

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 07 • Pages 617 - 699

October 1, 2008

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 431-3071
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Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 431-3077

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 431-3079

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@nclm.org

NORTH CAROLINA REGISTER
 Publication Schedule for January 2008 – December 2008

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 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

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.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 143
PROCLAMATION OF A STATE OF DISASTER
FOR CABARRUS AND MECKLENBURG COUNTIES

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §166A-6, exists in the State of North Carolina, specifically Cabarrus and Mecklenburg counties, as a result of the remnants of Tropical Storm Fay which produced heavy rains that caused severe flooding on August 26 and 27, 2008;

WHEREAS, on August 28, 2008, Cabarrus and Mecklenburg counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria for a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Cabarrus and Mecklenburg counties declared a local state of emergency pursuant to N.C.G.S. §166A-8 and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

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

Section 1. Pursuant to N.C.G.S. §166A-6, a State of Disaster is hereby declared for Cabarrus and Mecklenburg counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

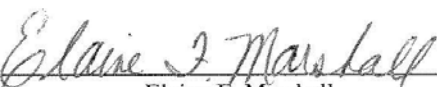
Section 6. This Type I Disaster Declaration shall expire 30 days after issuance of the state of disaster and Type I disaster proclamation for Cabarrus and Mecklenburg counties unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the twenty-ninth day of August in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 144
PROCLAMATION OF A STATE OF EMERGENCY
DUE TO TROPICAL STORM HANNA AND HURRICANE IKE

WHEREAS, I have determined that a state of emergency, as defined in N.C.G.S. Chapter 166A exists in the State of North Carolina, due to the approach and proximity of Tropical Storm Hanna and Hurricane Ike.

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

Section 1. Pursuant to N.C.G.S. §166A-5, I, therefore, proclaim the existence of a state of emergency in the State.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A of the North Carolina General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. §143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This proclamation shall become effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 145
EMERGENCY RELIEF FOR DAMAGE
CAUSED BY TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS
AFFECTING THE ATLANTIC COAST REGION

WHEREAS, I have proclaimed that a State of Emergency and threatened Disaster exists in North Carolina due to TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION thereby, justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); 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 supplies to relieve 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 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 supplies along North Carolina roadways to 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 Part 395 (Federal Motor Carrier Safety Regulations) **does not apply** to the CDL and Insurance Requirements. 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 TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION.

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

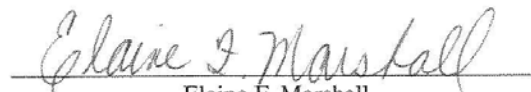
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fourth day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-second.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Eric Valentine
American Manufacturing
PO Box 97
Elkwood, VA 22718

For: Revised Innovative Approval for "American Perc-Rite[®]" Subsurface drip wastewater dispersal system

DENR Contact: Ted Lyon
1-919-715-3274
Fax: 919-715-3227
ted.lyon@ncmail.net

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: http://www.deh.enr.state.nc.us/osww_new/new1//index.htm.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or ted.lyon@ncmail.net, or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: On-Site Water Protection Section
1642 Mail Service Center
Raleigh, NC 27699-1642

For: Revised Innovative Approval for Tire Chips

DENR Contact: Ted Lyon
1-919-715-3274
Fax: 919-715-3227
ted.lyon@ncmail.net

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: http://www.deh.enr.state.nc.us/osww_new/new1//index.htm.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or ted.lyon@ncmail.net, or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.



City Attorney's Office

CITY OF GREENVILLE

North Carolina

P.O. Box 7207 - Greenville, N.C. 27835-7207

(252) 329-4426

(252) 329-4626 (FAX)

September 3, 2008

Ms. Molly Massich
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

FILED
2008 SEP -5 PM 1:32
OFFICE OF
ADMIN HEARINGS

RE: Preclearance of Annexations

Dear Ms. Massich:

Under G.S. 120-30.9H as amended July 15, 1986, we are forwarding to you for publication in the North Carolina Register a letter received by the City of Greenville from the U.S. Department of Justice reflecting approval of the Attorney General of seven (7) annexations which were approved by City Council on March 13, 2008, April 10, 2008, and May 8, 2008.

For your information, the seven (7) annexations precleared are as follows:

Ordinance No.	Description	Date Annexed
08-35	Rebecca Winstead Gay, et al	3/13/08
08-36	Vancroft, Lot 103, Section 2	3/13/08
08-37	Davencroft, Phase 3	3/13/08
08-38	Laurel Ridge (a portion of Section 2 and 3)	3/13/08
08-39	BKJ Capital, LLC	3/13/08
08-45	Grove Pointe	4/10/08
08-56	Cobblestone, Phase 3 Addition	5/8/08

These properties have been submitted under Section 5 of the Voting Rights Act. Please call if there are any questions.

Sincerely,

David A. Holec
City Attorney

attachment

Medical Care Commission

Notice to Extend Comment Period

The comment period for the notice submitted by the Medical Care Commission and published in the NCR 23:04, on August 15, 2008, is extended to October 14, 2008. The proposed rules published in the notice are as follows: 10A NCAC 13P .0305, .0511 (adoption), 10A NCAC 13(.0101-.0102, .0201-.0202, .0204-.0210, .0212-.0215, .0301-.0302, .0401-.0406, .0408-.0409, .0501-.0502, .0504, .0507-.0510, .0601-.0603, .0701, .0901-.0905, .1101-.1103 (amend), 10A NCAC 13P .0103-.0107, .0109-.0124, .0303-.0304, .0801, .1001-.1002, 10A NCAC 13Q .0101-.0103, 10A NCAC 13R .0101, .0103-.0105, .0201-.0202, .0204-.0206, .0301 (repeal).

The notice inadvertently had the date of September 30, 2008 listed as the ending date for the 60 day comment period. The Agency had all intentions of holding the 60-day comment period from August 15, 2008 through October 14, 2008; however, a typographical error was made in the submission and subsequently published in the NC Register. The Public Hearing will be held on September 23, 2008 as published in the NCR. The 60 day public comment period for these rules started on August 15, 2008 and will end on October 14, 2008.

**STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617**

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMITS

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater for the following types of discharges:

NPDES General Permit No. NCG010000 for stormwater point source discharges associated with construction activities including clearing, grading, and excavation activities resulting in the disturbance of land area. The Division is noticing intent to reissue a revised version of this permit with changes in conditions and administration processes. The draft permit will be available for public comment on October 15, 2008. Further, the Division is administratively extending the effective date of the existing, expired permit to June 30, 2009, or until such prior time as the draft permit is finalized. Please refer to the information below for directions on obtaining the full text of the draft permit (on and after October 15, 2008) or the existing permit.

NPDES General Permit No. NCG200000 for stormwater point source discharges associated with establishments primarily engaged in assembling, breaking up, sorting, and wholesale trade of scrap metal [standard industrial classification (SIC) 5093]. This permit also covers stormwater discharges from other areas at scrap metal recycling facilities used to process other scrap materials or used for vehicle maintenance. The Division is noticing intent to reissue a revised version of this permit. As of the date of this notice a draft permit is not yet available. The Division will re-notice this permit when a draft permit is available for public comment. Further, the Division is administratively extending the effective date of the existing, expired permit to June 30, 2009, or until such prior time as the draft permit is finalized. Please refer to the information below for directions on obtaining the full text of the existing permit.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permits for the discharges as described above.

INFORMATION: The text of the draft NPDES General Permit NCG010000 and the associated Fact Sheets will be available on and after October 15, 2008, at the Stormwater Permitting Unit website at <http://h2o.enr.state.nc.us/su/index.htm>.

In addition the text of the administratively extended, existing permits NCG010000 and NCG200000 are currently available at the same website.

Written comments regarding the draft permit NCG010000 will be accepted at the address below until December 1, 2008. Additionally, comments may be submitted by email to ken.pickle@ncmail.net. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held if the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. After October 15, 2008, the draft permit, Fact Sheet, and other information will be available at the Division of Water Quality, 512 N. Salisbury Street, Room 942T, Archdale Building, Raleigh, North Carolina. The documents may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. Please include the NPDES permit number on all comments and requests.

CONTACT:

Ken Pickle
Wetlands and Stormwater Branch
N.C. Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617
Telephone (919) 807-6376

Date: September 12, 2008

(signed) Ken Pickle
for Coleen H. Sullins, Director
N.C. Division of Water Quality

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD AND SUMMARY OF PROPOSED REMEDIAL ACTION PLAN

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
DIVISION OF WASTE MANAGEMENT
HAZARDOUS WASTE SECTION
1646 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1646
(919) 508-8400**

The North Carolina Division of Waste Management (“Division”) of the North Carolina Department of Environment and Natural Resources hereby gives notice of a public hearing and public comment period on a proposed Remedial Action Plan (“Proposed RAP”) for a Site located in Jamestown, Guilford County, North Carolina. The Site consists of the former Seaboard Chemical Corporation Facility, the City of High Point’s Riverdale Drive Landfill, the City Materials Recovery Facility adjacent to the Landfill, any property that has been or may be acquired for purposes of performing a remedial action program at the Site and the groundwater contamination originating from these source areas. The purpose of the Proposed RAP is to contain and remediate contaminated soils and groundwater at the Site. A summary of the Proposed RAP appears at the end of this notice.

In addition, the Division hereby gives notice of a public hearing and public comment period on a proposed Remedial Action Settlement Agreement and a proposed De Minimis Settlement Administrative Order on Consent (collectively “Proposed Settlement Agreements”). The Division proposes to enter into the Remedial Action Settlement Agreement with certain Settling Remediators, as defined in the Remedial Action Settlement Agreement, to provide for the implementation of an effective remedial program at the Site and the payment of past costs incurred by the Division at the Site. The Division proposes to enter into the De Minimis Settlement Administrative Order on Consent with persons who arranged for disposal or treatment or transport for disposal or treatment of no more than 85,000 gallons of hazardous substances at the Site. The De Minimis Settlement Administrative Order on Consent provides a method whereby each De Minimis Settlor may substantially resolve its liability to the State for implementation of a remedial action program at the Site and the payment of past costs incurred by the Division at the Site.

The public hearing on the Proposed RAP and Proposed Settlement Agreements will be held on Wednesday, November 5, 2008, at 7:00 p.m. in the High Point City Council Chamber on the third floor of City Hall, 211 South Hamilton St., High Point, North Carolina. The doors will open by 6:30 p.m. All interested parties will have an opportunity to present oral and written statements concerning the Proposed RAP and Proposed Settlement Agreements. Five (5) minutes will be allotted per speaker.

The public comment period on the Proposed RAP and Proposed Settlement Agreements will begin on October 1, 2008, and extend through November 30, 2008. All comments received during the public comment period and at the public hearing will be considered in the formulation of a final decision by the Division on the Proposed RAP and Proposed Settlement Agreements. Written comments should be sent to the following address by November 30, 2008:

Mr. Vance Jackson
Hazardous Waste Section
N. C. Division of Waste Management
1646 Mail Service Center
Raleigh, NC 27699-1646

The Division will mail documents constituting the Proposed RAP and Proposed Settlement Agreements to each public library in Guilford County, with a request that each library maintain a copy of the documents for review and copying from October 1, 2008, through November 30, 2008. The City of High Point will also maintain a copy of the documents at the High Point Public Library, 901 North Main Street, High Point. No appointment is necessary to review documents at Guilford County libraries or the High Point Public Library during normal business hours.

In addition, the Division will make all documents constituting the Proposed RAP and Proposed Settlement Agreements available for review at its offices located at 401 Oberlin Road, Suite 150, Raleigh North Carolina. Documents are available for review at this location from 9:00 a.m. to 4:00 p.m. on Monday through Friday. An appointment should be made to review documents at this location by calling the Division at (919) 508-8400, extension 8564.

After the expiration of the public comment period on November 30, 2008, the Division will make and document its final decision regarding the Proposed RAP and Proposed Settlement Agreements. The Division will place a copy of the final decision in the repository at the 901 North Main Street branch of the High Point Public Library and in its permanent files for the Site at its offices at 401 Oberlin Road in Raleigh, North Carolina. The Division will also mail a copy of the final decision to all persons who record their names and addresses on the sign-up sheet at the public hearing.

Summary of Proposed RAP

The Proposed RAP consists of the Remedial Action Settlement Agreement, its appendices and the Remedial Recommendation Document, which is incorporated into the Remedial Action Settlement Agreement by reference. The Remedial Recommendation Document is available for review on the North Carolina Division of Waste Management website at URL: http://wastenot.enr.state.nc.us/HWHOME/RemedyRecommendation_Seaboard.pdf. The Proposed RAP takes into consideration the findings of the Remedial Investigation, the Feasibility Study, the Baseline Risk Assessment and the currently known technical limitations on remediation of dense, non-aqueous phase liquids in fractured bedrock. The Proposed RAP includes engineering and institutional controls along with leachate collection, groundwater extraction and treatment for plume containment and contaminant reduction. The Proposed RAP will control the potential for off-site migration of impacted groundwater and leachate into the Deep River and the Randleman Reservoir.

The Proposed RAP addresses these objectives through the following components:

1. Isolation of Landfill leachate and leachate-impacted groundwater to prevent its migration to the waters of the Deep River and the Northern and Southern Intermittent Streams;
2. Stabilization of Landfill slopes and enhancement of the existing caps at the Landfill and the Seaboard Site;
3. Extraction of groundwater to contain plume migration and capture impacted groundwater recharge into the Deep River and the Northern and Southern Intermittent Streams.
4. Treatment of extracted groundwater to reduce contaminant mass;
5. The use of natural treatment processes, including constructed wetlands and upland phytoremediation systems, to provide sustainable and cost-effective treatment of extracted groundwater;
6. Physical and chemical treatment, including air stripping, aeration and ozone-oxidation methods, to supplement the natural treatment processes. A HiPOx treatment system which uses hydroxyl radicals formed by the reaction of ozone with hydrogen peroxide to treat organic contaminants in the groundwater to a performance standard of <10 ug/l or an equivalent system with an equal or greater performance standard is proposed for use at the Site. This system will provide effective treatment during periods of time when the natural treatment systems are not operational or are not effective in treating contaminated groundwater.
7. Continued use and maintenance of fences and warning signs at the Site to restrict unauthorized access;
8. Permanent land use restrictions on the Site and the property immediately across the Deep River from the Site to prevent future uses of impacted groundwater or activities which could result in unacceptable risk exposures;
9. Long-term, periodic site inspections and agency reviews; and
10. Long-term, periodic groundwater and surface water monitoring.

The Proposed RAP also includes a Statement of Work that establishes time frames for implementation of the Proposed RAP, if approved by the Division after public comment. The Statement of Work provides, among other things, for a review of the effectiveness of the remedy no less than every five years after commencement of the remedial action systems.

**The 2009 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. INTRODUCTION

The 2009 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.
 - 15. Energy efficiency.
 - 16. Historic nature of the buildings.
- 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.

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. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major natural disaster the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A), II(B); or II(C). ~~Projects awarded in prior years that will place in service in 2009 and have increased development costs are eligible to apply for additional 9% tax credits. The Agency will evaluate such applications based on the relevant criteria in the applicable set-aside. Both the prior cycle and current cycle awards (for the project seeking additional tax credits) would count towards the maximum per Principal limit in Section II(E)(1).~~

This Section II only applies to 9% tax credit applications.

- A. ~~(previously preservation set-aside)~~**PRESERVATION SET ASIDE**
The Agency will award up to \$750,000 in tax credits to applications proposing to rehabilitate the following:

- ~~1. properties with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project based rental assistance for at least fifty percent (50%) of the units, or~~
 - ~~2. projects allocated 9% tax credits in 1992 or earlier.~~
- ~~In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). See Section II(E)(2) for award limitations.~~

B. REHABILITATION SET-ASIDE

The Agency will award up to twenty percent (20%) of tax credits available after forward commitments ~~and the preservation set-aside~~ to projects proposing rehabilitation of existing housing. Adaptive reuse projects, ~~and~~ entirely vacant residential buildings, and applications proposing to increase the number of residential units on the project site will be considered new construction. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3).

Up to \$750,000 of the rehabilitation set-aside will be awarded to projects meeting one or both of the following criteria:

1. existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units;
2. allocated 9% tax credits in 1992 or earlier.

C. NEW CONSTRUCTION SET-ASIDES

The Agency will award tax credits remaining after awards described above and any under Section II(G)(2) to other new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides 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.

WEST 20%		CENTRAL 25%		METRO 30%	EAST 25%	
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

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:

1. ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
2. 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). The Agency may make such adjustment(s) in any set-aside.

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 subsection (D)(2).

E. ~~LIMITATION OF AWARDS TO PRINCIPALS AND PROJECTS~~ AWARD LIMITS; 30% BASIS BOOST

1. The maximum award to any one Principal will be a total of \$1,~~3200,000~~ 3200,000 in tax credits, including all set-asides. ~~Forward commitments will count towards the maximum applicable in the year they are allocated.~~ For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the proposed project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests.
2. The maximum award to any one project will be \$1,~~1000,000~~ 1000,000, ~~other than the preservation set aside, which will be \$250,000.~~
3. Public housing redevelopment (PHR) projects:
 - (a) The Agency may determine that tax credits awarded to PHR projects do not count against some or all of the Principals involved for the purpose of subsection (E)(1) above. This determination will be based on the Principal's role in the project(s) and overall development capacity. The allowance in this subsection (E)(3)(a) will apply to a maximum of one (1) project per Principal. In the event a Principal is involved in multiple PHR projects, this exemption will apply to the one with the smallest award of 9% tax credits.
 - (b) PHR includes:
 - (i) buildings to be located on the site of former public housing,
 - (ii) constructing replacement public housing units, or
 - (iii) rehabilitation of existing public housing.
4. The Agency may increase or "boost" the eligible basis of projects awarded in 2009 by up to 30% if the eligible basis otherwise would be a low percentage of the total development costs due to either of the following:
 - (a) High land costs because of being in a desirable or commercially valuable location. The seller may not be a related party or local government.
 - (b) Necessity of extensive site preparation and/or off-site costs. All such work must be reasonable based on the circumstances.

