

(e) A criminal history record check fee in the amount of fifty five dollars (\$55.00) shall be submitted with each applicant application.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .2201, .2606.

Proposed Effective Date: April 1, 2006

Public Hearing:

Date: November 29, 2005

Time: 2:00 – 3:00 p.m.

Location: Parker-Lincoln Building, Division Conference Room 1a201, 2728 Capital Boulevard, Raleigh, NC

Reason for Proposed Action:

15A NCAC 18A .2201 – The reason for deleting this definition is that it already exists in the General Statutes and it conflicts with the definition in G.S. 130A-2(3).

15A NCAC 18A .2606 – The reason for amending this rule is to add a reference. Rule .2616 is where references to employee hygiene are contained and Item 9 is where they would be marked on the inspection form. Therefore, reference to Rule .2616 needs to be added to Item 9.

Procedure by which a person can object to the agency on a proposed rule:

Contact Sue Grayson, Branch Head, DENR Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 or email sue.grayson@ncmail.net, or telephone 919-715-0926 or 919-733-2905.

Written comments may be submitted to: Sue Grayson, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone 919-715-0926, fax 919-715-4739 and email sue.grayson@ncmail.net

Comment period ends: December 16, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local

- Substantive (≥\$3,000,000)
- None

points assessed for violation of the rules of this Section as follows:

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

15A NCAC 18A .2201 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Bed and Breakfast Home" means a private home offering bed and breakfast accommodations to eight or less persons per night for a period of less than a week.
- (2) "Division" means the North Carolina Division of Environmental Health. The term also means the authorized representative of the Division.
- (3) "Director" means the Director of the Division of Environmental Health of the Department of Environment and Natural Resources.
- ~~(4) "Imminent Hazard" means a situation which is likely to cause an immediate threat to life or a serious risk of irreparable damage to the environment if no immediate action is taken.~~
- ~~(5)~~(4) "Permittee" means the person in charge who resides in and owns or rents the home.
- ~~(6)~~(5) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- ~~(7)~~(6) "Sanitarian" means a person authorized to represent the Division in making inspections and evaluations pursuant to this Section.

Authority G.S. 130A-250.

SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS

15A NCAC 18A .2606 GRADING

(a) The sanitation grading of all restaurants, food stands, drink stands and meat markets shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Restaurants or other Food Handling Establishments shall be used to document

- (1) Violation of Rules .2608, .2612, .2615, or .2622 of this Section related to food from approved sources, free of spoilage, adulteration or contamination shall equal no more than 5 percent.
- (2) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, or .2632 of this Section related to potentially hazardous food temperatures or time requirements for food during storage, preparation, display, service or transportation shall equal no more than 5 percent.
- (3) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, or .2632 of this Section related to food storage, thawing, and preparation, cooking, handling, display, service, or transportation in a manner to prevent contamination, adulteration, or spoilage shall equal no more than 5 percent.
- (4) Violation of Rule .2611 of this Section related to re-serving food shall equal no more than 5 percent.
- (5) Violation of Rule .2609 of this Section related to accurate thermometer availability shall equal no more than 3 percent.
- (6) Violation of Rule .2610 of this Section related to written notice to customers about use of clean plates for return trips to buffet shall equal no more than 1 percent.
- (7) Violation of Rule .2610 of this Section related to properly labeling or storage of dry food shall equal no more than 2 percent.
- (8) Violation of Rule .2616 of this Section related to personnel with infections or communicable diseases restricted shall equal no more than 5 percent.
- (9) Violation of Rule .2609 or .2616 of this Section related to proper handwashing or good hygienic practices shall equal no more than 5 percent.
- (10) Violation of Rule .2616 of this Section related to clean clothes or hair restraints shall equal no more than 1 percent.
- (11) Violation of Rules .2618 or .2619 of this Section related to food contact surfaces cleaned or sanitized by approved methods, sanitizing solution required shall equal no more than 5 percent.
- (12) Violation of Rules .2618, or .2619 of this Section related to approved utensil-washing facilities of sufficient size, with accurate thermometers or test methods available or used shall equal no more than 3 percent.
- (13) Violation of Rules .2617, .2618, or .2622, of this Section related to food contact surfaces shall equal no more than 3 percent.
- (14) Violation of Rules .2601, .2608, .2617 or .2621 of this Section related to food service

