

NORTH CAROLINA

IN THIS ISSUE



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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20	Treasurer	Massage & Bodywork Therapy	30
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NORTH CAROLINA REGISTER
 Publication Schedule for July 2000 – June 2001

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

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

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

FILING DEADLINES

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

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

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

U.S. Department of Justice

Civil Rights Division

JDR:GS:VNR:par
DJ 166-012-3
2001-2234

*Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128*

September 13, 2001

Amanda P. Little, Esq.
Interim City Attorney
P.O. Box 1513
Fayetteville, NC 28301-1513

Dear Ms. Little:

This refers to the increase in compensation for the mayor, mayor pro tem, and the council members of the city of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 2, 2001.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

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

Cleveland County

Pursuant to N.C.G.S. § 130A-310.34, Cleveland County has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Shelby, Cleveland County, North Carolina. The Property consists of approximately 0.97 acres and is located at 309-321 Campbell Street. Environmental contamination exists on the Property in groundwater. Cleveland County has committed itself to redevelop the Property exclusively as a parking lot to facilitate public access to the adjacent Cleveland County Administrative Office building. In light of previous environmental investigation activities conducted on the Property, the land use restrictions included in the proposed Notice of Brownfields Property referenced below, and the required maintenance of the proposed parking lot included in the proposed Brownfields Agreement referenced below, are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Cleveland County, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the offices of Cleveland County at 311 East Marion Street, Shelby, North Carolina 28150 by contacting Pat Spangler at that address or at (704) 484-4800; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, should be addressed as follows:

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

September 24, 2001

The Honorable Julian Mann, III
Director, Office of Administrative Hearings
424 North Blount Street
Raleigh, North Carolina 27601

Dear Judge Mann:

Effective July 24, 2001, the North Carolina Federal Tax Reform Allocation Committee (the "Committee") is required, pursuant to North Carolina General Statutes Section 143-433.9 to take certain actions prior to the adoption of the 2002 Qualified Allocation Plan governing the allocation of North Carolina's low-income housing tax credits. One such action is to notify any person who applied for the low-income housing credit last year and any other interested parties of the Committee's intent to adopt the Qualified Allocation Plan. By this letter, the Committee notifies you of its intent to adopt the 2002 Qualified Allocation Plan (the "Plan"), and the Committee, or the North Carolina Housing Finance Agency (the "Agency") as the agent of the Committee, intends to take the following actions to adopt the Plan:

1. The proposed Plan will be published in the North Carolina Register on October 15, 2001, at least thirty (30) days prior to the adoption of the Plan.
2. The proposed Plan will also be posted on the Agency's website (www.nchfa.com) no later than the day the proposed Plan is first published in the North Carolina Register.
3. The Agency will hold a public hearing on the proposed Plan on October 29, 2001 at 2:00 PM. The location will be posted on the website by October 15, 2001. Reasonable public notice of this public hearing will be given by the Agency prior to the hearing as required by the Internal Revenue Code (the "Code").
4. The Agency will accept oral and written comments on the proposed Plan after its publication and until November 15, 2001.
5. After publication of the proposed Plan in the North Carolina Register and once oral and written comments submitted to the Agency have been considered, the Committee will adopt the final 2002 Qualified Allocation Plan upon approval of the Plan by the governor as required by the Code.

If you should have any questions, please contact Steve Culnon at (919) 877-5623.

Sincerely,

A. Robert Kucab
Executive Director
North Carolina housing Finance Agency

THE PROPOSED 2002 LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN
FOR THE STATE OF NORTH CAROLINA

I. INTRODUCTION

The 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", refer to **Appendix T**). 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 held in compliance with the Code and met the other requirements under statutory law, prior to final adoption by the Committee. The staff of the Agency was present at the hearings to take comments and answer questions.