Applicants requesting a boost will need to submit an appraisal and/or standard geological survey, as applicable, by the preliminary application deadline. Projects with market-rate units are ineligible for an increase under this subsection (E)(4). The Agency will make designations between preliminary and full applications.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. No county will be awarded tax credits for new construction exceeding \$1,~~6500,000~~ 6500,000 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 (2) 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.
 2. 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: (a) ~~C~~county median income; (b) ~~P~~poverty rate; (c) ~~P~~percent of population in rural areas; (d) ~~R~~regional growth patterns; (e) ~~E~~nterprise area N.C. Department of Commerce tier (one, two or three 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
<u>Buncombe</u>	Brunswick	Lee	Anson	Greene	Pender
Cabarrus	Buncombe	Lincoln	Ashe	Halifax	Perquimans
Catawba	Burke	Moore	Avery	Hertford	Richmond
Chatham	Caldwell	Nash	Beaufort	Hoke	Robeson
Durham	Carteret	Onslow	Bertie	Hyde	Rockingham
Forsyth	Cleveland	Person	Bladen	Jackson	Rutherford
<u>Gaston</u>	Craven	Pitt	<u>Caldwell</u>	Jones	Sampson
Guilford	Cumberland	Polk	Camden	Lenoir	Scotland
Iredell	Dare	Randolph	Caswell	Macon	Surry
Johnston	Davidson	<u>Rockingham</u>	Cherokee	Madison	Swain
Mecklenburg	Davie	Rowan	Chowan	Martin	<u>Transylvania</u>
New Hanover	Franklin	Stanly	Clay	McDowell	Tyrrell

Orange	Gaston	Stokes	Columbus	Mitchell	Vance
Union	Granville	Transylvania	Currituck	Montgomery	Warren
Wake	Harnett	Watauga	Duplin	Northampton	Washington
	Haywood	Wayne	Edgecombe	Pamlico	Wilkes
		Wilson	Gates		Yancey
		Yadkin			

G. OTHER AWARDS AND EXCEEDING LIMITATIONS

1. The Agency may award tax credits remaining from the four geographic set-asides to the next highest scoring eligible new construction application(s) statewide and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. The Agency may award 2009 tax credits outside of the normal process to projects that: a) allow the Agency to comply with HUD regulations regarding timely commitment of funds, b) prevent the loss of state or federal investment, c) provide housing for underserved populations or d) are part of a settlement agreement of legal action brought against a local government. The total amount of such awards(s) shall not exceed \$1,000,000.
3. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) 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 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.
4. The Agency may exceed the limitations on awards contained in Sections ~~II(A)~~, II(B), II(E)(1), II(F)(1) and this Section II(G) in order to completely fund a project request. Projects will be counted towards these limitations in the order awarded under the Plan (~~preservation~~, rehabilitation, higher-scoring new construction applications, and tie-breakers).

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2009 application process for 9% tax credits. The Agency will announce the application schedule for bond allocation and 4% tax credits at a later time.

January 24	Deadline for submission of preliminary applications (12:00 noon)
March 23	Market analysts will mail studies to the Agency and applicants
March 13 14	Notification of final site scores <u>and qualification for Agency-designated increase in eligible basis</u>
March 23 24	Deadline for market-related project revisions
March 30 31	Deadline for the Agency and applicant to receive a hard copy of the revised market study, if applicable
May 8	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, ALLOCATION, MONITORING AND PENALTY FEES

1. All applicants are required to pay a nonrefundable fee of \$5,4~~5000~~ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,1~~5000~~ 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 \$1,1~~504,100~~ 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) ~~0.6260%~~ of the project's total qualified basis ~~or,~~
 (b) ~~seventy five hundred dollars (\$7,500).~~
 For projects with prior awards applying for additional tax credits, the percentage above will be applied to the project's entire amount of qualified basis. This fee is in addition to the fee paid at time of the prior award. 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.
4. Entities receiving tax exempt bond volume are required to pay a nonrefundable allocation fee equal to forty (40) basis points of the awarded bond volume. (For example, the fee due on a \$10 million bond award would be \$40,000.) The allocation fee will be due at the time the bond volume is awarded. Failure to return the required documentation and fee by the date specified may result in cancellation of the bond allocation. The Agency may assess other fees for additional monitoring responsibilities.

5. Owners must pay a monitoring fee of \$700 per unit (includes all units, qualified, unrestricted and employee) prior to issuance of the project's IRS Form 8609.
6. 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.
7. The Agency may assess applicants or owners a fee of up to \$2,000 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; such a delay in processing may result in disqualification of application(s).

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) or activity (new/rehabilitation) 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. The Agency may allow such applications to be considered as one for the full application underwriting 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.
5. For each application one individual or validly existing entity must be identified as the applicant. An entity may be one of the following:
 - (a) corporation, including nonprofits,
 - (b) limited partnership, or
 - (c) limited liability company.Only the identified applicant will have the ability to make decisions with regard to that application. The applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the applicant must become a managing member or general partner of the ownership entity.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

New construction applications must meet all threshold requirements and receive 110 points to be considered for award and funding. ~~Preservation and Rehabilitation~~ applications will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H)(3) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to ~~preservation and~~ rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2009 cycle.

A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 100 POINTS)

(a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application submission date, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions). The Agency may grant an extension of this deadline if:
 - requested by the applicant in advance of the full application due date, and
 - all approval(s) are scheduled to be considered for final approval no later than forty five (45) days from the full application date.

In evaluating extension requests, the Agency will consider whether the applicant complied with the jurisdiction's deadlines and other requirements in a timely manner.

(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-owner'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 and document the right to perform such work.

(b) Criteria for Site Score Evaluation:

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. The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. The score for a particular category will reflect the project's tenant type (family/elderly/supportive housing).

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 30 POINTS)

- Trend and direction of real estate development and area economic health.
- Physical condition of buildings and improvements in the immediate vicinity.
- Concentration of affordable housing, including HUD, Rural Development, and tax credit projects as well as unsubsidized, below-market housing.

(ii) SURROUNDING LAND USES AND AMENITIES (MAXIMUM 60 POINTS)

- Land use pattern is residential in character (single and multifamily housing).
- Availability, quality and proximity of services, amenities and features, including but not limited to: grocery store; mall/strip center; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center.
- 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).
- Extent that the location is isolated.

(iii) SITE SUITABILITY AND BUILDING LOCATION (MAXIMUM 10 POINTS)

- Adequate traffic safety controls (i.e. stop lights, speed limits, turn lanes).
- Burden on public facilities (particularly roads).
- Access to mass transit (if applicable).

~~(iv) LOCATION OF BUILDINGS (MAXIMUM NEGATIVE 20 POINTS)~~

- Degree of negative features, design challenges or 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 reuse projects-suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition).
- The proximity of the buildings to adjacent residential structures would be a problem because of their height and/or scale.
- The project would not be visible to potential tenants using normal travel patterns.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

(a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). 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 limit the number of projects awarded in the same application round to those that it determines can be supported in the market.

(c) The following four criteria are threshold requirements for new construction applications:

- (i) the project's capture rate,
- (ii) the project's absorption rate,
- (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
- (iv) the project's effect on existing or awarded properties with 9% tax credits or Agency loans.

(c) 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 subsection (A)(2).

(d) Projects may not give preferences to potential tenants based on:

- (i) residing in the jurisdiction of a particular local government,
- (ii) having a particular disability, or
- (iii) being part of a specific occupational group (e.g. artists).

B. RENT AFFORDABILITY

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)(de); 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 public housing authority's (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. The agreement must commit the PHAs to include the project 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 project. 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 20 POINTS)

(a) Eligibility:

Only loans or grants from the following sources will qualify for points under this subsection (B)(2):

- (i) the local PHA,
- (ii) Community Development Block Grant (CDBG) program funds,
- (iii) HUD Section 202 or 811,
- (iv) Federal Home Loan Bank Affordable Housing Program (AHP),
- (v) established local government housing development funds, and
- (vi) RD Section 515.

Other sources of 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) unless the total housing expense for all market-rate units are at least twenty percent (20%) higher than the maximum allowed for a unit at 60% area median income. Adjustments to the purchase price of the land by the seller, Agency loans, state credits and bond financing are not sources of mortgage subsidy.

(b) Required Terms:

In order to qualify for points under subsection (B)(2), 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 must be treated as a "below market federal loan" under Section 42(i)(2) of the Code.~~

See Section IV(C)(2) for a restriction on RPP loans for applications with local government financing.

(c) Metro Region:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$6,000	6	\$14,000	14
\$8,000	8	\$16,000	16
\$10,000	10	\$18,000	18
\$12,000	12	\$20,000	20

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 provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government.

(d) East, Central and West Regions:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$2,000	5	\$6,000	15

\$4,000	10	\$8,000	20
---------	----	---------	----

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 provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government.

- (e) Projects that will utilize federal and state historic rehabilitation tax credits and are funded entirely with equity and state low-income housing tax credits (no grants or debt sources other than deferred developer fees) will be awarded five (5) points. Any deferred fee must comply with Section VI(B)(5).

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

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 low-income 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 low-income 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 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 low-income 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 low-income 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 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 low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (d) 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 are mutually exclusive.)

C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 20 POINTS)

~~(a)~~ The Agency will assess negative points to applications listing more than the following ~~construction costs per unit in line 5 of the Project Development Cost (PDC) description~~, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- ~~(a)~~ all units are detached single family houses or duplexes,
- ~~(b)~~ serving persons with severe mobility impairments,
- ~~(c)~~ development challenges resulting from being within or adjacent to a central business district,
- ~~(d)~~ utilization of historic rehabilitation tax credits,
- ~~(e)~~ public housing redevelopment projects, or
- ~~(f)~~ building(s) with both steel and concrete construction and at least four (4) stories of housing.

Chart A		Chart B	
\$7860,000	-10	\$9271,000	-10
\$9069,000	-20	\$11085,000	-20

The cost amounts above will be increased by \$4,000 per unit for applications that agree to have residential buildings comply with all Energy Star standards as defined in **Appendix B** (see Section IV(F)(1)).

~~(b)~~ The calculation of construction costs in subsection (C)(1)(a) above includes lines 2 through 10 of the Project Development Cost (PDC) description. See Sections VI(B)(7), (8), and (9), and (15) for other cost restrictions.

~~(c)~~ Applications for projects awarded in prior years applying for additional credits may only include increased costs in lines 2 through 19 of the PDC description.

2. RESTRICTIONS ON RPP AWARDS

(a) Projects requesting RPP funds may not:

- (ia) 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,
- (iib) include market-rate units,
- (iiie) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999,
- (ivd) request less than \$150,000 or more than \$800,000 per project, or
- (ve) have a commitment of funds from a local government under terms that will result in more repayment than the RPP financing (see description in subsection (C)(2)(b) below).

The maximum award of RPP funds to any one Principal will be a total of \$1,500,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(de) if the Agency has inadequate funds.

(b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

$$\text{Repayment of RPP and local government loans} = (\text{NOI} / 1.15) - \text{conventional debt service.}$$

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan = \$400,000
 local government loan = \$200,000

	Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000
RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333

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 (1) North Carolina low-income housing tax credit project or six (6) separate low-income housing tax credit projects totaling in excess of 200 units. The project(s) must have been placed in service between December 1, 2003~~2~~ and January 1, 2008~~7~~. (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 project 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, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.

(c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) 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 ten 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 any publicly subsidized project;

- (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;
- (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 a 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 2005~~4~~ 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 2005~~4~~ or earlier for which the final cost certification requirements have not been met by December ~~1921~~, 2008~~7~~;
- (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 under the ~~preservation or~~ rehabilitation set-asides in the current cycle; 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 2009 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 one hundred and twenty (120) units.
- 3. New construction bond financed projects may not exceed two hundred (200) units.
- 4. All projects must have at least sixteen (16) qualified low-income 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, including public housing projects, 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

1. ENERGY STAR—(MAXIMUM 5 POINTS)

~~Five (5) points will be awarded to applications that agree to have~~ New construction residential buildings must comply with all Energy Star standards as defined in **Appendix B** (incorporated herein by reference).

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 geographic 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) completion of the project would contribute to one or more of the goal(s) stated in the CRP; and
- (d) the CRP either (i) was officially adopted or amended by a local government between January 1, 2003~~2~~ and the preliminary application deadline or (ii) is actively underway.

Only documents or information included in the officially adopted CRP will be considered in evaluating the criteria in this subsection. 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).** Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Plan requirements of subsection (F)(4).

4. TARGETING PLANS

All projects will be required to target ten percent (10%) of the total units to persons with disabilities or homeless populations. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that are targeting units under this subsection are not required to provide onsite supportive services or a service coordinator.

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 project 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 project, 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 project.
 - (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project 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.
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the required number of units 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, up to the required number of units.
- (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 for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.
- (j) A description of how the project will make the targeted units affordable to persons with extremely low incomes. NOTE: Key Program assistance is only available to persons receiving income based upon a disability. Projects targeting units to non-disabled homeless populations or persons in recovery with only a substance abuse diagnosis must have an alternative mechanism to assure affordability.

The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A Targeting Plan template and other documents related to this subsection are included in **Appendix D** (incorporated herein by reference). ~~Applicants~~**Owners** will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July ~~2324, 20102009~~ 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. LOCAL GOVERNMENT LAND DONATION (MAXIMUM 5 POINTS)

Applications that meet the following criteria will be awarded five (5) points:

- (a) the real estate that will contain the proposed project buildings is owned by a unit of local government as of the preliminary application deadline;
- (b) the local government did not purchase any portion of the real estate from the applicant or any owner, Principal or affiliate thereof; and
- (c) the application shows no more than a total of \$1,000 in the line-items for purchase of land and buildings (in the case of a ground lease, no more than \$50 per year).

6. 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.

First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.

Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects 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).

Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects 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

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

1. THRESHOLD REQUIREMENTS

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 categories:

- on-site playground 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;
- building envelope and insulation;
- provisions for sight and hearing impaired residents;
- additional requirements for rehabilitation of existing apartments;
- additional requirements for adaptive reuse; and
- Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM OF 50 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to ten (10) points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to forty (40) points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) ~~Use of brick veneer or masonry products on building exteriors. The degree to which building exteriors are designed for very low maintenance and extended useful life.~~

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to forty (40) points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

~~[moved to a later section]NOTE: Owners may not start construction, including sitework, before the Agency has approved the project's plans and specifications.~~

H. CRITERIA FOR SELECTION OF ~~PRESERVATION AND REHABILITATION~~ PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Sections ~~II(A) or~~ II(B), a project must:

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit or (ii) federal rental assistance for at least thirty percent (30%) of the total units, which may consist of a project-based contract, households with Section 8 vouchers as of the preliminary application deadline, or a combination of the two,
- (b) have been placed in service on or before December 31, 1994,
- (c) require rehabilitation expenses in excess of \$10,000 per unit for preservation projects under Section II(A) and \$15,000 per unit for rehabilitation projects under Section II(B) (both as supported by a physical needs assessment conducted or 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), and
- (i) have total replacement costs of less than \$100,000 per unit, including all Agency-required rehabilitation work.

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 PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B**, the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Sections ~~II(A) and II(B)~~ based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards 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 (g) 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) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above 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).
- (d) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (e) 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.
- (f) 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).
- (g) ~~While the preservation and rehabilitation set-asides are~~ 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. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall HOPE VI revitalization effort.
2. Rehabilitation of existing rent restricted housing projects.
3. Rehabilitation of projects consisting of entirely market-rate units.
- ~~43.~~ Adaptive reuse projects.
- ~~54.~~ 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, applications seeking the least amount of authority per low-income unit will have priority.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax exempt bonds and 4% credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. New construction applications must earn 100 points, ~~and agree to~~
2. All projects must meet one of the following requirements:
 - (a) 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
 - (b) 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.
- ~~32.~~ Rehabilitation applications must:
 - (a) have been placed in service on or before December 31, 199~~43~~,
 - (b) require rehabilitation expenses in excess of \$10,000 per unit,
 - (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
 - (d) not have begun or completed after December 31, 2001 a full debt restructuring under the Mark to Market process (or any similar HUD program) and
 - (e) not be deteriorated to the point of requiring demolition.

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 ownership entity.~~

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 involving an existing structure or 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 order an additional appraisals with costs to be paid by the applicant where cost per acre is below this amount.~~ Appraisals for ~~preservation~~, rehabilitation and adaptive reuse 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 ~~preservation and~~ 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~~ owner is responsible for all relocation expenses, which must be included in the project's development budget. ~~Applicants~~ Owners 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. **RENT INCREASES**

Owners of projects with 9% tax credits must seek approval from the Agency prior to increasing rents for qualified low-income units during the time between award and issuance of the federal form 8609.

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.

9. **EXTENDED USE PERIOD**

~~Applicants~~ Owners 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.

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.
- (c) Applications requesting RPP funds may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the applicable RPP Guidelines.
- (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 reuse): minimum of \$2,800 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes ~~preservation~~, rehabilitation and adaptive reuse): minimum of \$3,000 per unit per year not including taxes, reserves and resident support services.
- (c) 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. The Agency may also set a maximum price. 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 PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (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 (four months for tax-exempt bond projects), and must be maintained for the duration of the low-income use period.

The operating reserve can be funded by deferring the developer 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. ~~Preservation, r~~Rehabilitation and adaptive reuse 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.

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.

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 fifteen (15) 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.~~

(b) All projects proposing public permanent financing, binding commitments are required to be submitted by the full application due date. The Agency may grant a forty-five (45) day extension of this deadline for local governments if requested by the applicant in advance of the full application due date. Local governments also must identify the source of funding (e.g. HOME, trust fund). 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) All projects must provide a construction loan letter of intent stating the loan amount, interest rate, and any origination fees.