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- (15) equipment NSF or equal or approved utensils shall equal no more than 2 percent. Violation Rule .2618 of this Section related to air-drying clean equipment or utensils shall equal no more than 3 percent.
- (16) Violation of Rule .2620 of this Section related to the storage of single service utensils shall equal no more than 2 percent.
- (17) Violation of Rules .2617 or .2622 of this Section related to non-food contact surfaces clean or in good repair shall equal no more than 2 percent.
- (18) Violation of Rules .2618 or .2623 of this Section related to source of water supply, hot or cold water under pressure, or meets water temperature requirements shall equal no more than 5 percent.
- (19) Violation of Rule .2623 of this Section related to cross connections or other potential sources of contamination shall equal no more than 5 percent.
- (20) Violation of Rules .2624, or .2625 of this Section related to lavatory or toilet facilities approved, accessible, or in good repair shall equal no more than 4 percent.
- (21) Violation of Rules .2609, .2624, or .2625 of this Section related to lavatory facilities or toilet facilities with self-closing doors, fixtures or rooms clean, mixing faucet, soap, towels, dryer, or sign shall equal no more than 2 percent.
- (22) Violation of Rules .2612, .2613, or .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment and disposal system: other by-products disposed of properly shall equal no more than 5 percent.
- (23) Violation of Rule .2626 of this Section related to garbage cans, containerized systems properly maintained, cleaning facilities provided or contract maintained for cleaning shall equal no more than 2 percent.
- (24) Violation of Rule .2633 of this Section related to animal or pest presence shall equal no more than 4 percent.
- (25) Violation of Rule .2633 of this Section related to self-closing doors or screened windows shall equal no more than 2 percent.
- (26) Violation of Rule .2633 of this Section related to pest breeding places or rodent harborages shall equal no more than 1 percent.
- (27) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings properly constructed shall equal no more than 2 percent.
- (28) Violation of Rules .2613, .2624, .2627, or .2628 of this Section related to floors, walls, or ceilings clean or in good repair shall equal no more than 1 percent.
- (29) Violation of Rule .2630 of this Section related to lighting or ventilation that meets illumination or shield requirements shall equal no more than 1 percent.
- (30) Violation of Rule .2631 of this Section related to ventilation clean or in good repair shall equal no more than 1 percent.
- (31) Violation of Rule .2633 of this Section related to storage or labeling of toxic substances shall equal no more than 5 percent.
- (32) Violation of Rules .2620, 2632, or .2633 of this Section related to outside premise clean, storage spaces clean, or storage above the floor shall equal no more than 1 percent.
- (33) Violation of Rule .2633 of this Section related to storage space not used for domestic purpose shall equal no more than 1 percent.
- (34) Violation of Rule .2633 of this Section related to work clothing and linen properly handled or stored and proper storage of mops, brooms and hoses shall equal no more than 1 percent.

One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.

(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health. The course shall include a minimum of 12 contact hours and provide instruction in the following subject areas:

- (1) basic food safety;
- (2) requirements for food handling personnel;
- (3) basic HACCP;
- (4) purchasing and receiving food;
- (5) food storage;
- (6) food preparation and service;
- (7) facilities and equipment;
- (8) cleaning and sanitizing;
- (9) pest management program; and
- (10) regulatory agencies and inspections.

Evidence that a person has completed such a program shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

(d) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the local health department, except for sanitation

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awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be clearly labeled as an award.

(e) Nothing herein shall affect the right of a permit holder to a reinspection pursuant to Rule .2604 of this Section.

(f) Nothing herein shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

Authority G.S. 130A-248.