Federal and State low-income housing tax credits and Rental Production Program ("RPP") loan funds are available to owners, on a competitive basis, for the development of affordable rental housing in North Carolina. The Agency's goals include supporting the best developments possible given the limited resources available. Therefore, the Agency will select projects which propose developments serving low-income residents for the longest period of time, at appropriate locations and with strong market demand, with the healthiest financial structures, the best architectural design, the best quality of building materials and workmanship, and with the most qualified ownership and management.

The Agency is committed to the development of safe and decent affordable housing that includes supportive services to improve the quality of life for families, the elderly and other individuals with special needs. The Plan, which specifically includes the Multifamily Rental Production General Requirements, the Rental Production Program loan product information outlined below, and all appendices attached hereto, is written and is to be interpreted to support these goals.

Projects utilizing Rental Production Program (RPP) funds should refer to **Appendix R** for special requirements.

For taxable years beginning on or after January 1, 2000, a North Carolina state tax credit is available for any project that receives an allocation of tax credits under section 42(h)(1) of the Code, and meets the requirements of N.C.G.S. Section 105-129.16B, et seq. The amount of the state credit must be calculated and presented as a source of equity in all applications submitted under the Plan unless the project formally declines or is ineligible for the state credit. Information concerning the state credit can be found in **Appendix S**.

Any applicant proposing to use tax-exempt bonds with four percent (4%) housing tax credits must meet all of the requirements outlined in **Appendix U**. They should also carefully read the Plan, as the Code requires they be in compliance with the Plan to receive four percent (4%) tax credits. The application, application process, deadlines, and fees are the same for applicants applying for four percent (4%) tax credits with bond financing, as those applying for the nine percent (9%) credits.

Applicants financing more than 50% of their project with tax-exempt bond proceeds and not seeking a low-income housing tax credit allocation from the Committee must complete a separate application and are not required to fully comply with the Plan as explained in **Appendix V**.

The Committee will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. In general, these elements, and others added by the Committee are:

- A. Description of the project selection criteria to be used in determining housing priorities appropriate for local conditions.
- B. Criteria which give preference to:
 - 1. Project location and site suitability.
 - 2. Evidence of sufficient market demand and other characteristics such as local housing needs and priorities.
 - 3. Serving the lowest income tenants.
 - 4. Serving qualified tenants for the longest periods.
 - 5. Project characteristics including design and quality of construction, bedroom mix, supportive service plans and amenities packages.
 - 6. Soundness of the proposed financial structure.
 - 7. Use of mortgage subsidies and leveraging of funding sources.
 - 8. Diversity of Principal(s) and their experience, quality and quantity of development and management experience, and the ability to maintain regulatory compliance.
 - 9. Tenant populations with special housing needs.
 - 10. Willingness to solicit referrals from public housing waiting lists.
 - 11. Tenant populations of individuals with children.

12. Projects intended for eventual tenant ownership.
13. Projects that include the use of existing housing as part of a community revitalization plan.
14. Projects located in a Qualified Census Tract, the development of which contribute to a concerted community revitalization plan.

C. A description of the Agency's compliance monitoring program, including a description of procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

The following sections of the Plan contain these requirements. If you have questions, please contact:
Rental Investment Group of the North Carolina Housing Finance Agency
P.O. Box 28066
Raleigh, NC 27611-8066, phone: (919) 877-5712

II. DEFINITIONS

The following terms as defined below are used throughout the Plan.

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

Allowable Development Cost: Cost upon which the Agency calculates allowable developer fees. Includes lines 2- 36 less lines 8, 9 and 10 in the Project Development Cost Description in the application.

Code: The Internal Revenue Code of 1986, as amended, including any successor provisions. See **Appendix T** for excerpt.

Community Revitalization Plan: A plan that includes, but is not limited to, the following elements to improve community-wide living conditions: (1) adopted and with specific funding commitments by one or more unit(s) of government at least 4 months prior to the date of application to the Agency; (2) clearly delineates a geographic target area that includes the project; (3) includes detailed policy goals (which must include the provision and improvement of safe, decent and affordable housing) and implementation measures along with specific timeframes for the achievement of such policies; (4) includes housing activities that will occur within at least one-half mile of the project; and (5) at least one community revitalization action that has been initiated and is demonstrating measurable progress.