~~(d)~~ 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 AND ADDITIONAL CONTINGENCY

(a) Developer fees for new construction projects shall be the lesser of \$10,500 per unit or \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000).

(b) Developer fees for rehabilitation projects shall be the greater of \$7,500 per unit or twenty five percent (25%) of the PDC description line item for rehabilitation (line 4), but in no event will exceed \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000).

(c) Builder's general requirements shall be limited to six percent (6%) of hard costs.

(d) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.

(e) 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).

(f) The application may include up to \$1,000 per unit in additional contingency to cover overruns in any project development cost. To the extent this amount is not used for cost overruns it may be taken as additional developer fee.

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be 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 PDC 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. ~~Preservation, r~~Rehabilitation and adaptive reuse 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. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. 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 9% tax credit reservation amount will be the total anticipated qualified basis amount multiplied by ~~eight and one-half~~nine percent (8.59%), 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 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 subsection (A)(2). 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. Owners may not start construction, including sitework, before the Agency has approved the project's final plans and specifications. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a completed Final Cost Certification that complies with the Agency's guidelines and requirements. Project cash flow is a prohibited source of funds for the project budget.
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: (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.
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 if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction. Owners will acknowledge that the following constitute conditions to their allocation:
 - (a) accuracy of the facts and compliance with representations contained in the project's final accepted application, including all exhibits and attachments,
 - (b) completion of construction as depicted on the site layout, floor plan and elevations submitted with the project application,
 - (c) adherence to the Plan, and
 - (d) provision and maintenance of those certain unit and project amenities for the benefit of the tenants described in the project application.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to this allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

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, 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.
11. 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 IRS, and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the IRS will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

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.

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 temporary 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 project, 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.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

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).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

Stabilized Occupancy: Maintenance of at least ninety percent (90%) occupancy for three consecutive months.

APPENDIX B

Design Quality Standards and Requirements

The terms of this Appendix B are the minimum requirements for any project awarded tax credits in 2008. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

Once final plans and specifications have been completed, owners must submit them to the Agency and receive written approval before commencing sitework or construction.

At all times after award the owner is responsible for promptly informing the Agency of any changes or alterations which deviate from the final plans and specifications approved by the Agency. In particular owners must not take action on any material change in the site layout, floor plan, elevations or amenities without written authorization from the Agency. This includes changes required by local governments to receive building permits.

I. DESIGN DOCUMENT STANDARDS

All required documents must be prepared by an engineer or architect licensed to do business in North Carolina. All drawings should be to scale, using the minimum required scale as detailed below.

A. PRELIMINARY APPLICATION PLAN REQUIREMENTS ~~GENERAL PROVISIONS~~

Plans must be 11" x 17" and indicate the following:

1. Street name(s) where site access is made, site acreage, planned parking areas, layout of building(s) on site to scale, any flood plains that will prohibit development on site, retaining walls where needed, and adjacent properties with descriptions.
2. Front, rear and side elevations of ALL building types and identify all materials to be used on building exteriors.
3. Use a 1/8" or 1/16" scale for each building.
- ~~1. Minimum size for all design documents is 24"x36".~~
- ~~2. All drawings should be to scale, using the minimum required scale as detailed below.~~
- ~~3. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.~~

B. FULL APPLICATION PLAN REQUIREMENTS~~SITE PLAN~~

Site and floor plans ~~M~~ must be 24" x 36" and indicate the following:

1. Location of, and any proposed changes to, existing buildings, roadways, and parking areas.
2. All existing site and zoning restrictions including set backs, right of ways, boundary lines, wetlands and any flood plains.
3. Existing topography of site and any proposed changes including retaining walls.
4. Front, rear and side elevations of ALL building types and identify all materials to be used on building exteriors.~~The finished floor elevations for all buildings.~~
5. 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.
6. Locations of site features such as playground(s), gazebos, walking trails, refuse collection areas, postal facilities, and site entrance signage.

C. FLOOR PLANS

- ~~1.7. Include floor layouts. The location of units, common use areas and other spaces using a minimum scale of 1/16" = 1' for each building; identifying the location of units, common use areas and other spaces.~~
- ~~2.8. Show d~~Dimensioned floor plans for all unit types using a minimum scale of 1/4" = 1'.
- ~~3.9. Indicate n~~Net building square footage and heated square footage. See "Definitions" in this Appendix.
- ~~4.10. _____~~ For projects involving renovation and/or demolition of existing structures, ~~show~~ proposed changes to building components and design and also describe removal and new construction methods.
- ~~5.11. _____~~ For projects involving removal of asbestos and/or lead based paint removal, ~~show~~ general notes identifying location and procedures for removal.

D. ELEVATIONS FOR NEW CONSTRUCTION

- ~~1. Minimum scale for elevations is 1/16" = 1'.~~
- ~~2. Include front, rear and side elevations of all building types.~~
- ~~3. Identify all materials to be used on building exteriors.~~

II. BUILDING AND UNIT DESIGN PROVISIONS

A. EXTERIOR DESIGN AND MATERIALS

1. Building design must use different roof planes and contours to "break" up roof lines. Wide window and door trim must 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.
2. The use of no or very low maintenance materials is required for exterior building coverings on all new construction projects. These include high quality vinyl siding, brick, or fiber cement siding. The use of metal siding is prohibited.
3. All exterior trim, including fascia and soffits, window and door trim, gable vents, etc, must also be constructed of no or very low maintenance materials.
4. All buildings must include seamless gutters.
5. All building foundations must have a minimum of 12 inches exposed brick veneer above finished grade level (after landscaping).
6. Breezeway and stairwell ceilings must be constructed of materials rated for exterior exposure.
7. Buildings and units must be identified using clearly visible signage and numbers. Building and unit identification signage must be well lit from dusk till dawn.
8. Exterior stairs must have a minimum clear width of 40 inches and be completely under roof cover.
9. Exterior railings must be made of vinyl, aluminum, or steel (no wood).

10. Anti-fungal shingles with a minimum 25-year warranty are required for all shingle roof applications.

B. DOORS AND WINDOWS

1. All primary unit entries must either be within a breezeway or have a minimum roof covering of 3 feet deep by 5 feet wide, including a corresponding porch or concrete pad.
2. High durability, insulated doors (such as steel and fiberglass) are required at all exterior locations. Single lever deadbolts and eye viewers are required on all main entry doors to residential units.
3. Exterior doors for fully accessible units (“Type A”) must include spring hinges.
4. Insulated, double pane, vinyl windows with a U-factor of 0.40 or below and a SHGC of 0.48 or below are required for new construction.
5. Windows must not be located over tub or shower units.

C. UNIT DESIGN AND MATERIALS

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

Single Room Occupancy (“SRO”)	250 square feet
Studio	375 square feet
Efficiency	450 square feet
1 Bedroom	660 square feet
2 Bedroom	900 square feet
3 Bedroom	1,100 square feet
4 Bedroom	1,250 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).
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.
4. Carpet and pad must meet FHA minimum standards.
5. Kitchens, dining areas, and entrance areas must have non-skid flooring of vinyl, VCT or other non-carpet material flooring.
6. The minimum width of interior hallways in residential units is 40 inches.
7. For new construction, interior doors must be constructed of six panel hardboard, solid core birch or solid core lauan. Hollow core, flat-panel wood doors are prohibited.
8. Bi-fold and by-pass doors are prohibited. Pocket doors are not allowed in elderly properties or handicapped units.
9. Fireplaces are prohibited in residential units.
10. Residential floors and common tenant walls must ~~be separated by~~ have sound insulation batts.

D. BEDROOMS

1. The primary bedroom must have at least 130 square feet, excluding the closet(s).
2. Secondary bedrooms must have at least 110 square feet, excluding the closet(s).
3. Every bedroom must have a closet with a shelf, closet rod and door. The average size of all bedroom closets in each unit type must be at least 7 linear feet.

E. BATHROOMS

1. A medicine cabinet must be installed in every full bathroom in each residential unit.
2. Exclusive of fully accessible units, the average size of all vanities in each unit type must be at least 36 inches.

3. Mirrors in bathrooms must be low enough to reach the counter backsplashes.
4. All bathrooms must include an exhaust fan rated at 70 CFM vented to the exterior of the building using hard ductwork along the shortest run possible. The exhaust fan must be wired to run whenever the bathroom light is on.
5. For ceramic tile applications, tile should be applied over cement backer board rather than directly to drywall.
6. All new construction projects must comply with QAP Section IV(F)(3) regarding additional accessible bathrooms, including curbless showers. All curbless showers must have a collapsible water dam installed before occupancy.
7. Approaches to curbless showers must be level, not sloped.

F. 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. A pantry cabinet or closet in or near each kitchen must be provided (does not include SRO, studio or efficiency units).
4. All residential units must have either a dry chemical fire extinguisher mounted and readily visible and accessible in every kitchen, including kitchen in community building if present, or an automatic fire suppression canister mounted in each range hood.
5. Each kitchen must have at the least the following minimum linear footage of countertop, excluding the sink space (only include countertops that are at or below 36 inches in height above finished floor):

SRO	4.5 linear feet
Studio	5.0 linear feet
Efficiency	5.0 linear feet
1 Bedroom	10.0 linear feet
2 Bedroom	12.0 linear feet
3 Bedroom	13.0 linear feet
4 Bedroom	13.0 linear feet

6. All residential units must have a frost-free Energy Star rated refrigerator with a freezer compartment. For fully accessible ("Type A") units the refrigerator must be side by side. The following are the minimum sizes:

0-2 Bedroom	14 cubic feet
3 Bedroom	16 cubic feet
4 Bedroom	18 cubic feet

7. All residential units must have an Energy Star rated dishwasher (excluding elderly properties).
8. All handicap (Type "A") kitchen sinks must be rear-draining and have sink bottoms insulated if bottom of sink is at or below 29" above finished floor.
9. Pull-out worktops are prohibited.

G. LAUNDRY ROOM CLOSETS

1. Laundry room closets must be 36" minimum depth measured from back wall to back of closet doors.
2. Clothes dryer vent connection must be 2" maximum above finished floor.

H. PROVISIONS FOR ALL ELDERLY HOUSING

1. All elderly residential units must be equipped with emergency pull chains in the master bedroom and full bathroom. The pull chains must 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. Exhaust vents and lighting above ranges must be wired to a remote switch near the range in an accessible location.
4. Provide solid blocking at all water closets and tub/shower units for grab bar installation.

5. Provide a minimum 12" grab bar in all tub/shower units. The grab bar will be installed ~~horizontally~~ centered vertically at 48" A.F.F. on the wall opposite the controls.
6. Corridors in any common areas must have a continuous suitable handrail on one side mounted 34 inches above finished floor, and be 1 ¼ inches in diameter.
7. All doors leading to habitable rooms must have a minimum ~~2'-10"~~ 3'-0" door and include lever handle hardware.
8. Hallways must have a minimum width of 42 inches.
9. The maximum threshold height at any entry door is ½ inch.

I. PROVISIONS FOR SIGHT AND HEARING IMPAIRED UNITS

Applies ONLY to projects using Rental Production Program funds. Under Section 504 of the Rehabilitation Act of 1973, 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. These requirements include the following:

1. The unit(s) must be roughed in to allow for smoke alarms with strobe lights in every bedroom and living area.
2. The units must have a receptacle next to phone jacks in units for future installation of TTY devices.
3. Each overhead light fixture and receptacle must be wired to accommodate a 150 watt load.
4. The unit must also be fully accessible ("Type A").

The requirements of this provision can be satisfied by adding the elements described above to the additional fully accessible units with curbless showers required by QAP Section IV(F)(3) such that at least two percent (2%) of all units are properly equipped to serve persons with sight and or hearing impairments.

III. **MECHANICAL, SITE AND INSULATION PROVISIONS**

A. PLUMBING PROVISIONS

1. Zero to two bedroom units require at least one (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 two (2) full bathrooms.
4. All tubs and showers must have slip resistant floors.
5. All electric water heaters must have an Energy Factor of at least ~~.91-93~~. All natural gas water heaters must have an Energy Factor of at least .61.
6. All water heater tanks must be placed in an overflow pan piped to the exterior of the building, regardless of location and floor level. The temperature and relief valve must also be piped to the exterior.
7. Whirlpool baths or spas are prohibited.
8. A frost-proof exterior faucet must be installed on an exterior wall of the community/office building.
9. All tub/shower control knobs must be single lever handled and offset towards the front of the tub/shower.
10. Provide lever faucet controls for the kitchen and bathroom sinks.
11. All sinks, shower heads, and toilets must be low-flow.

B. ELECTRICAL PROVISIONS

1. Provide overhead lighting, a ceiling fan, telephone jack and a cable connection in every bedroom and living room. If using ceiling fans with light kits, the fan and light must have separate switches.
2. Any walk-in closets must also have a switched overhead light.
- 2.3. Switches and thermostats must not be located more than 48 inches above finished floor height.
- 3.4. Receptacles, telephone jacks and cable jacks must not be located less than 16 inches above finished floor height.
- 4.5. Exterior lighting is required at each unit entry door.

- ~~5.6.~~ Additional exterior light fixtures not specific to a 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.
- ~~6.7.~~ 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.
- ~~7.8.~~ Projects with gas heating and/or appliances must provide a hard-wired carbon monoxide detector with a battery back-up in each residential unit. ~~Electric baseboard heating systems are not permitted.~~
- ~~8.9.~~ All non-residential and residential spaces must have separate electrical systems.
- 10. Initially-installed bulbs in residential units and common areas must be compact fluorescent (other than in ceiling fans and range hoods).

C. HEATING, VENTILATING AND AIR CONDITIONING PROVISIONS

- 1. All non-residential areas and residential units must have their own separate heating and air conditioning systems.
- 2. Through the wall HVAC units are prohibited in all but Studio, Efficiency and SRO units. They are allowed in laundry rooms and management offices where provided.
- 3. HVAC systems, including the air handler and line sets, must be rated at 13.0 SEER or greater and properly sized for the unit.
- 4. Connections in duct system must be sealed with mastic and fiberglass mesh.
- 5. All openings in duct work at registers and grills must be covered after installation to keep out debris during construction.
- 6. Fresh air returns must be a minimum of 12” above the floor.

D. 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 including the use of insulated headers on all exterior walls, framing roofs and ceilings to allow the full depth of ceiling insulation to extend over the top plate of the exterior walls of the building, and framing all corners and wall intersections to allow for insulation.
- 3. Seal at doors, windows, plumbing and electrical penetrations to prevent moisture and air leakage.

E. SITWORK AND LANDSCAPING

- 1. Provide positive drainage at all driveways, parking areas, ramps, walkways and dumpster pads to prevent standing water.
- 2. Provide a non-skid finish to all walkways.
- 3. All water from roof and gutter system must be piped away from buildings and discharged no less than 6’ from building foundation.
- 4. Lots must be graded so as to drain surface water away from foundation walls. The grade away from foundation walls must fall a minimum of 6 inches within the first 10 feet.
- 5. Burying construction waste on-site is prohibited.
- 6. No part of the disturbed site may be left uncovered or unstabilized once construction is complete.
- 7. Minimum landscaping budgets of \$300 per residential unit are required. This allowance is for plants and trees only and may not be used for fine grading, seeding and straw or sod.
- 8. Plant material must be native to the climate and area.
- ~~9. All plants must be mulched within two days after planting by covering entire planting area with a 4 inch layer of mulch.~~
- ~~10. Trees at streetscape must be at least 2 ½ inch caliper. Trees sited for building landscaping must be at least 2 inch caliper.~~
- ~~11. All shrubs must be a minimum size of 2 gallons.~~
- ~~12. Foundation plantings must be spaced an appropriate distance away from buildings to assure proper maintenance and growth.~~

IV. ENERGY STAR CERTIFICATION

Developers of projects utilizing tax credits have the opportunity to receive bonus points by choosing are required to have their projects certified as compliant with the requirements of the ENERGY STAR program which is administered by the U. S. Environmental Protection Agency. In general, ENERGY STAR qualified homes are at least 15% more energy efficient than homes built to the 2006 International Energy Conservation Code (IECC). ENERGY STAR qualified homes achieve energy savings through established, reliable building technologies that address 5 critical elements:

- Effective Insulation
- High-Performance Windows
- Tight Construction and Ducts
- Efficient Heating and Cooling Equipment
- Lighting and Appliances

Additionally, to receive ENERGY STAR certification, developers must work with independent, third-party experts who assist with project design, verify construction quality, and test completed units to certify energy efficiency.

Additional information regarding the requirements for energy star certification can be found on the EPA website. (http://www.energystar.gov/index.cfm?c=new_homes.nh_features)

V. COMMON AREA AND SITE AMENITY PROVISIONS

All common use areas must be fully accessible to those with disabilities in compliance with all applicable State and Federal laws and regulations.

A. REQUIRED SITE AMENITIES

All projects are required to include a minimum of six (6) tenant amenities. There are four (4) amenities that are mandatory and the additional two (2) can be selected from the list below.

The required amenities vary by project type:

Family	Senior
Playground	Indoor or Outdoor Sitting Areas (min. of 3 locations)
Resident Computer Center (min. of 2 computers)	Multi-Purpose Room (250 sq.ft.)
Covered Picnic Area (150 sq.ft. with 2 tables and grill)	Resident Computer Center (min. of 2 computers)
Outdoor Sitting Areas with Benches (min. of 3 locations)	Tenant Storage Areas

In addition to the required amenities, projects must also include at least two (2) of the following additional amenities:

- covered drive-thru or drop-off at entry
- covered patio with seating (150 sq. ft.)
- covered picnic area with two tables and one grilles (150 sq. ft.)
- exercise room (must include new equipment)
- raised bed garden plots (8 ft. x 8 ft. boxes 50 sq. ft. per plot, 12-24 inches deep, one plot per 10 residents, elderly projects only)
- gazebo (100 sq. ft.)
- 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)
- sunroom with chairs (150 sq. ft.)
- screened porch (150 sq. ft.)
- tot lot (family projects only)
- walking trails (4 ft. wide paved continuous around property)

Dimensions listed are the minimum required. Amenities must be located on the project site.