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 <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 AND BEVERAGE COMMISSION</u>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Camerons v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr	05 ABC 0799	Elkins	07/28/05	
<u>BOARD OF LICENSING OF GEOLOGISTS</u>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<u>AUCTIONEERS LICENSING BOARD</u>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
<u>COMMERCE, DEPARTMENT OF</u>				
Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning	96 COM 1921	Gray	07/05/05	
<u>CRIME VICTIMS COMPENSATION</u>				
Dwight D Hoover Sr. v. Victims Compensation Commission	04 CPS 0988	Conner	07/07/05	
Myrtle Perry v. Crime Victims Compensation Commission	04 CPS 1190	Chess	06/21/05	
Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division	05 CPS 0150	DeLuca	07/29/05	
Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm	05 CPS 0220	Lassiter	08/08/05	
Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
Jamaal O Staten v. Crime Victims Compensation Commission	05 CPS 0711	Elkins	07/28/05	
<u>BOARD OF ELECTIONS</u>				
Republican Governors Association & Holly Lynn Koerber v. State Board of Elections	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100
<u>HEALTH AND HUMAN SERVICES</u>				
MedVisit, Inc. v. Div. of Medical Assistance (DHR)	94 DHR 0012	Gray	07/12/05	
Patsy Norris v. Department of Human Resources	94 DHR 0895	Gray	07/06/05	
Small World DC II, Trena McDaniel v DHHS, Div of Child Dev.	00 DHR 2202 ²	Gray	08/08/05	
Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev.	01 DHR 0321 ²	Gray	08/08/05	
Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	
Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter	03 DHR 1253	Gray	06/27/05	20:03 NCR 144
Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance	03 DHR 1737	Conner	07/27/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Mecca L Stewart v DHHS, Division of Facility Services	04 DHR 0213	Elkins	08/15/05	
Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05	