Community Service Facility: Any facility designed to serve primarily individuals whose income is 60% or less of area median income.

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 reflected in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person and/or such person's personal property from their current residence as a direct result of an applicant's project being developed at the site of such residence.

Displacement, temporary: Displacement that will result in the displaced person remaining as a tenant in the project that is receiving tax credits and/or loan funds administered by the Agency.

An example of temporary displacement includes the acquisition and rehabilitation of an existing multifamily residential development in which half the units are vacant. The vacant units would be rehabilitated first, creating opportunities to relocate current tenants within the development to minimize project costs and disruption to tenants.

Distressed Neighborhood: For municipalities with populations greater than 25,000 residents only, a distressed neighborhood includes, but is not limited to, a census tract (or tracts, if a site is on or near a tract boundary, a determination the Agency will make at its discretion) in which 25% or more of the households have incomes that are at or below the national poverty level, based on most recent census data. The applicant must supply the poverty rate percentage (percentage of households below the poverty level) for the census tract(s) in which the project is to be located for projects in municipalities with populations greater than 25,000 residents, as part of the Preliminary Application, and the Agency will verify this data as part of its contracted market analysis work.

A distressed neighborhood also includes, but is not limited to, the following conditions within a half-mile radius:

- a majority of structures that are deteriorated, dilapidated, not occupied and/or poorly maintained

- concentrations of minority and/or low income households
- deteriorating infrastructure
- low access to public transportation and basic services and retailing

The Agency will have final discretion in determining if a neighborhood qualifies as distressed.

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

Elderly Housing: Owners may choose one of three established definitions for each project. A single project cannot be divided into both elderly and general population, regardless of how units are physically configured. The first two definitions are specifically described in the Federal Fair Housing Law. Owners should read the law itself and obtain professional guidance to determine compliance. These definitions are provided for general information only.

1. Housing that is intended and operated for occupancy by persons 55 years of age or older. At least 80% of the occupied units must be occupied by at least one person who is 55 years of age or older.
2. All units are restricted to households in which all members are over the age of 62.
3. Housing in which the mortgage is financed by a federal program specifically designed for the elderly which has its own occupancy requirements. This includes housing developed under the HUD Section 202 program and elderly projects financed using Rural Development (RD) Administration programs. NCHFA financing alone does not make a project eligible for this definition.

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.

Gross Square Footage or Floor Area: Space measured from outside walls to include all building footprints and covered spaces.

HOME Program Rents: Generally, projects using RPP loan funds must set rents below the lesser of the rent calculated as affordable for households at 50% of median income or the Fair Market Rent (FMR) listed in Appendix J and published by HUD. Users should contact the Agency concerning this calculation if they are unfamiliar with HOME Program rules.

Homeless Populations: The homeless include persons without a fixed nighttime residence, persons living in a shelter or in a transient residence for persons that provides temporary quarters, and persons staying in a place not designed or ordinarily used for sleeping.

Housing Quality Standards: Minimum physical standards established by the Department of Housing and Urban Development (HUD).

Immediate Family: With respect to any Person, his or her spouse, children, including adopted children, step-children, parents, parents-in-law, nephews, nieces, brothers, sisters, brothers-in-law, and sisters-in-law, each whether by birth, marriage, or adoption, as well as any *inter vivos* trusts created for the benefit of such Person.

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

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 thereafter.

Maximum Housing Expense: The maximum rent, utilities and any other required charges paid by the tenant calculated on a monthly basis as permitted under Section 42 of Internal Revenue Code (**Appendix T**).

Neighborhood: Areas within one-half mile radius of subject property.

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 un-conditioned outside structures that can not be used as net square footage.

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

Owner(s): Person(s) or entit(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. The agreement should identify all parties involved in the project, including all owners and principals, and describe each party's duties, responsibilities and any actual or expected benefits, including fees and earnings.

Paint to Paint Square Footage: Interior heated rental dwelling space (does not include community room space).