B. PLAYGROUND AREAS

1. Wherever possible tot lots and playgrounds must be located away from areas of frequent automobile traffic and situated so that the play area is visible from the office and maximum number of residential units.
2. A bench must be provided at playgrounds to allow a child’s supervisor to sit. The bench must be anchored permanently, weather resistant and have a back.

C. POSTAL FACILITIES

1. Postal facilities must be located adjacent to available parking and sited such that tenants will not obstruct traffic while collecting mail.
2. On-site postal facilities must have a roof covering which offers residents ample protection from the rain while gathering mail.
3. Postal facilities must include adequate lighting on from dusk to dawn.

D. LAUNDRY FACILITIES

1. Laundry facilities are required at all projects ~~with twenty (20) or more residential units.~~
2. There must be a minimum of one washer and one dryer per twelve (12) residential units if washer/dryer hookups are not available in each unit. If hookups are available in each unit, there must be a minimum of one washer and one dryer per twenty (20) units.
3. Laundry facilities must be located on an accessible route.
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 ½ inch above finished interior grade level.
6. A “folding” table or countertop must be installed. The working surface must 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, and have a 30 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 glass panel to allow residents a view of the outside/inside.
8. The laundry room must be positioned on the site to allow for a high level of visibility from residential units or the community building/office.
9. The laundry room must have adequate entrance lighting that is on from dusk to dawn.
10. If the project has only one laundry facility, it must be adjacent to the community building/office (if provided) to allow easy access and provide a handicap parking space(s).
11. One washer and one dryer must be front loading and usable by residents with mobility impairments (front loading), including at least a 30 by 48 inch clear floor space in front of each.

E. COMMUNITY / OFFICE SPACES

1. All projects 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. This includes subsequent phases of a multi-phase development.
2. Projects 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 both a handicapped toilet facility and a kitchen area that includes a refrigerator and sink.
4. The community building/space, including toilet facilities and kitchenette but excluding maintenance room and site office, must contain a minimum of seven (7) square feet for each residential unit.
5. The office must be situated as to allow the site manager a prominent view of the residential units, playground, entrances/exits, and vehicular traffic.
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.

F. PARKING

1. Two parking spaces per unit are required for family projects.
2. Elderly projects require a minimum of two-thirds (2/3) parking space per unit.
3. If local guidelines require less parking, the number of parking spaces required by the Agency may be reduced to meet those

standards upon receiving Agency approval.

4. There must be at least one handicap parking space for each designated fully accessible apartment unit and must be the nearest available parking space to the unit.

G. REFUSE COLLECTION AREAS

1. Fencing consistent with the appearance of the residential buildings must screen the collection area. The fencing must be made of PVC or treated lumber and constructed for permanent use.
2. The pad for the refuse collection area, including the approach area, must be concrete (not asphalt).
3. The refuse collection areas may not be at the entrances or exits of the project.
4. Signs must be at all refuse collection areas to prohibit parking in front of collection facilities.
5. A concrete parking bumper, pipe bollards or 8 inch x 8 inch treated timber must be installed behind dumpsters.
6. All projects must include a pad for tenant recycling receptacles as part of the collection area even if recycling is not yet available.

VI. ADDITIONAL PROVISIONS FOR REHABILITATION OF EXISTING HOUSING

The following requirements apply to rehabilitation of existing units. Replacement of materials and methods during rehabilitation must comply with the design standards for new construction.

- A. Design documents must show all proposed changes to existing and proposed buildings, parking, utilities, and landscaping. An architect or engineer must prepare the design drawings.
- B. Submit a hazardous material report that 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. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect, building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- C. Submit an engineer's report assessing the structural integrity of the building(s) being renovated.
- D. Submit a current termite inspection report.
- E. Show "reserves for replacements" adequate to maintain and replace any existing systems and conditions not being replaced or addressed during rehabilitation.

VII. ADDITIONAL PROVISIONS FOR ADAPTIVE RE-USE OF EXISTING STRUCTURES

- A. Mechanical Systems: All mechanical systems (including HVAC, plumbing, electrical, fire suppression, security system, etc.) must 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. Where structural or other significant limitations make complete enclosure and concealment impossible, the applicant must secure approval from the Agency prior to installation of affected systems.
- B. Windows: 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 must be replaced. Where original window sashes cannot be retained, install replacement sashes be installed into existing frames. In all cases, windows must be finished with a complete coating of paint.
- C. Floors: All wood flooring is to be restored as closely to original condition as possible. Where repairs are necessary, flooring salvaged from other areas of the building must be utilized as fill material. If salvaged wood is not available, flooring of similar dimension and species must be used. All repairs must 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 prohibited. Where original flooring has gaps in excess of 1/8 inch, the gaps must be filled with an appropriate filler material prior to the application of final finish.

- D. Hazardous Materials: Submit a hazardous material report that 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. 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.

VIII. APPLICABLE ACCESSIBILITY REGULATIONS

A. FAIR HOUSING AMENDMENTS ACT

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. THE AMERICANS WITH DISABILITIES ACT

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.

C. NORTH CAROLINA STATE ACCESSIBILITY CODE

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.

DEFINITIONS

Efficiency Apartment: A unit with a minimum of 450 heated 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.

Heated Square Feet: The floor area of an apartment unit, measured interior wall to interior wall, not including exterior wall square footage. Interior walls are not to be deducted, and the area occupied by a staircase may only be counted once.

Net Square Feet: Total area, including exterior wall square footage, of all conditioned (heated/cooled) space, including hallways and common areas.

One Bedroom Apartment: A unit of at least 660 heated square feet (assuming new construction) 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 unit with a minimum of 250 heated 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. 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 unit with a minimum of 375 heated 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 unit with a minimum of 1,100 heated square feet (assuming new construction) 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 unit with a minimum of 900 heated square feet (assuming new construction) 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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SA intends to amend the rule cited as 10A NCAC 28F .0101 and repeal the rules as cited as 10A NCAC 29D .0301-.0304.

Proposed Effective Date: March 1, 2009

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, and Raleigh, NC 27699-3018

Reason for Proposed Action:

10A NCAC 28F .0101: The current rule establishes regions according to a category of state operated facility. The categories include: psychiatric hospitals, mental retardation centers and alcohol and drug abuse treatment centers. Each of the categories contains four regions. The proposed amendment establishes a single three region model incorporating all state operated facilities. The regions include the Western Region, Central Region and Eastern Region. Each region has a designated psychiatric hospital, developmental center (formerly known as mental retardation center), alcohol and drug abuse treatment center, and neuro-medical treatment center (which is a new facility designation). The exceptions to this proposed rule are state-wide programs and cross-regional admissions approved by the Division Director.

10A NCAC 29D .0301 - .0304: This Section is being repealed because it is no longer needed.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, N.C., 27699-3018

Comments may be submitted to: W. Denise Baker, 3018 Mail Service Center, Raleigh, N.C., 27699-3018, phone 919-715-2780, fax 919-733-1221, email denise.w.baker@ncmail.net

Comment period ends: December 1, 2008

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: A copy of the fiscal note can be obtained from the agency.

- State
- Local 10A NCAC 28F .0101
- Substantive (≥\$3,000,000)
- None 10A NCAC 29D .0301 - .0304

CHAPTER 28 – MENTAL HEALTH, STATE OPERATED FACILITIES AND SERVICES

SUBCHAPTER 28F – ADMISSION AND DISCHARGE

SECTION .0100 – ADMISSIONS

10A NCAC 28F .0101 REGIONS FOR DIVISION INSTITUTIONAL ADMISSIONS

(a) Except as otherwise provided in rules codified in this Chapter and Chapters 26 through 29 of this Title and except for State-wide programs and cross-regional admissions approved by the Division Director, a person seeking admission to a regional institution of the Division shall be admitted only to the institution which serves the region of the state which includes the person's "county of residence" as defined in G.S. 122C-3.

(b) For state operated facilities, the regions of the state and the counties which constitute the regions shall be as follows:

- (1) Western Region: Broughton Hospital, Black Mountain Neuro-Medical Treatment Center, Julian F. Keith Alcohol and Drug Abuse Treatment Center (ADATC), and J. Iverson Riddle Developmental Center shall serve Alleghany, Alexander, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rowan, Rutherford, Stanly, Surry,

Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, Yancey;

- (2) Central Region: Dorothea Dix Hospital, John Umstead Hospital, Central Regional Hospital, Murdoch Developmental Center, O'Berry Neuro-Medical Treatment Center, R. J. Blackley ADATC, Whitaker School, and Wright School shall serve Alamance, Anson, Caswell, Chatham, Davie, Durham, Forsyth, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Stokes, Vance, Wake, Warren; and
- (3) Eastern Region: Cherry Hospital, Caswell Developmental Center, Longleaf Neuro-Medical Treatment Center, and Walter B. Jones ADATC shall serve Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, Wilson.

(b) ~~The regions of the state and the counties which constitute the regions shall be as follows for the psychiatric hospitals:~~

- (1) ~~Western Region. Broughton Hospital shall serve Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davie, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rowan, Rutherford, Stanly, Swain, Transylvania, Union, Watauga, Wilkes, Yancey.~~
- (2) ~~North Central Region. John Umstead Hospital shall serve Alamance, Caswell, Chatham, Durham, Forsyth, Franklin, Granville, Guilford, Orange, Person, Rockingham, Stokes, Surry, Vance, Warren, Yadkin.~~
- (3) ~~South Central Region. Dorothea Dix Hospital shall serve Anson, Bladen, Columbus, Cumberland, Davidson, Harnett, Hoke, Johnston, Lee, Montgomery, Moore, Randolph, Richmond, Robeson, Scotland, Wake.~~
- (4) ~~Eastern Region. Cherry Hospital shall serve Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Sampson, Tyrrell, Washington, Wayne, Wilson.~~

(c) ~~The regions of the state and the counties which constitute the regions shall be as follows for the mental retardation centers:~~

~~Western Region:~~

~~Western—Carolina—Center shall serve Alexander, Alleghany, Ashe, Avery, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Davie, Gaston, Iredell, Lincoln, McDowell, Mecklenburg, Polk, Rowan, Rutherford, Stanly, Union, Watauga, Wilkes. In addition, Western Carolina Center shall serve clients from the counties normally served by Black Mountain Center as specified in (c) (1) (B) of this Rule if the client has severe behavioral or medical disorders.~~

~~Black Mountain Center shall serve Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, Transylvania, Yancey. In addition, Black Mountain Center shall serve clients from the counties normally served by Western Carolina Center as specified in (c) (1) (A) of this Rule if the client is in the geriatric age range.~~

~~North Central Region. Murdoch Center shall serve Alamance, Caswell, Chatham, Durham, Forsyth, Franklin, Granville, Guilford, Orange, Person, Rockingham, Stokes, Surry, Vance, Warren, Yadkin.~~

~~South Central Region. O'Berry Center shall serve Anson, Bladen, Columbus, Cumberland, Davidson, Harnett, Hoke, Johnston, Lee, Montgomery, Moore, Randolph, Richmond, Robeson, Scotland, Wake, Wayne.~~

~~Eastern Region. Caswell Center shall serve Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Sampson, Tyrrell, Washington, Wilson.~~

(d) ~~The regions of the State and the counties which constitute the regions shall be as follows for the alcohol and drug abuse treatment centers:~~

(1) ~~Western Region. The Alcohol and Drug Abuse Treatment Center at Black Mountain shall serve Alleghany, Ashe, Avery, Alexander, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Mitchell, Polk, Rowan, Rutherford, Stanly, Swain, Transylvania, Union, Watauga, Wilkes, Yancey.~~

(2) ~~North Central Region. The Alcohol and Drug Abuse Treatment Center at Butner shall serve Alamance, Anson, Caswell, Chatham, Durham, Forsyth, Franklin, Granville, Guilford, Harnett, Hoke, Johnston, Lee, Montgomery, Moore, Orange, Person,~~

~~Randolph, Richmond, Rockingham, Stokes, Surry, Vance, Wake, Warren, Yadkin.~~

- ~~(3) Eastern Region. The Walter B. Jones Alcohol and Drug Abuse Treatment Center at Greenville shall serve Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, Wilson.~~

Authority G.S. 122C-3; 122C-112; 143B-147.

CHAPTER 29 – MENTAL HEALTH, OTHER RULES

SUBCHAPTER 29D - MISCELLANEOUS

SECTION .0300 - DESIGNATION OF AREA MENTAL HEALTH: MENTAL RETARDATION AND SUBSTANCE ABUSE AUTHORITIES AND CATCHMENT AREAS

10A NCAC 29D .0301 SCOPE

~~(a) The purpose of the rules in this Subchapter is to designate area authorities and catchment areas for the delivery of community based mental health, mental retardation and substance abuse services and to specify the process to be followed in requesting changes in catchment areas.~~

~~(b) These Rules apply to the 41 area mental health, mental retardation and substance abuse authorities.~~

Authority G.S. 122C-3; 122C-112; 122C-115; 122C-116; 122C-117.

10A NCAC 29D .0302 DEFINITIONS

~~As used in this Subchapter, the following terms have the meanings specified:~~

- ~~(1) "Area Authority" means an area mental health, mental retardation, and substance abuse authority which is the governing unit authorized by the Commission and delegated the authority to serve as the comprehensive planning, budgeting, implementing, and monitoring group for community based mental health, mental retardation, and substance abuse programs. An area authority is a local political subdivision of the state except that a single county area mental health, mental retardation, and substance abuse authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.~~
- ~~(2) "Catchment Area" means a geographic portion of the state served by a specific area authority.~~

Authority G.S. 122C-3; 122C-112; 143B-147.

10A NCAC 29D .0303 AREA AUTHORITIES AND CATCHMENT AREAS

~~The designated area authorities and the counties which comprise the catchment area for each authority shall be as follows:~~

- ~~(1) The Western Region consists of:

 - ~~(a) Smoky Mountain Area Authority serving a catchment area of Cherokee, Clay, Graham, Jackson, Haywood, Macon, and Swain Counties;~~
 - ~~(b) Blue Ridge Area Authority serving a catchment area of Buncombe, Madison, Mitchell, and Yancey Counties;~~
 - ~~(c) New River Authority serving a catchment area of Alleghany, Ashe, Avery, Watauga, and Wilkes Counties;~~
 - ~~(d) Trend Area Authority serving a catchment area of Transylvania and Henderson Counties;~~
 - ~~(e) Foothills Area Authority serving a catchment area of Caldwell, Burke, Alexander, and McDowell Counties;~~
 - ~~(f) Rutherford Polk Area Authority serving a catchment area of Rutherford and Polk Counties;~~
 - ~~(g) Cleveland Area Authority serving a catchment area of Cleveland County;~~
 - ~~(h) Gaston Lincoln Area Authority serving a catchment area of Gaston and Lincoln Counties;~~
 - ~~(i) Catawba Area Authority serving a catchment area of Catawba County;~~
 - ~~(j) Mecklenburg Area Authority serving a catchment area of Mecklenburg County;~~
 - ~~(k) Tri County Area Authority serving a catchment area of Rowan, Iredell, and Davie Counties; and~~
 - ~~(l) Piedmont Area Authority serving a catchment area of Stanly, Cabarrus, and Union Counties.~~~~
- ~~(2) The North Central Region consists of:

 - ~~(a) Surry Yadkin Area Authority serving a catchment area of Surry and Yadkin Counties;~~
 - ~~(b) Forsyth Stokes Area Authority serving a catchment area of Forsyth and Stokes Counties;~~
 - ~~(c) Rockingham Area Authority serving a catchment area of Rockingham County;~~
 - ~~(d) Alamance Caswell Area Authority serving a catchment area of Alamance and Caswell Counties;~~~~

- ~~(e) — Guilford Area Authority serving a catchment area of Guilford County;~~
- ~~(f) — Orange, Person, Chatham Area Authority serving a catchment area of Orange, Person and Chatham Counties;~~
- ~~(g) — Durham Area Authority serving a catchment area of Durham County; and~~
- ~~(h) — Vance, Granville, Franklin, Warren Area Authority serving a catchment area of Vance, Granville, Franklin, and Warren Counties.~~
- ~~(3) — The South Central Region consists of:~~
 - ~~(a) — Davidson Area Authority serving a catchment area of Davidson County;~~
 - ~~(b) — Sandhills Area Authority serving a catchment area of Moore, Hoke, Richmond, Montgomery, and Anson Counties;~~
 - ~~(c) — Southeastern Regional Area Authority serving a catchment area of Robeson, Bladen, Scotland, and Columbus Counties;~~
 - ~~(d) — Cumberland Area Authority serving a catchment area of Cumberland County;~~
 - ~~(e) — Lee Harnett Area Authority serving a catchment area of Lee and Harnett Counties;~~
 - ~~(f) — Johnston Area Authority serving a catchment area of Johnston County;~~
 - ~~(g) — Wake Area Authority serving a catchment area of Wake County; and~~
 - ~~(h) — Randolph Area Authority serving a catchment area of Randolph County.~~
- ~~(4) — The Eastern Region consists of:~~
 - ~~(a) — Southeastern Area Authority serving a catchment area of New Hanover, Brunswick, and Pender Counties;~~
 - ~~(b) — Onslow Area Authority serving a catchment area of Onslow County;~~
 - ~~(c) — Wayne Area Authority serving a catchment area of Wayne County;~~
 - ~~(d) — Wilson-Greene Area Authority serving a catchment area of Wilson and Greene Counties;~~
 - ~~(e) — Edgecombe-Nash Area Authority serving a catchment area of Edgecombe and Nash Counties;~~
 - ~~(f) — Halifax Area Authority serving a catchment area of Halifax County;~~
 - ~~(g) — Neuse Area Authority serving a catchment area of Craven, Jones, Pamlico, and Carteret Counties;~~
 - ~~(h) — Lenoir Area Authority serving a catchment area of Lenoir County;~~
 - ~~(i) — Pitt Area Authority serving a catchment area of Pitt County;~~

- ~~(j) — Roanoke-Chowan Area Authority serving a catchment area of Hertford, Bertie, Gates, and Northampton Counties;~~
- ~~(k) — Tideland Area Authority serving a catchment area of Beaufort, Washington, Tyrrell, Hyde, and Martin Counties;~~
- ~~(l) — Albemarle Area Authority serving a catchment area of Pasquotank, Chowan, Perquimans, Camden, Dare, and Currituck Counties; and~~
- ~~(m) — Duplin-Sampson Area Authority serving a catchment area of Duplin and Sampson Counties.~~

Authority G.S. 122C-3; 122C-112; 143B-147.