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North Brook Rest Home, Inc v. DHHS, Adult Licensure Section	04 DHR 0407	Conner	07/26/05
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 ¹	Mann	06/03/05
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05
Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA)	04 DHR 0929	Gray	08/10/05
Patricia A. Reece v. DHHS, Division of Facility Services	04 DHR 1062	Mann	07/27/05
Mario Flores v. DHHS, Division of Facility Services	04 DHR 1110	Mann	08/01/05
Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance	04 DHR 1168	Gray	08/03/05
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 ¹	Mann	06/03/05
Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05
Julia Carver Thompson v DHHS	04 DHR 1498	Conner	09/13/05
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05
Dorothy S Coleman v DHHS	04 DHR 2247	Elkins	07/28/05
Maxine L Froneyberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section	04 DHR 2286	Chess	08/25/05
LaKenya S. Perry v Division of Child Development	05 DHR 0112	Gray	08/24/05
Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services	05 DHR 0196	Wade	08/31/05
Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene	05 DHR 0243	Conner	06/10/05
Vicky Richardson v DHHS	05 DHR 0262	Wade	08/10/05
Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre	05 DHR 0264	Wade	06/20/05
Belinda Darnell Hawkins v. DHHS, Div of Facility Services	05 DHR 0265	Elkins	06/09/05
LaQuasha K Massey v. DHHS, Division of Social Services	05 DHR 0294	Lassiter	07/11/05
Wade R Kearney II v. DHHS, Office of Emer Medical Services	05 DHR 0325	Lassiter	07/25/05
Cherry Bruce Kearney, Operator 7 th Heaven Day Care v. DHHS, Division of Facility Services	05 DHR 0382	Wade	06/20/05
DSS, Deloise Bryant v Halifax County Adoption Agency	05 DHR 0388	Lassiter	07/14/05
Janet Stovall v DHHS	05 DHR 0403	Chess	08/08/05
Tammy Trejo v. Office of Administrative Hearings	05 DHR 0452	Gray	06/15/05
Maria Shante Holley v DHHS, DFS	05 DHR 0461	Wade	07/18/05
Albert Ansah Amoatey v. DHHS	05 DHR 0459	Mann	07/20/05
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Eric & Carolyn Blue v DHHS	05 DHR 0476	Chess	08/23/05
Jerry Lemar Pettus v Off. Of Emergency Medical Services	05 DHR 0496	Mann	07/19/05
Veronica M Black v. DHHS, Division of Facility Services	05 DHR 0533	Gray	08/10/05
Valerie R McGahee ID #26001205 Elite Land Child Care & Learning Center v.DHHS, Division of Child Development	05 DHR 0534	Lassiter	09/12/05
D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services	05 DHR 0570	Lassiter	06/02/05
William Henry Lane v. DHHS, Div. of Medical Assistance	05 DHR 0571	Chess	05/31/05
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PJ's Child Care Learning Center #2 v DHHS, Div of Child Development	05 DHR 0633	Lassiter	08/10/05
Candace L Wood on behalf of Caitlyn A Wood v. OPC Men Hlth Area Prog	05 DHR 0649	Conner	08/01/05
Candace L Wood on behalf of Waylon S Keeter v. OPC Men Hlth Area Prog	05 DHR 0650	Conner	08/01/05
Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA05	DHR 0651	Conner	07/12/05
Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA05	DHR 0652	Conner	07/12/05
Rose McRae v. DHHS, Division of Health Services	05 DHR 0662	Elkins	07/18/05
Charles Edward Shaw, Jr v Dorothea Dix Hospital	05 DHR 0675	Elkins	09/15/05
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Amy Hallisey, Pharmacist, Target Pharmacy-Lawndale, Greensboro v. DHHS Accounts Receivable, Division of Medical Assistance	05 DHR 0762	Elkins	08/11/05
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Linda M Currie v. Medicaid	05 DHR 0854	Gray	07/07/05
Geneva Walton v DHHS, Division of Facility Services	05 DHR 0861	Chess	07/21/05
Claire Diggs v. Moore County, Program Integrity Unit	05 DHR 0915	Gray	08/10/05
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Benny Brown v. DHHS, Division of Facility Services	05 DHR 0949	Elkins	07/28/05
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LaYvonne Diaz Evans v DHHS, Division of Facility Services	05 DHR 0994	Lassiter	08/16/05
Tracy Anderson v DHHS, Division of Facility Services	05 DHR 1095	Elkins	09/09/05
Tiffany Charles v Office of Administrative Hearings	05 DHR 1105	Gray	09/07/05

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncsoah.com/decisions.

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Andrew Arnold Powell, Jr. v. Crim Just Educ & Trng Stds Comm.	01 DOJ 1771	Chess	07/19/05
Carlos Orellana v. Private Protective Services Board	04 DOJ 0813	Conner	08/01/05

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Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0505	Conner	06/23/05	
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Gary Lee King v Private Protective Services Board	05 DOJ 0830	Lassiter	09/12/05	
Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm.	05 DOJ 0929	Gray	09/12/05	
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George L Brown v Dept of St. Treasurer, Retirement Systems Division	05 DST 0147	Morrison	07/22/05	
Tony M Martin v Dept. of State Treasurer, Retirement Systems Division	05 DST 0253	Lassiter	08/31/05	

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James H. Ballard v State Board of Education	05 EDC 0948	Conner	09/15/05	
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JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health	95 EHR 0110	Gray	07/06/05	
Southwinds Homeowners Association v. DEHNR, Div. of Env. Health	95 EHR 0271	Gray	07/06/05	
Sandy Mitchell & E Ward Norris v. Mecklenburg Co Health Dept and DEHNR	95 EHR 0306	Gray	07/06/05	
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Tall Pines Plantation Property Owners Assoc. Inc. v. DENR	01 EHR 1638	Gray	08/17/05	
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John & Elizabeth Kaylor v. DENR	03 EHR 0046	Conner	06/29/05	
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Glenda Daniel v. Halifax Co Health Dept, Env Health Division	04 EHR 1583	Conner	07/27/05	
Matthew and Kathy Johnson v. DENR	04 EHR 2163	Conner	06/01/05	
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DeJuana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

1 – Combined Cases
2 – Combined Cases