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

Principal: Principal includes (1) all such 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 25%** of the development fee for such project or **\$100,000**, and (2) all affiliates of such persons or entities in clause (1) 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 25%** of the development fee for such project or **\$100,000**.

Qualified Census Tract: Any census tract which is designated by the Secretary of Housing and Urban Development (HUD) and, for the most recent year for which census data are available on household income in such tract, either in which 50% or more of the households have an income which is at or below 60% of the area median gross income for such year or which has a poverty rate of at least 25%.

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).

Qualified Unit: A unit receiving tax credits and/or RPP loan funds from the Agency. Such units must be rented to households with incomes at or below the appropriate tenant income limit (by household size) elected in the application.

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing administered and serviced by the North Carolina Housing Finance Agency. RPP funds may include both federal HOME funds as well as State Housing Trust Funds. It is used in conjunction with tax credits as a source of gap financing. See Rental Production Program information (**Appendix R**).

Significant Non-Compliance (for purposes of deducting points from an application): An event occurring after June 30, 1993 that results in the issuance of an 8823 for any of the following, provided the issue was not subsequently corrected: 1) Failure to maintain accurate records for each unit, 2) Failure to rent to a Section 8 voucher or certificate holder, 3) Rents for the development are not properly restricted, 4) The development has transient occupancy, 5) Any unit for which low income housing tax credits were allocated is not available to the general public, 6) There are ineligible tenants found to be occupying qualifying units, 7) Failure of the development to maintain minimum housing quality standards, or 8) Failure to re-certify low income tenants on an annual basis.

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

Stabilized Occupancy: Maintenance of at least 93% occupancy for six consecutive months.

Substantial Renovation: Replacement of one or more major building components. Major building components include roof structures, wall or floor structures, foundation, plumbing system, electrical system, central heating and cooling systems. Hard

IN ADDITION

construction costs must exceed \$7,000 per unit, calculated using lines 2 through 7 in the Project Development Cost Description in Part A of the application and certified at final cost certification.

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

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

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

Window of Affordability: Ninety-five percent of the Maximum Housing Expense for low-income areas and ninety percent of the Maximum Housing Expense for high-income areas (see **Appendix K**). This calculation determines the highest total housing expense (including rent, tenant-paid utilities and any other required fees) permitted by the Agency for projects receiving low-income housing tax credits or RPP funds. This requirement must be met for the entire compliance period. Note: Tax credit projects that select the minimum set-aside of 40% at 60% but also choose to target more deeply (i.e. 50% of units at 50%) will **not** be required to use the window of affordability when figuring the rents for these lower targeted units.

III. SET-ASIDE PROCEDURES

A. In general, the total volume cap of federal low-income housing tax credits available to North Carolina is \$1.75 per person living in the state plus any unused credits from the previous two years, any credits returned in the year, and any credits received from the national pool. For 2002, the population component of the total credit volume cap is estimated to be \$14,086,298. The Committee reserves the right to revise the available credits in each set-aside, prorated from any new population volume cap and made available by issuance by the IRS of carry forward rules, regulations, or guidelines.

In order to ensure that the tax credits are distributed geographically and to projects of different sizes, the Committee has established certain set-asides. These set-asides will apply to the ranking and selection of all projects. If there is insufficient demand by eligible projects in any geographic area, funds will be transferred to other areas and projects will be awarded in descending order of the project point rankings.

No county or project will be awarded tax credits exceeding \$1,500,000 unless it is necessary to meet another set-aside requirement of this Plan or to completely fund a project request. At its sole discretion, the Agency may waive this limit for proposals utilizing HOPE VI financing or for other large scale revitalization efforts characterized by a high degree of committed public subsidies or in order to implement a disaster relief plan.