10A NCAC 29D .0304 CHANGE OF CATCHMENT AREAS

- ~~(a) Any catchment area designated after July 1, 1984 shall have a population of at least 75,000 and no more than 200,000.~~
- ~~(b) Any request for designation as a catchment area shall be submitted in a written petition to: Chairman, Commission for Mental Health, Mental Retardation and Substance Abuse Services, c/o Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N. C. 27611. The petition shall meet the following requirements:~~
 - ~~(1) — The petition shall be submitted by the board or boards of county commissioners of the proposed catchment area.~~
 - ~~(2) — The petition shall contain the written concurrence of the present area authority and that of the Board of commissioners of each county of the present catchment area.~~
 - ~~(3) — The petition shall contain documentation that the proposed catchment area has the capacity to provide comprehensive mental health, mental retardation and substance abuse services as required by the rules of the Commission and the Department.~~
 - ~~(4) — The petition shall contain documentation that comprehensive services can be provided in the proposed catchment area at no additional cost to the state.~~

Authority G.S. 122C-3; 122C-112; 143B-147.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02Q .0207, .0701-.0702, .0706, .0709.

Proposed Effective Date: March 1, 2009

Public Hearing:

Date: *October 28, 2008*

Time: *7:00 p.m.*

Location: *Division of Air Quality Training Room AQ-526, 2728 Capital Blvd., Raleigh, NC 27604*

Reason for Proposed Action:

15A NCAC 02Q .0207 - *Annual Emissions Reporting, is proposed for amendment to add Greenhouse Gases to the list of pollutants that shall be reported annually from Title V facilities and to consolidate lists of all pollutants that shall be reported annually from Title V facilities in one place.*

15A NCAC 02Q .0701 - *Applicability, is proposed for amendment to remove obsolete language regarding assessment of Maximum Achievable Control Technology (MACT) standards for combustion sources and to add language specifying a periodic assessment of combustion sources.*

15A NCAC 02Q .0702 - *Exemptions, is proposed for amendment to modify the exemption of combustion sources to exclude new or modified combustion sources.*

15A NCAC 02Q .0706 - *Modifications, is proposed for amendment to add language clarifying that facility wide emissions of toxic air pollutants emitted by new or modified combustion sources, including common pollutant emissions from existing combustion sources, are to be included in toxics evaluations on or after March 1, 2009.*

15A NCAC 02Q .0709 - *Demonstrations, is proposed for amendment to extend availability of the economic hardship and technical infeasibility provisions of the rule to facilities with previously exempt combustion sources that are permitted between May 1, 1990 and the effective date of the amendment.*

Procedure by which a person can object to the agency on a proposed rule: *If you have any objections to the proposed rules, please email a letter including your specific reasons to Mr. Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.*

Comments may be submitted to: *Mr. Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)715-3743, fax (919)715-7476, email michael.abraczinskas@ncmail.net.*

Comment period ends: *December 1, 2008*

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: A copy of the fiscal note can be obtained from the agency.

State – *15A NCAC 02Q .0207*

Local – *15A NCAC 02Q .0207*

Substantive (\geq \$3,000,000) – *15A NCAC 02Q .0701-.0702, .0706, .0709*

None

Fiscal Note posted at

http://www.osbm.state.nc.us/files/pdf_files/DENR09082008.pdf

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02Q – AIR QUALITY PERMITS PROCEDURES

SECTION .0200 – PERMIT FEES

15A NCAC 02Q .0207 ANNUAL EMISSIONS REPORTING

(a) The owner or operator of a Title V facility shall report by June 30th of each year the actual emissions during the previous calendar year of:

- (1) volatile organic compounds,
- (2) nitrogen oxides,
- (3) total suspended particulates,
- (4) sulfur dioxide,
- (5) fluorine,
- ~~(6) hydrogen chloride,~~
- ~~(7) hydrogen fluoride,~~
- ~~(8) hydrogen sulfide,~~
- ~~(9) methyl chloroform,~~
- ~~(10) methylene chloride,~~
- ~~(11)(6) ozone,~~
- ~~(12) chlorine,~~
- ~~(13) hydrazine,~~
- ~~(14) phosphine~~
- ~~(15)(7) particulate matter (PM10),~~
- ~~(16)(8) carbon monoxide,~~
- ~~(17)(9) lead, and~~
- ~~(18)(10) perchloroethylene, perchloroethylene.~~
- (11) particulate matter (PM2.5),
- (12) carbon dioxide,
- (13) methane,
- (14) nitrous oxide,
- (15) sulfur hexafluoride,
- (16) perfluorocyclobutane (octafluorocyclobutane),
- (17) perfluorobutane (decafluorobutane),
- (18) perfluoroethane (hexafluoroethane),
- (19) perfluorohexane (tetradecafluorohexane),
- (20) perfluoromethane (tetrafluoromethane),
- (21) perfluoropentane (dodecafluoropentane),
- (22) perfluoropropane (octafluoropropane),
- (23) HFC-23 (trifluoromethane),
- (24) HFC-32 (difluoromethane),
- (25) HFC-41 (fluoromethane),

- (26) HFC-43 (10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane),
- (27) HFC-125 (pentafluoroethane),
- (28) HFC-134 (1,1,2,2-tetrafluoroethane),
- (29) HFC-134a (1,1,1,2-tetrafluoroethane),
- (30) HFC-143 (1,1,2-trifluoroethane),
- (31) HFC-143a (1,1,1-trifluoroethane),
- (32) HFC-152 (1,2-difluoroethane),
- (33) HFC-152a (1,1-difluoroethane),
- (34) HFC-161 Fluoroethane),
- (35) HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane),
- (36) HFC-236cb (1,1,1,2,2,3-hexafluoropropane),
- (37) HFC-236ea (1,1,1,2,3,3-hexafluoropropane),
- (38) HFC-236fa (1,1,1,3,3,3-hexafluoropropane),
- (39) HFC-245ca (1,1,2,2,3-pentafluoropropane),
- (40) HFC-245fa (1,1,1,3,3-pentafluoropropane),
- (41) HFC-365mfc (1,1,1,3,3 pentafluorobutane).

(b) The owner or operator of a Title V facility shall report by June 30th of each year the actual emissions during the previous calendar year of:

- (1) Hazardous Air Pollutants (HAP) as listed in Section 112(b)(1) of the federal Clean Air Act with the exception of those pollutants delisted in 40 CFR Part 63 and 302,
- (2) Toxic Air Pollutants (TAP) as listed in 15A NCAC 02D .1104.

~~(b)(c)~~ The accuracy of the report required by Paragraph (a) and (b) of this Rule shall be certified by a responsible official of the facility as defined under 40 CFR 70.2.

~~(e)(d)~~ The owner or operator of a facility not included in Paragraph (a) of this Rule, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds shall report by June 30th of each year the actual emissions of nitrogen oxides and volatile organic compounds during the previous calendar year, if the facility is in:

- (1) Cabarrus County,
- (2) Davidson County,
- (3) Durham County,
- (4) Forsyth County,
- (5) Gaston County,
- (6) Guilford County,
- (7) Lincoln County,
- (8) Mecklenburg County,
- (9) Rowan County,
- (10) Union County,
- (11) Wake County,
- (12) Davidson Township and Coddle Creek Township in Iredell County,
- (13) Dutchville Township in Granville County, or
- (14) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River.

~~(d)(e)~~ The annual reporting requirement under Paragraph ~~(e)(d)~~ of this Rule shall begin with calendar year 2007 emissions for facilities in Cabarrus, Lincoln, Rowan, and Union counties and

Davidson Township and Coddle Creek Township in Iredell County.

~~(e)(f)~~ The report shall be in or on such form as may be established by the Director. The Director may require reporting for sources within a facility, for other facilities, or for other pollutants, parameters, or information, by permit condition or pursuant to 15A NCAC 02D .0202 (Registration of Air Pollution Sources).

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 143-215.65; 143-215.107; 143B-282; 150B-21.6.

SECTION .0700 - TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0701 APPLICABILITY

(a) With the exceptions in Rule .0702 of this Section, no person shall cause or allow any toxic air pollutant named in 15A NCAC 02D .1104 to be emitted from any facility into the atmosphere at a rate that exceeds the applicable rate(s) in Rule .0711 of this Section without having received a permit to emit toxic air pollutants as follows:

- (1) new facilities according to Rule .0704 of this Section;
- (2) existing facilities according to Rule .0705 of this Section;
- (3) modifications according to Rule .0706 of this Section.

~~(b) The Division shall assess risks from combustion sources using the latest risk assessment methodologies and information every five years starting March 1, 2014. Within one year after promulgation of MACT standards for the industrial boilers, commercial/institutional boilers, process heaters, stationary combustion turbines and stationary internal combustion engines source categories under Section 112 (d) of the Clean Air Act that are applicable to combustion sources as defined in Rule .0703 of this Section, the Division shall assess such MACT standards to determine whether additional measures are necessary with respect to toxic air pollutant emissions from combustion sources. Upon completion of this determination, the Commission shall proceed through normal rulemaking procedures, if necessary, to implement additional measures.~~

(c) Facilities required to comply with MACT standards under 15A NCAC 02D .1109, .1111, or .1112 or 40 CFR Part 63 shall be deemed in compliance with this Subchapter and 15A NCAC 02D .1100 unless the Division determines that modeled emissions result in one or more acceptable ambient levels in 15A NCAC 02D .1104 being exceeded. This review shall be made according to the procedures in 15A NCAC 02D .1106. Once a facility demonstrates compliance with the acceptable ambient levels in 15A NCAC 02D .1104, future demonstrations shall only be required on a five-year basis. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until the permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S. L. 1989, c. 168, s. 45.

15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
 - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
 - (B) does not affect compliance status; and
 - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;
- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to

- (14) agronomic practices acceptable to the North Carolina Department of Agriculture; asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;
- (15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);
- (16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;
- (17) laboratory activities:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;
 - (C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and
 - (D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;
- (18) combustion sources as defined in ~~15A NCAC 02Q .0703~~ 15A NCAC 02Q .0703 except new or modified combustion sources permitted on or after March 1, 2009; until 18 months after promulgation of the MACT or GACT standards for combustion sources. (Within 18 months following promulgation of the MACT or GACT standards for combustion sources, the Commission shall decide whether to keep or remove the combustion source exemption. If the Commission decides to remove the exemption, it shall initiate rulemaking procedures to remove this exemption.)

- (19) storage tanks used only to store:
- (A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;
 - (B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;
- (20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (21) portable solvent distillation systems that are exempted under 15A NCAC 02Q .0102(c)(1)(I).
- (22) processes:
- (A) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (B) electric motor bake-on ovens;
 - (C) burn-off ovens for paint-line hangers with afterburners;
 - (D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (E) blade wood planers planing only green wood;
 - (F) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
 - (G) perchloroethylene drycleaning processes with 12-month rolling total consumption of:
 - (i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;
 - (ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or
 - (iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;
- (23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712;
- (24) wastewater treatment systems at pulp and paper mills for hydrogen sulfide and methyl mercaptan only;
- (25) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
- (26) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled at least to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);
- (27) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; or
- (28) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992; unless:
- (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal, or
 - (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 02D .0927(i).
- (b) Emissions from the activities identified in Subparagraphs (a)(25) through (a)(28) of this Rule shall be included in determining compliance with the toxic air pollutant requirements in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through (a)(24) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section.
- (c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.
- (d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section, other than Section .1100, in Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities as defined in 15A NCAC 02Q .0103(20) or sources exempted under Rule .0102 of this Subchapter;
(2) has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or
(3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if:

- (1) The modification results in:
(A) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; or
(B) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section; or
(2) The Director finds that the modification of the facility will cause an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded. The Director shall provide the findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide an evaluation showing what the resultant emissions and impacts on ambient levels for air toxics from the modified facility will be.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
(2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. Notwithstanding

02Q .0702(a)(18) on and after March 1, 2009, an evaluation of a modification to a combustion source or of a new combustion source shall also include emissions from all combustion sources as defined in 02Q .0703. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded.

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S. L. 1989, C. 168, S. 45.

15A NCAC 02Q .0709 DEMONSTRATIONS

(a) Demonstrations. The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the premises (adjacent property boundary); or
(2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:
(A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or
(B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered under 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, or a perchloroethylene dry

cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325, or a combustion source as defined in Rule 02Q .0703 of this Section permitted before March 1, 2009, who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 would result in serious economic hardship. (In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.)

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraphs (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(c) Pollution Prevention Plan. The owner or operator of any facility using the provisions of Part (a)(2)(A) or Paragraph (b) of this Rule shall develop and implement a pollution prevention plan consisting of the following minimum elements:

- (1) statement of corporate and facility commitment to pollution prevention;
- (2) identification of current and past pollution prevention activities;
- (3) timeline and strategy for implementation;
- (4) description of ongoing and planned employee education efforts;
- (5) identification of internal pollution prevention goal selected by the facility and expressed in either qualitative or quantitative terms.

The facility shall submit along with the permit application the pollution prevention plan. The pollution prevention plan shall be maintained on site. A progress report on implementation of the plan shall be prepared by the facility annually and be made available to Division personnel for review upon request.

(d) Modeling Demonstration. If the owner or operator of a facility demonstrates by modeling that no toxic air pollutant emitted from the facility exceeds the acceptable ambient level values given in 15A NCAC 02D .1104 beyond the facility's premises, further modeling demonstration is not required with the permit application. However, the Commission may still require more stringent emission levels according to its analysis under 15A NCAC 02D .1107.

(e) Change in Acceptable Ambient Level. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104

is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until:

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded (If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level.); or
- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic evaluation showing that the new acceptable ambient level shall not be exceeded.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0305.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: December 16, 2008

Time: 1:00 p.m.

Location: Room 428, 4th floor, Centennial Campus Headquarters, 1751 Varsity Drive, Raleigh, NC

Reason for Proposed Action: Respond to petition from Brunswick to establish a no wake zone along the Big Davis Canal in the Town of Oak Island.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Joan Troy.

Comments may be submitted to: Joan Troy, 1717 Mail Service Center, Raleigh, NC 27699-1717, email joan.troy@ncwildlife.org

Comment period ends: December 16, 2008

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0305 BRUNSWICK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Lockwoods Folly River. An area on that portion of the Lockwood Folly River beginning 1500 feet north of the boat ramp at the end of State Road 1123 and extending downstream to a point 800 feet south of said boat ramp and the portion of Mill Creek beginning at its intersection with the Lockwood Folly River and extending upstream for 100 feet.
- (2) Calabash River. An area located on the Calabash River beginning 100 feet west of the Billy Cox Landing and extending 100 feet east of Captain Harry's Landing.
- (3) State Port Authority Small Boat Harbor. Beginning at the Intracoastal Waterway on the easterly side of the North Carolina State Port Authority Small Boat Harbor; thence runs along and with the easterly boundary of the said boat harbor basin and along the northerly boundary and westerly boundary thereof to a point at the intersection of the westerly boundary of said boat harbor with the highwater mark of the Intracoastal Waterway; runs thence in an easterly direction with the highwater mark of the Intracoastal Waterway to the place and point of beginning, and being the entire small boat harbor in Southport.

- (4) Shallotte River. The portion of the Shallotte River beginning at its intersection with the Intracoastal Waterway and extending from the northern boundary of the Intracoastal Waterway for a distance of 500 feet to the north, to be marked by appropriate markers.
- (5) Big Davis Creek. That part of Big Davis Creek within 100 yards of Sportsman Inn at Blue Water Point Marina near Long Beach.
- (6) Town of Ocean Isle Beach. Those waters in the canals, both natural and concrete, which are located on the south side of the Intracoastal Waterway in the Town of Ocean Isle Beach.
- (7) Town Creek. The 200 yard portion of Town Creek lying in Town Creek Colony as delineated by no wake zone markers.
- (8) Town of Oak Island. That part of Big Davis Canal within the Town of Oak Island starting with the entrance from the Intracoastal Waterway at the end of Yacht Drive SW upstream to the canal end at 40th Street, NE.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. Subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, the following agencies are designated suitable agencies for the placement and maintenance of markers implementing this Rule:

- (1) The Board of Aldermen of Varnamtown as to areas indicated in Paragraph (a), Subparagraph (1) of this Rule.
- (2) The Board of Commissioners of Brunswick County as to areas indicated in Paragraph (a), Subparagraphs (2) - ~~(7)~~(8) of this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rule cited as 25 NCAC 01D .0116 and amend the rule cited as 25 NCAC 01D .2701.

Proposed Effective Date: February 1, 2009

Public Hearing:

Date: November 19, 2008

Time: 10:00 a.m.

Location: Office of State Personnel, 3rd Floor, Administration Building, 116 West Jones Street, Raleigh, NC

Reason for Proposed Action:

25 NCAC 01D .0116 - The General assembly passed legislation that provides for funding to be used by the Department of Health and Human Services to pay sign-on bonuses to newly employed

registered nurses hired during the fiscal year to work in state operated facilities in the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. The proposed rules will cover any appropriations that are made for this purpose in the future.

25 NCAC 01D .2701 – The amendments to the Severance Salary Continuation Rules are proposed for clarification and to incorporate a provision in G.S. 143-27.2 that prohibits reemployment while receiving severance in any State agency except the University of North Carolina and the Community College System. Although the policy was changed to incorporate this provision, the rule was never changed.

Procedure by which a person can object to the agency on a proposed rule: A person may object to these proposed rules by one of the following methods: 1. A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to peggy.oliver@osp.nc.gov. 3. A telephone call to Peggy Oliver at (919)807-4832.

Comments may be submitted to: Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)807-4832, email peggy.oliver@osp.nc.gov.

Comment period ends: December 1, 2008

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 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01D - COMPENSATION

SECTION .0100 - ADMINISTRATION OF THE PAY PLAN

25 NCAC 01D .0116 SIGN-ON BONUS

When the Legislature appropriates funds to use for a sign-on bonus for a certain occupational group, the following provisions shall apply unless otherwise provided by statute:

- (1) A sign-on bonus is a lump sum payment that serves as a recruitment incentive to aid in the employment of individuals in critical positions that have labor market shortages which affect the business needs of the agency and which impair the delivery of essential services.
- (2) Labor market shortages are defined through significant vacancy rates, turnover rates, difficulty in recruitment and fluctuating market conditions. Agencies will track and provide data related to these factors for the specific occupation in the bonus program. Turnover and vacancy rates in an occupation that are five percent or higher as compared to agency-wide and statewide rates for all occupations are significant. Recruitment difficulty is defined by active recruitment of positions that required more than six months to obtain a qualified applicant pool. Fluctuating market conditions are identified as competitors begin to rapidly increase pay and offer new incentives such as bonuses.
- (3) The amount of the bonus shall be determined based on labor market data and available funds.
- (4) An employee shall receive one-half of the bonus in the first paycheck and will receive a second installment after successful completion of 36 consecutive months provided the employee retain eligibility as outlined in this Rule. Bonuses for part-time employees are pro-rated.
- (5) Eligibility for the initial sign-on bonus:
 - (a) A newly employed permanent full-time and permanent part-time employee who is employed to work at least 36 months is eligible for a sign-on bonus. An employee who works 30 to 40 hours per week is considered full-time for this purpose. An employee who works at least 20 hours but less than 30 hours per week is part-time.
 - (b) An employee who has worked in a State agency within the last twelve months is not eligible to receive a sign-on bonus and shall remain ineligible for twelve months from the separation date.
 - (c) An employee who has previously received a sign-on bonus under the agency's bonus program is not eligible for a sign-on bonus.
 - (d) A sign-on bonus shall not be paid when contract placement or

recruitment fees are paid by the agency in connection with the employment.

(6) Eligibility for the final sign-on bonus installment

- (a) An employee who remains employed in same agency and the occupational area for 36 consecutive months is eligible for the final installment of the sign-on bonus payment
- (b) An employee who is subsequently promoted to a classification in the same occupational area is eligible for the final installment after completion of 36 consecutive months.
- (c) An employee whose performance rating at any time is not at or above "good" or "meets" or who has documented disciplinary actions for misconduct or performance shall be ineligible for the final sign-on bonus installment.
- (d) An employee who receives a sign-on bonus who subsequently transfers to another agency before the completion of 36 consecutive months is not eligible for the final sign-on bonus installment.
- (e) An employee with less than 24 months of consecutive service who changes from a permanent full-time or permanent part-time 30-40 hour appointment to a permanent part-time 20-30 hour appointment is not eligible for the final sign-on bonus installment.

(7) Repayment of Sign-on Bonus

- (a) An employee who terminates employment with the agency, either voluntarily or involuntarily, before the completion of 36 months of consecutive service shall repay a prorated amount of the sign-on bonus based on months of service completed.
- (b) The repayment shall be based on the following formula:
 - (i) $\frac{\$ \text{ of Initial Sign-on Bonus Received}}{36 \text{ Months}} = \text{prorated Monthly Amount}$
 - (ii) $\text{Prorated Monthly amount} \times (36 \text{ Months} - \text{Months Worked}) = \text{Amount due}$
- (c) he amount due shall be deducted in full from the employee's final paycheck. If the amount deducted exceeds the final paycheck, the remaining balance shall be paid in

full to the agency within 60 days from the last date of employment.

(8) Credit for Consecutive Service

- (a) One month of credit toward the 36 months is granted for each month that the employee is in pay status for one-half or more of the scheduled workdays and holidays in the pay period.
- (b) Time on military leave or workers' compensation leave applies to consecutive service with the final installment being paid when the employees return to work.

(9) The agency shall:

- (a) Develop and submit a plan for administering the bonus to the Office of State Personnel that includes the following:
 - (i) Regional market data that identifies the practices of competitors for bonus programs and defines the agency's practice.
 - (ii) Guidelines for administration of the bonus program within the agency that defines eligibility, method of payment, and criteria for repayment.
- (b) Submit to the Office of State Personnel the base line data related to vacancy rates, turnover, recruitment issues, and market conditions for the occupation no later than 30 days from the approval of the agency plan.
- (c) Submit yearly reports to the Office of State Personnel that detail the vacancy rates, turnover, recruitment issues, and market conditions for the occupation.

(10) The Office of State Personnel shall:

- (a) Review and approve or disapprove agency plans, and
- (b) Monitor and audit agency adherence to their plan and State Personnel Commission requirements.
- (c) Analyze yearly data from the agency related to vacancy, turnover, recruitment and market to report the impact of the bonus program in the annual Compensation and Benefits Report to the NC General Assembly.

Authority G.S. 12-4; S.L. 2008-0107.

**SECTION .2700 - SEVERANCE SALARY
CONTINUATION**

25 NCAC 01D .2701 SEVERANCE SALARY CONTINUATION

G.S. 143-27.2 provides for severance salary continuation or a discontinued service retirement allowance when the Director of the Budget determines that the closing of a State institution or a reduction-in-force will accomplish economies in the State Budget, provided reemployment is not available. "Economies in the State Budget" means economies resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. The provisions outlined below provide for uniform application of severance salary continuation for eligible employees.

(1) Eligible Employees:

- (a) A full-time or part-time (20 hours or over) employee with a permanent appointment who does not obtain another permanent or time-limited permanent job in state— State government or any other permanent position that is funded in part or in whole by the State by the effective date of the reduction in force separation shall be eligible for severance salary continuation when separated. Also eligible are employees with trainee appointments who have completed six months of service, and employees who had a permanent appointment prior to entering a trainee appointment. ~~This shall not apply to employees whose reduction in force is not considered permanent; that is, employees who are reduced in force on a temporary or seasonal basis with the expectation that they will return to work within twelve months.~~
- (b) An employee with a time-limited permanent probationary, temporary or intermittent appointment is not eligible for severance salary continuation.
- (c) An employee separated from a time-limited permanent appointment is not eligible for severance salary continuation. If the appointment extends beyond three years, the appointment is made permanent and the employee becomes eligible for severance salary continuation.
- ~~(e)~~(d) An employee who is separated or scheduled to be separated due to reduction in force and who applies for retirement benefits and receiving retirement benefits from based on early retirement, service retirement, long term disability or a discontinued service retirement as provided by G.S. 143-27.2 shall not be eligible for

severance salary continuation. An employee who is eligible for early or service retirement may elect to delay ~~the employee's retirement and receive severance salary continuation for the prescribed period.~~ continuation.

- ~~(e)~~ An employee who is reemployed from any retired status with the State and who is subsequently terminated as a result of reduction in force shall be eligible for severance salary continuation.
- ~~(d)~~(f) An employee who is receiving workers' compensation or short-term disability payments is eligible for severance salary continuation.
- ~~(e)~~(g) An employee on leave with pay or leave without pay shall be separated on the effective date of the reduction-in-force, the same as other employees, and shall be eligible to receive severance salary continuation. ~~continuation—on that date.~~
- ~~(f)~~(h) An employee with a permanent appointment separated by reduction-in-force, may accept a temporary ~~state~~ State position ~~or a contractual services arrangement~~ and remain eligible to receive severance salary continuation in accordance with this Section.
- ~~(i)~~ An employee may continue to receive severance salary continuation if reemployed under a contractual arrangement in a State university or community college in accordance with G.S. 143-27.2. However, an employee receiving salary continuation may not be reemployed in any other State agency until 12 months have elapsed since the separation.
- ~~(g)~~(j) An employee with a permanent appointment scheduled to be separated through reduction-in-force may decline a lower level position with regard to salary grade (or salary grade equivalency), salary rate or appointment type and retain eligibility for severance salary continuation.

(2) Amount and Method of Payment:

- (a) Severance salary continuation shall be based on aggregate— total State state service ~~(except as noted in this Rule)~~ and supplemented by an age adjustment factor as follows:

PROPOSED RULES

(i) Amount of Salary Continuation:

Years of Service	Payment
Less than 1 year	2 weeks
1 but less than 5 years	1 month
5 but less than 10 years	2 months
10 but less than 20 years	3 months
20 or more years	4 months

(ii) Age Adjustment Factor:
An employee qualifies for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment shall be limited by the service payment and cannot exceed the total service payments.

(b) When calculating severance, the employee's annual salary at the time of separation shall be used except when the employee has received a promotion to a higher salary grade (or salary grade equivalency) and salary rate within the previous 12 months. If an employee has been promoted within the last 12 months, the salary used to calculate severance is the employee's salary rate prior to the promotion, including any across-the-board legislative salary increases since the promotion. The amount to be paid to part time employees shall be calculated using aggregate state service multiplied by the prorated monthly pay.

(c) Severance salary continuation shall be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, shall not be included in computing average final compensation for retirement purposes.

(d) Any period covered by severance salary continuation shall not be credited as a period of state service.

(e) An employee who is reemployed in any permanent position with the ~~state~~ State or any other permanent position that is paid in part or in whole by the State while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment. ~~The reemploying agency shall be responsible for determining if the former employee is receiving severance salary continuation payments.~~

(f) If an employee dies while receiving severance salary continuation, the balance of such payment shall be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment.

(g) Funds for severance salary continuation shall be provided as directed by the Office of State Budget and Management.

(3) For each employee who receives severance salary continuation, agencies shall show on the separate form, Form PD-105, the calculation and amount of such payment.

Authority G.S. 126-4(10); 143-27.2.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on August 21, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

WILDLIFE RESOURCES COMMISSION

Town of Emerald Isle 15A NCAC 10F .0376* 22:20 NCR

REVENUE, DEPARTMENT OF

Completing a Return 17 NCAC 06B .0104* n/a G.S. 150B-1(d)(4)
Extensions 17 NCAC 06B .0107* n/a G.S. 150B-1(d)(4)
Tax Credit for Qualified Business Investments 17 NCAC 06B .0612* n/a G.S. 150B-1(d)(4)
Penalties for Failure to File and Pay 17 NCAC 06B .3203* n/a G.S. 150B-1(d)(4)
Refunds 17 NCAC 06B .3406* n/a G.S. 150B-1(d)(4)
Taxable Income of Nonresidents and Part-Year Residents 17 NCAC 06B .3904* n/a G.S. 150B-1(d)(4)
New Withholding Agents 17 NCAC 06C .0201* n/a G.S. 150B-1(d)(4)
Annual Reports 17 NCAC 06C .0203* n/a G.S. 150B-1(d)(4)
Amounts Withheld are Held in Trust for Secretary of Revenue 17 NCAC 06C .0204* n/a G.S. 150B-1(d)(4)
Determining an Underpayment 17 NCAC 06D .0209* n/a G.S. 150B-1(d)(4)

SECRETARY OF STATE, DEPARTMENT OF

Designated Securities 18 NCAC 06 .1201* n/a G.S. 150B-21.5(b)(1)
Application for Registration of Athlete Agents 18 NCAC 06 .1901* n/a G.S. 150B-21.5(b)(1)
Expiration of Registration 18 NCAC 06 .1902* n/a G.S. 150B-21.5(b)(1)
Renewal of Registration 18 NCAC 06 .1903* n/a G.S. 150B-21.5(b)(1)
Approval of Agent Contracts 18 NCAC 06 .1904* n/a G.S. 150B-21.5(b)(1)
Notice to Client 18 NCAC 06 .1905* n/a G.S. 150B-21.5(b)(1)
Forms 18 NCAC 06 .1906* n/a G.S. 150B-21.5(b)(1)

DENTAL EXAMINERS, BOARD OF

Permitted Functions of Dental Assistant II 21 NCAC 16H .0203* 22:14 NCR
Reporting Continuing Education 21 NCAC 16I .0104* 22:14 NCR
Exemptions from and Credit for Continuing Education 21 NCAC 16R .0106* 22:14 NCR

MASSAGE AND BODYWORK THERAPY, BOARD OF

Definitions 21 NCAC 30 .0102* 22:17 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3.)

AGRICULTURE, BOARD OF

<u>Outdoor Facilities</u>	02	NCAC	52J .0203*	22:09 NCR
<u>Veterinary Care</u>	02	NCAC	52J .0210*	22:09 NCR
<u>Primary Enclosures Used in Transporting Dogs and Cats</u>	02	NCAC	52J .0302*	22:09 NCR

MEDICAL BOARD

<u>Required Information</u>	21	NCAC	32X .0101*	22:21 NCR
<u>Voluntary Information</u>	21	NCAC	32X .0102*	22:21 NCR
<u>Reporting of Medical Judgments, Awards, Payments and Sett...</u>	21	NCAC	32X .0103*	22:21 NCR
<u>Contents of the Report</u>	21	NCAC	32X .0104*	22:21 NCR
<u>Publication of Judgments, Awards, Payments or Settlements</u>	21	NCAC	32X .0105*	22:21 NCR
<u>Publishing Certain Misdemeanor Convictions</u>	21	NCAC	32X .0106*	22:21 NCR
<u>Noncompliance or Falsification of Information</u>	21	NCAC	32X .0107*	22:21 NCR

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 52J .0203 OUTDOOR FACILITIES

- (a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.
- (b) Dogs and cats kept outdoors shall be provided housing to allow them to remain dry and comfortable during inclement weather. Housing shall be constructed of material which is impervious to moisture and which can be disinfected. One house shall be available for each animal within each enclosure except for a mother and its unweaned offspring.
- (c) In addition to housing, the enclosure shall provide protection from excessive sun and inclement weather.
- (d) Animal owners shall be advised at the time of reservation and admission if the animal will be kept in outside facilities.
- (e) A suitable method of drainage shall be provided.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. Pending Legislative Review; January 1, 2005.

02 NCAC 52J .0210 VETERINARY CARE

- (a) A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established with the assistance of a licensed veterinarian by any person who is required to be licensed or registered under the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes.

(b) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem.

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. Pending Legislative Review; January 1, 2005.

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

- (a) Primary enclosures such as compartments or transport cages, cartons, or crates used by persons subject to the Animal Welfare Act to transport cats and dogs shall be constructed, ventilated

and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall be maintained between 50 degrees F and 85 degrees F. A shelter shall be deemed as being in compliance if its vehicles' animal containment units are equipped with operable air-conditioning, forced-air cooling and heating or other temperature control mechanisms.

(b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than four months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.

(c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to turn about freely, and to easily stand, sit, or lie down in a natural position. Primary enclosures used to transport dogs and cats shall be secured to the vehicle to prevent sliding or tipping of the enclosure during transit.

(d) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed so as to prevent animal excreta from entering lower enclosures.

(e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. Pending Legislative Review; January 1, 2005.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

15A NCAC 10F .0376 TOWN OF EMERALD ISLE

(a) Regulated Area. This Rule applies to waters within the territorial jurisdiction of the Town of Emerald Isle, as described in Paragraph (c) of this rule.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated area described in Paragraph (c) of this Rule.

(c) Affected Areas are:

- (1) the entire length of the Bogue Sound Drive Channel, which is .6 miles in length, located adjacent and roughly parallel to the shoreline in the vicinity of Kelly Lane and Bogue Sound Drive; and
- (2) the waters of the Coast Guard Channel at a point extending from the north entrance of the channel behind 419 Channel Drive to the west entrance of the canal near 116 Bogue Court.

(d) Placement and Maintenance of Markers. The Town of Emerald Isle is designated a suitable agency for placement and maintenance of the markers or signs implementing this Rule.

*History Note: Authority G.S. 71A-15; 72A-3;
Eff. September 1, 2008.*

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 06B .0104 COMPLETING A RETURN

(a) A taxpayer must use the North Carolina income tax form for the year in which his or her taxable year begins.

(b) A person who files an income tax return for an unmarried individual who died during the taxable year must enter the date of the individual's death and the individual's name on the return.

(c) On a return, a taxpayer must furnish his or her social security number and the name and social security number of his or her spouse and must indicate whether the return is filed jointly or separately.

(d) The same filing status claimed on the Federal income tax return must be claimed on the North Carolina income tax return. However, if the taxpayer filed the Federal return as married filing jointly and either the taxpayer or their spouse is a nonresident and had no North Carolina taxable income, for tax years beginning on or after January 1, 2006, the taxpayer may file the North Carolina tax return as either married filing jointly or married filing separately as explained in 17 NCAC 06B .3904.

(e) Each applicable line of the tax return must be completed and the entering of words or phrases, such as "unconstitutional" or "object - self incrimination" does not meet the requirement of completing each applicable line on the return.

(f) The tax must be computed accurately and, in the case of a delinquent return, the penalty and interest prescribed by statute must be added.

(g) If an individual has moved into or out of North Carolina during the tax year or is a nonresident with income from sources within North Carolina, the section on Form D-400, Computation of North Carolina Taxable Income for Part-Year Residents and Nonresidents, must be completed. Credit for tax paid to another state is not allowed to an individual moving into or out of this State unless the individual has income derived from and taxed by another state or country while a resident of this State.