In order to encourage broad participation in the development of tax credit projects by a variety of developers across North Carolina and to attempt to minimize the impact of the departure or financial failure of one or more developers, during the calendar year, any principal will be limited to an award of not more than 15% of the total tax credits available to the state. All persons and entities meeting the definition of principal as defined by the Plan will be certified by the applicant on the application, at credit allocation, at carryover allocation and at final cost certification. Any project that qualifies for a allocation of credits but that would result in a principal exceeding this 15% limit will be disqualified and ineligible for a credit allocation in the current year, provided, however, if a qualifying project results in a principal exceeding this 15% limit and at least one-half of the projects' credits would be within the principal's 15% limit, such project will not be disqualified or ineligible for credits, and the 15% limit for such principal is waived to the extent of the credits in excess of the 15% limit needed to fully fund such project with credits.

B. Set-Aside Categories. The following set-asides apply for calendar year 2002.

1. Geographic Set-Asides

Tax Credit Set Asides

TOTAL	WEST (15%)	CENTRAL (50%)	EAST (35%)
\$14,086,298	\$2,112,945	\$7,043,149	\$4,930,204

The distribution to geographic regions is based primarily on population. **Appendix O** lists the counties by region.

2. Nonprofit Set-Aside

Congress mandates that 10% of the State's tax credit ceiling must be set aside for projects with nonprofit entities as owners that materially participate in the project. Applicants applying for nonprofit set-aside must meet the requirements outlined in Section VI.B.2.(b) of the QAP.

IV. APPLICATION PROCEDURES

A. The following schedule will apply to the application process for 2002.

- December 14, 2001 On or before December 14, 2001, applicants are required to submit the location (city and county) and project type (family or elderly) to the Agency.

- December 14, 2001 through
January 18, 2002 Preliminary applications: The submission window will be December 14, 2001 through January 18, 2002. Last day for submittal of preliminary applications. Applications will be accepted by the Agency until 4:30 p.m. January 18, 2002.

- March 22, 2002
TENTATIVE. Agency will notify applicants of their site scores and market status. THIS DATE IS TENTATIVE.

- April 26, 2002 Deadline to submit a full application for tax credits, RPP funds and a tax-exempt bond allocation to be used with 4% tax credits.

- July 30, 2002 Final allocations will be announced. THIS DATE IS TENTATIVE.

- December 30, 2002 or 6
months from allocation
date Cost certifications for projects receiving allocations in 2002 are due to the Agency by 4:30 p.m. on this date. *For administrative purposes, the Agency is requesting that the 10% cost certification be submitted by November 15, 2002.* For projects that will not be placed in service in 2002, 10% cost certifications must be submitted in accordance with the procedures outlined in Appendix X.

The Committee also reserves the right to change the schedule as necessary.

Recognizing the potential need to address the loss of safe, decent and affordable housing due to the effects of a natural disaster, the Committee reserves the right, at its sole discretion and timing, to implement an accelerated schedule to allocate housing credits and loan funds to proposed developments it deems necessary and appropriate to alleviate housing needs in the impacted counties.

- B. Page 2 of Application Part A lists the Exhibits required to be submitted with each application and identifies minimum threshold requirements for submission and eligibility to be considered for project selection.

- C. Processing, application and allocation fees for tax credits are due at the time applications are submitted as follows:
 - 1. All applicants are required to pay a nonrefundable fee of \$5,000 at the submission of the preliminary application requiring site and market information. This fee covers the cost of the market study and a \$1,000 preapplication processing fee.
 - 2. All applicants are required to pay a nonrefundable processing fee of \$1,000 upon submission of the full application.
 - 3. If tax credits are allocated for a project, applicants are required to pay an allocation fee equal to 5.25% of a single year's tax credits, calculated using the full 9% and/or 4% AFR. The allocation fee must be paid to the Agency before an allocation letter will be issued. Failure to submit this allocation fee within 30 days of the date of the allocation letter may result in the withdrawal of the tax credit allocation by the Agency, at its discretion.

4. If expenditures of 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.

D. All information that an applicant wants the Agency to consider should be submitted to the Agency by the application deadline. The Agency encourages all applicants to seek the assistance of the Agency staff to improve their application prior to the submission deadline.