(h) If a tax credit is claimed for tax paid to another state or country, there must be attached to the return a true copy of the return filed with the other state or country and a canceled check, receipt, or other proof of payment of tax to the other state or country.

(i) Every return must be signed by the taxpayer or his or her authorized agent, and joint returns must be signed by both spouses.

(j) Where tax has been withheld, the state copy of the Wage and Tax Statement must be attached to the return.

(k) Any additional information that will assist in the processing and auditing of a return must be indicated on the return or a worksheet or schedule attached to the return.

(l) Anyone who is paid to prepare a return must sign the return in the space provided.

History Note: Authority G.S. 28A-15-8; 105-151; 105-152; 105-154; 105-155; 105-163.5(e); 105-163.7; 105-163.10; 105-251; 105-252; 105-262;
Eff. February 1, 1976;
Amended Eff. September 1, 2008; February 1, 2005; August 1, 2002; July 1, 1999; August 1, 1998; November 1, 1994; June 1, 1993; October 1, 1991; June 1, 1990.

17 NCAC 06B .0107 EXTENSIONS

- (a) Application. -- If an income tax return cannot be filed by the due date, a taxpayer may apply for an automatic six-month extension of time to file the return. To receive the extension, an individual must file Form D-410, Application for Extension for Filing Individual Income Tax Return, by the original due date of the return, and a partnership, estate, or trust must file Form D-410P, Application for Extension for Filing Partnership, Estate, or Trust Tax Return, by the original due date of the return.
- (b) Late Payment Penalty. -- A 10 percent late payment penalty applies to the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty. If a taxpayer does not file the application for extension by the original due date of the return, the taxpayer is subject to both the five percent per month late filing penalty (five dollars (\$5.00) minimum; 25 percent maximum) and the 10 percent late payment penalty (five dollars (\$5.00) minimum) on the remaining balance due.
- (c) Individuals Outside U.S. -- An individual who is "Out of Country" on the date the return is due is granted an automatic four-month extension for filing the North Carolina income tax return by marking the Out of Country indicator on the Form D-400 when the State return is filed. "Out of Country" means the individual is a United States citizen or resident who is living outside the United States and Puerto Rico and either their main place of work is outside the United States and Puerto Rico or they are in the military service outside the United States and Puerto Rico. The time for payment of the tax is also extended; however, interest is due on any unpaid tax from the original due date of the return until the tax is paid. If an individual is unable to file the return within the automatic four-month extension period, an additional two-month extension may be obtained by following the provisions in Paragraph (a) of this Rule; however, Form D-410 must be filed by the automatic extension date of August 15.
- (d) Return. -- A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

History Note: Authority G.S. 105-155; 105-157; 105-160.6; 105-160.7; 105-236(a)(3); 105-236(a)(4); 105-262; 105-263;
Eff. February 1, 1976;
Amended Eff. September 1, 2008; May 1, 2006; August 1, 2002; August 1, 1998; November 1, 1994; May 1, 1994; June 1, 1993; October 1, 1992.

17 NCAC 06B .0612 TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS

History Note: Authority G.S. 105-131.8(b); 105-163.010; 105-163.011; 105-163.012; 105-163.013; 105-163.14; 105-262;
Eff. September 1, 1992;
Amended Eff. July 1, 1996; May 1, 1994;
Repealed Eff. September 1, 2008.

17 NCAC 06B .3203 PENALTIES FOR FAILURE TO FILE AND PAY

- (a) General. -- Under the provisions of G.S. 105-236, both the failure to file and failure to pay penalties, if due, can be applied for the same month. If a return is filed late without payment of the tax shown due, both the failure to file and failure to pay penalties will be assessed at the same time.
- (b) Extension. -- If the return is filed under an extension, the failure to file penalty applies from the extended filing date rather than from the original due date. The failure to pay penalty applies from the original due date of the return. The failure to pay penalty is assessed when the tax paid by the original due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due must be paid with the income tax return on or before the expiration of the extension period to avoid the failure to pay penalty. Interest is due from the original due date to the date paid.
- (c) Amended Return. -- The failure to pay penalty does not apply to amounts paid with an amended return if the amount shown due on the return is paid when the return is filed.
- (d) Assessment. -- Effective January 1, 2008, the failure to pay penalty applies to a proposed assessment of additional tax due that is not paid within 45 days of the assessment.

History Note: Authority G.S. 105-152(e); 105-155; 105-157; 105-160.6; 105-160.7; 105-236; 105-262; 105-263;
Eff. April 1, 1978;
Amended Eff. September 1, 2008; July 1, 1999; June 1, 1993; February 1, 1991; June 1, 1990.

17 NCAC 06B .3406 REFUNDS

If the taxpayer has been granted an extension of time for filing the return, the three year period referred to in G.S. 105-241.6 is three years from the extended date.

History Note: Authority G.S. 105-262; 105-263; 105-241.6;
Eff. February 1, 1976;
Amended Eff. September 1, 2008; May 1, 1994; October 1, 1992; October 1, 1991; June 1, 1990.

17 NCAC 06B .3904 TAXABLE INCOME OF NONRESIDENTS AND PART-YEAR RESIDENTS

- (a) Nonresidents and part-year residents are required to prorate their federal taxable income to determine the portion that is subject to North Carolina tax.
- (b) For tax years beginning on or after January 1, 2006, an individual who files a joint federal income tax return with his or her spouse and is not required to file a joint North Carolina income tax return because the spouse is a nonresident and had no

North Carolina taxable income may file the State return as either married filing jointly or married filing separately. However, once the individual files a joint return, they cannot choose to file as married filing separately for that tax year after the due date of the return. An individual who files a joint federal income tax return and chooses to file a separate State return must calculate the individual's federal taxable income on a federal income tax form as a married person filing a separate federal income tax return and attach it to the individual's North Carolina return to show how the separate federal taxable income was determined. The individual filing the separate federal return must report only the individual's income, exemptions, and deductions. In lieu of making the calculation on a federal form, an individual may submit a schedule showing the computation of the individual's separate federal taxable income. An individual who submits a schedule must attach a copy of pages one and two of the individual's joint federal return if the federal return reflects an address outside North Carolina.

(c) An individual who has income from sources within another state or country while a resident of North Carolina and is subject to tax on the income by the other state or country may be eligible to claim a tax credit under G.S. 105-151.

(d) A nonresident is not entitled to the tax credit for tax paid another state or country.

History Note: Authority G.S. 105-134.5; 105-151; 105-152; 105-262;
Eff. June 1, 1990;
Amended Eff. September 1, 2008; July 1, 1999; August 1, 1998; June 1, 1993.

17 NCAC 06C .0201 NEW WITHHOLDING AGENTS

North Carolina does not use a deposit system for income tax withheld. Each new withholding agent who is required to withhold North Carolina income tax must complete and file with the Department an application for a withholding identification number, Form NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery, Equipment, and Manufacturing Fuel Tax, which can be obtained from any office of the Department or on the Department's website at www.dorncc.com. A withholding identification number will be assigned. The number must be used on all reports and correspondence concerning withholding.

History Note: Authority G.S. 105-262;
Eff. February 1, 1976;
Amended Eff. September 1, 2008; April 1, 2001; August 1, 1998; June 1, 1993; June 1, 1990.

17 NCAC 06C .0203 ANNUAL REPORTS

(a) At the end of each calendar year employers shall furnish wage and tax statements, Form W-2 to employees and Form NC-1099PS to contractors from whom tax was withheld. Two copies must be furnished to the employee or contractor and one copy must be furnished to the Department. Pension payers must report pension income and State tax withheld on federal Form 1099-R. The pension payer must give the Department a copy of a 1099-R given to a recipient of a pension payment if the 1099-R shows State tax withheld.

(b) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported. Form NC-1099 reports are not required to be filed if the payments have been reported to the Internal Revenue Service under the provisions of Section 6041 of the Code, the payments have otherwise been reported to the Department, or no North Carolina income tax was withheld from the payments. Notwithstanding the above, any person required to file Form NC-1099 NRS under the provisions of 17 NCAC 06B .3804(c) must do so regardless of any requirement to report the sale to the Internal Revenue Service.

History Note: Authority G.S. 105-154; 105-163.2; 105-163.2A; 105-163.7; 105-262;
Eff. February 1, 1976;
Amended Eff. September 1, 2008; February 1, 2005; April 1, 2001; August 1, 1998; June 1, 1993; February 3, 1992; October 1, 1991; February 1, 1991.

17 NCAC 06C .0204 AMOUNTS WITHHELD ARE HELD IN TRUST FOR SECRETARY OF REVENUE

(a) A withholding agent who fails to withhold or pay the amount required to be withheld is personally and individually liable for the tax. If a withholding agent has failed to withhold or to pay over income tax withheld or required to have been withheld, the unpaid tax may be asserted against the responsible persons of the withholding agent when the taxes cannot be immediately collected from the withholding agent. More than one person may be liable as a responsible person; however, the amount of the income tax withheld or required to have been withheld will be collected only once, whether from the withholding agent or one or more responsible persons. The term "responsible person" includes the president, treasurer, or chief financial officer of a corporation, the manager of a limited liability company or partnership, an officer of a corporation, a member of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay the tax, or a partner who is liable for the debts and obligations of a partnership under G.S. 59-34 or G.S. 59-403. Responsibility is a matter of status, duty, and authority, not knowledge. It is not necessary that the failure to collect and pay the withholding amounts was willful; it is only necessary that the responsible person failed to pay the tax withheld or required to have been withheld to the Secretary of Revenue regardless of the person's reasons or knowledge of the failure.

(b) When the Department of Revenue determines that collection of the tax from an employer is in jeopardy, the employer may be required to report and pay the tax at any time after payment of the wages.

History Note: Authority G.S. 105-163.8; 105-241.23; 105-242.2; 105-262;
Eff. June 1, 1990;
Amended Eff. September 1, 2008; April 1, 2001; June 1, 1993; February 1, 1991.

17 NCAC 06D .0209 DETERMINING AN UNDERPAYMENT

(a) No interest attributable to the underpayment of estimated tax will be due if the estimated tax payments were made on time and the payment for each period was at least as much as either the required installment or the annualized income installment for the period. Form D-422, Underpayment of Estimated Income Tax, shall be used to determine any underpayment.

(b) The required installment for any payment period is the lesser of 22.5 percent of the tax shown on the current-year return or 25 percent of the tax shown on the prior-year return (if the prior-year return covered all 12 months of the year). However, if the annualized income installment for any period is less than the required installment for the same period and the annualized income installment is used in determining the underpayment, the difference between the annualized income installment and the required installment shall be added to the required installment for the next period. If the annualized income installment for the next payment period is used, the difference between the annualized income installment for that period and the required installment (as increased) for that period shall be added to the required income installment for the following payment period.

(c) There will be no underpayment for any payment period in which the estimated tax payments, reduced by any amounts applied to underpayments in earlier periods, were paid by the due date for the period and were at least as much as the annualized income installment for the period.

History Note: Authority G.S. 105-163.15; 105-262; Eff. June 1, 1990; Amended Eff. September 1, 2008; June 1, 1993; October 1, 1991.

TITLE 18 – SECRETARY OF STATE

18 NCAC 06 .1201 DESIGNATED SECURITIES EXCHANGES

History Note: Authority G.S. 78A-16(8); Eff. April 1, 1981; Amended Eff. May 1, 1995; Repealed Eff. September 1, 2008.

18 NCAC 06 .1901 APPLICATION FOR REGISTRATION OF ATHLETE AGENTS

18 NCAC 06 .1902 EXPIRATION OF REGISTRATION

18 NCAC 06 .1903 RENEWAL OF REGISTRATION

18 NCAC 06 .1904 APPROVAL OF AGENT

CONTRACTS

18 NCAC 06 .1905 NOTICE TO CLIENT

18 NCAC 06 .1906 FORMS

History Note: Authority G.S. 78C-46(b); 78C-72; 78C-81; Eff. March 1, 1991; Amended Eff. September 1, 1995;

Repealed Eff. September 1, 2008.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

(a) A Dental Assistant II may perform any and all acts or procedures which may be performed by a Dental Assistant I. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions:

- (1) Take impressions for study models and opposing casts which will not be used for construction of dental appliances, but which may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided a dentist has examined the patient and prescribed the procedure;
- (3) Insert matrix bands and wedges;
- (4) Place cavity bases and liners;
- (5) Place and/or remove rubber dams;
- (6) Cement temporary restorations using temporary cement;
- (7) Apply acid etch materials/rinses;
- (8) Apply bonding agents;
- (9) Remove periodontal dressings;
- (10) Remove sutures;
- (11) Place gingival retraction cord;
- (12) Remove excess cement;
- (13) Flush, dry and temporarily close root canals;
- (14) Place and remove temporary restorations;
- (15) Place and tie in or untie and remove orthodontic arch wires;
- (16) Insert interdental spacers;
- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform extra-oral adjustments which affect function, fit or occlusion of any temporary restoration or appliance;
- (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist;
- (21) Polish the clinical crown using only;
 - (A) a hand-held brush and appropriate polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm)

with attached rubber cup or bristle brush, and appropriate polishing agents.

(b) A Dental Assistant II must complete a course in coronal polishing consisting of at least seven hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course must be offered by a community college. A polishing procedure shall in no way be represented to the patient as a prophylaxis and no specific charge shall be made for such unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

History Note: Authority G.S. 90-29(c)(9); 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. September 1, 2008; August 1, 2000; October 1, 1996; January 1, 1994; May 1, 1989; October 1, 1985; March 1, 1985.

21 NCAC 16I .0104 REPORTING CONTINUING EDUCATION

(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and certified by the hygienist. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent.

(c) Dental hygienists shall receive four hours credit per year for continuing education when engaged in the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) service on a full-time basis with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries.

Verification of credit hours shall be maintained in the manner specified in this Rule.

(d) Evidence of service or affiliation with an agency as specified in Paragraph (c) of this Rule shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

(e) Hygienists who work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of

this Rule shall receive two hours credit per year for continuing education.

History Note: Authority G.S. 90-225.1; Eff. May 1, 1994; Amended Eff. September 1, 2008; August 1, 2002; April 1, 2001.

21 NCAC 16R .0106 EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi-retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its affect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses in accordance with Rule .0103 of this Section when reclassifying the licensee. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test prior to allowing the licensee to resume practice when there is indication of inability to practice dentistry.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) service on a full-time basis with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in Rule .0105 of this Section.

(d) Dentists who work at least 20 hours per week in an institution or entity described in Subparagraph (c)(1) or (2) of this Rule shall receive five hours credit per year for continuing education. .

History Note: Authority G.S. 90-31.1; 90-38; Eff. May 1, 1994; Amended Eff. September 1, 2008; April 1, 2003; April 1, 2001; August 1, 1998.

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0102 DEFINITIONS

In addition to the definitions set forth in G.S. 90-622(1) through (5), the following definitions apply:

- (1) Classroom hours of supervised instruction. -- Student learning activities in a training program that is conducted in the physical presence of an instructor who meets the qualifications of Rule .0612.
(2) Generally accepted psychometric principles and standards. -- Standards for Educational and Psychological Testing (1999, American Psychological Association, American Educational Research Association, National Council on Measurement in Education), and Principles of Fairness: An Examining Guide for Credentialing Boards (Revised 2002, Council on Licensure, Enforcement, and Regulation, National Organization for Competency Assurance) which are hereby incorporated by reference, including subsequent amendments and editions. Copies of the standards may be obtained from The American Psychological Association at 750 First Street, NE, Washington, DC 20002-4242 or online at http://www.apa.org/science/standards.html.
(3) Gross negligence. -- The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.
(4) Incompetency. -- Conduct that evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of massage and bodywork therapy.
(5) Licensee. -- A person who holds a valid license issued by the Board to engage in the practice of massage and bodywork therapy.
(6) Malpractice. -- Conduct in variance with the Standards of Practice set forth in Section .0500 that results in harm to a client or that endangers the health or safety of a client.
(7) Place of business. -- The primary street location where the licensee provides massage and bodywork therapy. If the licensee provides massage and bodywork therapy only at the location of clients, then it shall be the residence street address of the licensee.
(8) Practice Act. -- Article 36, Chapter 90 of the North Carolina General Statutes: The North Carolina Massage and Bodywork Therapy Practice Act.
(9) Reciprocity. -- Pursuant to G.S. 90-630, a provision which shall apply to practitioners of massage and bodywork therapy qualified pursuant to Rule .0304 who reside outside the State.

- (10) Therapeutic, educational, or relaxation purposes. -- Pursuant to G.S. 90-622(3), that which is intended to positively affect the health and well-being of the client, and that does not include sexual activity, as defined in Rule .0508.

History Note: Authority G.S. 90-622; 90-626(9); Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. September 1, 2008; September 2, 2005.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32X .0101 REQUIRED INFORMATION

- (a) All physicians and physician assistants licensed by the Board or applying for licensure by the Board shall provide the information required by G.S. 90-5.2(a) on an application for licensure or annual renewal. Additionally, all physicians and physician assistants shall provide the Board with notice of any change in the information within 60 days.
(b) In addition to the information required by G.S. 90-5.2, a physician or physician assistant shall inform the Board about any misdemeanor convictions other than minor traffic offenses. "Minor traffic offenses" shall not include driving while intoxicated, driving under the influence, careless or reckless driving, or any other offense involving serious injury or death. The report must include the nature of the conviction, the jurisdiction in which the conviction occurred, and the punishment imposed. A person shall be considered convicted for purposes of this rule if they pled guilty, were found guilty by a court of competent jurisdiction, or entered a plea of nolo contendere.

History Note: Authority G.S. 90-5.2; 90-14.3; Eff. Pending Legislative Review.

21 NCAC 32X .0102 VOLUNTARY INFORMATION

Physicians and physician assistants may provide additional information such as hours of continuing education earned, subspecialties obtained, academic appointments, volunteer work in indigent clinics, and honors or awards received.

History Note: Authority G.S. 90-5.2; 90-14.3; Eff. Pending Legislative Review.

21 NCAC 32X .0103 REPORTING OF MEDICAL JUDGMENTS, AWARDS, PAYMENTS AND SETTLEMENTS

- (a) All physicians and physician assistants licensed by the Board or applying for licensure by the Board shall report all medical malpractice judgments, awards, payments and settlements greater than twenty-five thousand dollars (\$25,000) occurring on or after October 1, 2007, affecting or involving the physician or physician assistant on an application for licensure and annual renewal. Additionally, all physicians and physician assistant licensed by the Board shall report all medical

malpractice judgments, awards, payments and settlements greater than twenty-five thousand dollars (\$25,000) occurring on or after October 1, 2007, affecting or involving the physician or physician assistant within 60 days of the judgment, award, payment or settlement. If a physician or physician assistant is unsure whether a medical malpractice judgment, award, payment, or settlement affects or involves him or her, he/she shall report that information, and the Board shall determine whether the information shall be published.

(b) A settlement shall include a lump sum payment or the first payment of multiple payments (whichever comes first), a payment made from personal funds, or payment by a third party on behalf of a physician or physician assistant.

*History Note: Authority G.S. 90-5.2; 90-14.3;
Eff. Pending Legislative Review.*

21 NCAC 32X .0104 CONTENTS OF THE REPORT

A physician or physician assistant shall report the following information about a judgment, award, payment or settlement:

- (1) The date of judgment, award, payment or settlement;
- (2) The specialty in which the physician or physician assistant was practicing at the time the incident occurred that resulted in the judgment, award, payment or settlement;
- (3) The city, state, and country in which the judgment, award, payment or settlement occurred; and
- (4) The date of the occurrence of the events leading to the judgment, award, payment or settlement.

*History Note: Authority G.S. 90-5.2; 90-14.3;
Eff. Pending Legislative Review.*

21 NCAC 32X .0105 PUBLICATION OF JUDGMENTS, AWARDS, PAYMENTS OR SETTLEMENTS

(a) "Publish" means posting on the Board's Web site or other publications.

(b) For each physician or physician assistant, the Board shall publish:

- (1) all judgments, awards, payments or settlements greater than twenty-five thousand dollars (\$25,000) within the past seven years. However, the Board shall not publish any judgment, award, payment or settlement prior to October 1, 2007, the effective date of G.S. 90-5.2;

(2) the date of the incident that led to the judgment, award, payment or settlement and the date of the judgment, award, payment or settlement; and

(3) whether public disciplinary action was taken based on the Board's review of the care that led to the judgment, award, payment, or settlement.

(c) The Board shall not release or publish the individually identifiable numeric values of the reported judgment, award, payment or settlement or the identity of the patient associated with the judgment, award, payment or settlement.

(d) For each malpractice judgment, award, payment or settlement that is published, the physician or physician assistant may provide a statement explaining the circumstances that led to the judgment, award, payment or settlement, and whether the case is under appeal. The statement must conform to the ethics of the medical profession. The physician or physician assistant shall not publish identifiable numeric values of reported judgments, awards, payments or settlements. The physician or physician assistant shall not disclose the patient's identity, including information relating to dates and places of treatment or any other information that would tend to identify the patient. The Board may edit such statements to ensure conformity with this rule.

*History Note: Authority G.S. 90-5.2; 90-14.3;
Eff. Pending Legislative Review.*

21 NCAC 32X .0106 PUBLISHING CERTAIN MISDEMEANOR CONVICTIONS

The Board shall publish misdemeanor convictions which involve offenses against a person, offenses of moral turpitude, offenses involving the use of drugs or alcohol, and violations of public health and safety codes. Such misdemeanor convictions shall be published for a period of 10 years from the date of conviction.

*History Note: Authority G.S. 90-5.2; 90-14.3;
Eff. Pending Legislative Review.*

21 NCAC 32X .0107 NONCOMPLIANCE OR FALSIFICATION OF INFORMATION

Failure to provide the information as required by this subchapter or knowingly providing false information to the Board shall constitute unprofessional conduct.

*History Note: Authority G.S. 90-5.2; 90-14.3;
Eff. Pending Legislative Review.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday August 21, 2008 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

October 16, 2008 November 20, 2008
December 18, 2008 January 15, 2009

AGENDA

RULES REVIEW COMMISSION
Thursday, October 16, 2008, 10:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Board of Agriculture – 02 NCAC 52J .0602 (Bryan)
 - B. Environmental Management Commission – 15A NCAC 02B .0262-.0272 (DeLuca)
 - C. Board of Nursing – 21 NCAC 36 .0318 (DeLuca)
 - D. NC Building Code – 2006 IPC with NC Amendments – IPC 302.1 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between August 21, 2008 and September 22, 2008 (attached)
- V. Review of Temporary Rules
- VI. Commission Business
 - Next meeting: November 20, 2008

Commission Review

Log of Permanent Rule Filings
August 21, 2008 through September 22, 2008

AGRICULTURE, BOARD OF

The rules in Chapter 38 are from the standards division and include purpose and definitions (.0100); approval of weighing and measuring devices (.0200); package and labeling requirements (.0300); method of sale and commodities (.0400); leaf tobacco (.0500); sale of petroleum products (.0600); standards for storage, handling and installation of LP gas (.0700); and liquid fertilizers (.0800).

Retail Motor Fuel Dispensers/Half-Pricing
Amend/*

02 NCAC 38 .0601

AGRICULTURE, COMMISSIONER OF

The rules in Chapter 52 are from the Commissioner of Agriculture and cover the Veterinary Division of the department.

The rules in subchapter 52K concern the permitting and operation of animal exhibitions where the animals are displayed for the purpose of physical contact with humans. They include the rules purpose and scope (.0100); definitions (.0200); signage (.0300); fencing and other operational requirements (.0400); food, drink, and hand-washing requirements (.0500); animal keeping and exhibition requirements (.0600); and permitting and record-keeping (.0700).

<u>Surfaces; Exhibit Areas</u> Amend/*	02	NCAC	52K	.0406
<u>Hand Washing Stations</u> Amend/*	02	NCAC	52K	.0501
<u>Health Certificate; Vaccinations</u> Amend/*	02	NCAC	52K	.0601

DHHS/HEALTH SERVICE REGULATION, DIVISION OF

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); criteria and standards for gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and criteria and standards for hospice inpatient facilities and hospice residential care facilities (.4000).

<u>Performance Standards</u> Amend/*	10A	NCAC	14C	.1903
<u>Definitions</u> Amend/*	10A	NCAC	14C	.2101
<u>Information Required of Applicant</u> Amend/*	10A	NCAC	14C	.2102
<u>Performance Standards</u> Amend/*	10A	NCAC	14C	.2103
<u>Facility</u> Amend/*	10A	NCAC	14C	.2106
<u>Definitions</u> Amend/*	10A	NCAC	14C	.2701
<u>Information Required of Applicant</u> Amend/*	10A	NCAC	14C	.2702
<u>Performance Standards</u> Amend/*	10A	NCAC	14C	.2703
<u>Information Required of Applicant</u> Amend/*	10A	NCAC	14C	.3702

<u>Information Required of Applicant</u>	10A	NCAC	14C	.4002
Amend/*				
<u>Performance Standards</u>	10A	NCAC	14C	.4003
Amend/*				
<u>Facility</u>	10A	NCAC	14C	.4006
Amend/*				

HHS - MENTAL HEALTH, DIVISION OF

The rules in Chapter 26 concern mental health.

The rules in Subchapter 26C concern other general mental health rules including designation of facilities for the custody and treatment of involuntary clients (.0100); research (.0200); death reporting (.0300); miscellaneous (.0400); summary suspension and revocation (.0500); and removal of local management entity functions (.0600).

<u>Scope</u>	10A	NCAC	26C	.0101
Amend/*				
<u>Application</u>	10A	NCAC	26C	.0102
Amend/*				
<u>Review Process</u>	10A	NCAC	26C	.0103
Amend/*				
<u>Designation</u>	10A	NCAC	26C	.0104
Amend/*				
<u>Appeal</u>	10A	NCAC	26C	.0105
Amend/*				

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups

(.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

<u>Scope</u>	10A	NCAC	27G	.0601
Amend/*				
<u>Definitions</u>	10A	NCAC	27G	.0602
Amend/*				
<u>Incident Response Requirements for Categories A and B Pro...</u>	10A	NCAC	27G	.0603
Amend/*				
<u>Incident Reporting Requirements for Categories A and B Pr...</u>	10A	NCAC	27G	.0604
Amend/*				
<u>Local Management Entity Management of Incidents</u>	10A	NCAC	27G	.0605
Amend/*				
<u>Referral of Complaints to Local Management Entities Perta...</u>	10A	NCAC	27G	.0606
Amend/*				
<u>Complaints Pertaining to Category A or Category B Provide...</u>	10A	NCAC	27G	.0607
Repeal/*				
<u>Local Monitoring</u>	10A	NCAC	27G	.0608
Amend/*				
<u>Local Management Entity Reporting Requirements</u>	10A	NCAC	27G	.0609
Amend/*				
<u>Requirements Concerning the Need for Protective Services</u>	10A	NCAC	27G	.0610
Amend/*				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

<u>Vaccine for Providers Other than Local Health Departments</u>	10A	NCAC	41A	.0502
Amend/*				

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Open Seasons</u>	15A	NCAC	10B	.0302
Amend/*				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

<u>Grading</u>	15A	NCAC	18A	.2606
Amend/*				
<u>Grading</u>	15A	NCAC	18A	.3606
Amend/*				

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

The rules in Subchapter 18D concern water treatment facility operators including general policies (.0100); qualification of applicants and classification of facilities (.0200); applications and fees (.0300); issuance of certificate (.0400); rule-making procedures (.0500); contested cases (.0600) and operation and management (.0700).

<u>Expiration and Revocation of Certificate</u>	15A	NCAC	18D	.0307
Adopt/*				
<u>Professional Growth Hours</u>	15A	NCAC	18D	.0308
Adopt/*				

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); and temporary volunteer dental license (.0800).

<u>Reexamination</u>	21	NCAC	16B	.0310
Adopt/*				

The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

<u>Continuing Education Required</u>	21	NCAC	16I	.0102
Amend/*				
<u>Approved Courses and Sponsors</u>	21	NCAC	16I	.0103
Amend/*				
<u>Reporting Continuing Education</u>	21	NCAC	16I	.0104
Amend/*				

The rules in Subchapter 16R concern continuing education requirements of dentists.

<u>Continuing Education Required</u>	21	NCAC	16R	.0103
Amend/*				
<u>Approved Courses and Sponsors</u>	21	NCAC	16R	.0104

Amend/*

Variances and Exemptions from and Credit for Continuing E... 21 NCAC 16R .0106
Amend/*

The rules in Subchapter 16T concern patient records.

Transfer of Records Upon Request 21 NCAC 16T .0102
Amend/*

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern the Board of Massage and Bodywork Therapy and include organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

Student Compensation Prohibited 21 NCAC 30 .0626
Amend/*

Continuing Education Requirements 21 NCAC 30 .0701
Amend/*

MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32M concern approval of nurse practitioners (.0100).

Nurse Practitioner Registration 21 NCAC 32M .0103
Amend/*

Process for Approval to Practice 21 NCAC 32M .0104
Amend/*

Annual Renewal 21 NCAC 32M .0106
Amend/*

Prescribing Authority 21 NCAC 32M .0109
Amend/*

Fees 21 NCAC 32M .0115
Amend/*

NURSING, BOARD OF

The rules in Chapter 36 are from the Board of Nursing and include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

Selection and Qualifications of Nurse Members 21 NCAC 36 .0109
Amend/*

Determination of Vacancy 21 NCAC 36 .0112
Amend/*

Definitions 21 NCAC 36 .0120
Amend/*

Regular Renewal 21 NCAC 36 .0201
Amend/*

Inactive and Retired Status 21 NCAC 36 .0202
Amend/*

<u>Reinstatement of Lapsed License</u> Amend/*	21	NCAC	36	.0203
<u>Continuing Competence</u> Amend/*	21	NCAC	36	.0232
<u>Coordination with Division of Health Service Regulation (...)</u> Amend/*	21	NCAC	36	.0402
<u>Listing and Renewal</u> Amend/*	21	NCAC	36	.0404
<u>Approval of Nurse Aide Education Programs</u> Amend/*	21	NCAC	36	.0405
<u>Authority and Definitions</u> Amend/*	21	NCAC	36	.0501
<u>Certificate of Registration</u> Amend/*	21	NCAC	36	.0504
<u>General and Administrative Provisions</u> Amend/*	21	NCAC	36	.0505
<u>Forms</u> Amend/*	21	NCAC	36	.0506
<u>Prerequisites for Organization</u> Amend/*	21	NCAC	36	.0602
<u>Certificate of Registration</u> Amend/*	21	NCAC	36	.0603
<u>Fees</u> Amend/*	21	NCAC	36	.0605
<u>Nurse Practitioner Registration</u> Amend/*	21	NCAC	36	.0803
<u>Process for Approval to Practice</u> Amend/*	21	NCAC	36	.0804
<u>Annual Renewal</u> Amend/*	21	NCAC	36	.0806
<u>Prescribing Authority</u> Amend/*	21	NCAC	36	.0809
<u>Fees</u> Amend/*	21	NCAC	36	.0813

PHARMACY, BOARD OF

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Ballots: Casting and Counting</u> Amend/*	21	NCAC	46	.2107
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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

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
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Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission	08 ABC 0371	Lassiter	06/13/08	
Bhavesh Corporation, T/A K&B Foomart v. ABC Commission	08 ABC 0508	Overby	05/19/08	
<u>CRIME VICTIMS COMPENSATION</u>				
Patricia Ginyard v. Crime Victim Compensation Commission	06 CPS 1720	Gray	05/27/08	
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 0633	Lassiter	07/11/08	
Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 1350	Lassiter	07/11/08	
Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services	07 DHR 0124	Elkins	08/07/08	
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Alterra Clare Bridge of Asheville v. DHHS, DFS, Adult Care Licensure Section	07 DHR 0914	Gray	06/06/08	
Shirley Brooks Dial v. Health Care Personnel Registry	07 DHR 0931	Webster	02/27/08	
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel and Fesseha Zeru	07 DHR 1044	Webster	04/25/08	
Midtown Food Mart III, Chenet Haileslassi and Fesseha Zeru v. DHHS	07 DHR 1045	Webster	04/28/08	
Carolyn E. Reed v. DHHS, Division of Social Services Program Integrity	07 DHR 1214	Webster	07/21/08	

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Cornell Jones v. DHHS, Division of Health Services Regulation	07 DHR 1399	Joseph	04/22/08
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 1440	Joseph	05/07/08
Rufus Patrick Devers v. DHHS, Division of Health Service Regulation	07 DHR 1442	Joseph	05/29/08
Health Care Personnel Registry			
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1473	Joseph	04/08/08
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service Regulation, Licensure and Certification Section and DHHS, Division of Health Service Regulation, CON Section	07 DHR 1617	Elkins	05/21/08
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Ellen Brown v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	07 DHR 1651	Elkins	05/21/08
Joann Lennon v. Value Options Medicaid	07 DHR 1770	Webster	05/16/08
Angeline Currie v. DHHS	07 DHR 1986	Elkins	06/04/08
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Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 2020	Joseph	05/07/08
Lashauna Reid v. CCMHC (PFCS-Service Provider)	07 DHR 2039	Elkins	08/05/08
Family & Youth Services, Inc. Angela Ford, President v. DHHS, Division of Medical Assistance Provider Services	07 DHR 2057	Webster	05/16/08
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Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option	07 DHR 2087	Elkins	05/23/08
Gary Carlton, Sr., v. DHHS	07 DHR 2099	Brooks	07/10/08
Alexis Ford/Linda M McLaughlin v. DHHS	07 DHR 2111	Elkins	06/04/08
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Pearlene Johnson Ivery v. DMA, Third Party Recovery (Medicaid)	08 DHR 0286	Brooks	07/07/08
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Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford Center	08 DHR 0403	Joseph	06/09/08
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08
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Linda F. Ellison v. NC Department of Health and Human Services and or EDS	08 DHR 1035	Joseph	07/09/08
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Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
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Michael Gerald Copeland v. Private Protective Services Board	07 DOJ 2286	Gray	07/17/08
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Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	08 DOJ 1078	Lassiter	07/14/08
Cynthia Kay Saintsing v. Criminal Justice Education and Training Standards Commission	08 DOJ 1079	Lassiter	07/14/08
Timothy C. Darrh v. DHHS/Value Options	07 DOJ 1239	Overby	07/07/08
David Alan Moore v. North Carolina Private Protective Services Board	08 DOJ 1264	Morrison	07/21/08
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Sandra Leroux, Leroux Entertainment Corporation d/b/a Spectacular Events! V. DOL	08 DOL 0754	May	07/08/08
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DEPARTMENT OF TRANSPORTATION

Kevin Douglas v. Dept. of Justice Criminal Justice Standards, DMV License and Theft, Holly Springs Police Department	07 DOT 2221	Webster	05/12/08
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DEPARTMENT OF STATE TREASURER

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William S. Greene v. DST, Retirement Systems Division	08 DST 0235	Gray	07/16/08
Jerry Alan Reese v. DST, State and Local Finance Division and the Local Government Commission	08 DST 0256	Morrison	07/25/08

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Lucretia Burrus v. State Board of Education	07 EDC 2210	Webster	05/16/08
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Ray Poole's Park, Jean Poole v. DENR, Public Water Supply Section	08 EHR 0563	Joseph	05/16/08
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Eddie Verdis Hood v. N.C. Department of Environment and Natural Resources	08 EHR 1073	Overby	07/30/08
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