E. Applications should be mailed to:	Or delivered to:
N.C. Housing Finance Agency Rental Investment Group P.O. Box 28066 Raleigh, NC 27611-8066	N.C. Housing Finance Agency Rental Investment Group 3508 Bush Street Raleigh, NC 27609

V. PROJECT SELECTION CRITERIA USED TO DETERMINE HOUSING PRIORITIES

To meet the statutory requirements of Code Section 42, which defines basic requirements for the Plan, and to provide a reasonable selection process, the following point ranking system will be used to prioritize projects. Each project will be ranked by awarding points under sections A, B, C, D, E, F and G. Preliminary applications will be evaluated first on the suitability of the chosen site and market for affordable housing. See the threshold requirements described in the General Requirements, Section VI of the Plan. If the site and market do not meet **all** of the site thresholds outlined in the General Requirements, Section VI of the Plan, the project will not be allowed to submit a full application.

Full applications will be considered based on their site and market, rent affordability, financial structure, development team, design quality, creation of affordable units, geographic distribution, supportive services and targeted populations. Applications must meet all threshold requirements described in Section VI. B. of the Plan to be considered for award and funding. Further, full applications, including those planning to use tax-exempt financing with four percent (4%) housing tax credits must receive at least 210 points to receive an allocation. Points received in the earlier site and market analysis (Section A below) will be added to points received in Sections B, C, D, E, F and G.

An allocation of tax credits by the Committee for any specific project 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 according to Section 42 of the Code. In addition, the Agency's interpretation of Section 42 of the Code is not binding on the Internal Revenue Service, and the Agency neither represents nor warrants to any owner, equity investor, principal or other program participant how the Internal Revenue Service will interpret or apply any provision of the Code in any instance. Each owner and its agents should consult its own legal and tax advisors on these issues.

Any misrepresentation, false information or omission in the application document may (in the sole discretion of the Agency) result in disqualification of the application for the year. This may also result in projects in which the owner and/or principal(s) who were involved in such misrepresentation, false information or omission being disqualified for consideration for tax credits. Any misrepresentation, false information or omission in the application document may (in the sole discretion of the Agency) result in a revocation of an allocation of credits to the project.

A. SITE AND MARKET EVALUATION (MAXIMUM 140 POINTS)

1. SITE EVALUATION (MAXIMUM 140 POINTS)

The following evaluation will be based upon a preliminary application submitted to the Agency prior to the submission of the full application. The Agency will evaluate the site's existing conditions and the effects of known future planned adjacent land uses. Example of future uses may include road, public utility, commercial, institutional, or industrial projects. Evaluation of individual sites will include a relative comparison with other sites the Agency considers to be within the same market area and which will compete with one another, in the Agency's discretion.

(a) **NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 80 POINTS)** This category focuses on how the neighborhood will affect the proposed development. "Neighborhood" is defined as the areas within a one-half mile radius of subject property. Revitalization plans will be considered only if other funding is already committed for comprehensive revitalization. Evidence of significant revitalization activities already implemented will contribute to more favorable scoring under this section.

- (1) Physical conditions of buildings and grounds in the neighborhood, whether commercial, industrial, multifamily or single family residential are acceptable with no noticeable deterioration. Proposed developments in distressed neighborhoods should submit evidence with the preliminary application of a community revitalization plan in order to qualify for a more favorable score under this section. This information should include evidence of any recent revitalization activities as well as details and timing of planned development.
- (2) Existing neighborhood and surrounding land uses are compatible with proposed development. The ideal neighborhood should be primarily residential and have a **balance** of other land uses, including non-competing multifamily and single family dwelling units, recreational facilities, schools, churches, shopping and services. It should also be located in areas of new growth as evidenced by the most recent commercial and residential development.
- (3) For new construction projects, there are no other multifamily rental developments in less than very good condition (including tax credit developments) within the neighborhood of the proposed project as determined by the Agency. Existing developments within the neighborhood as determined by the Agency of proposed projects must be in very good physical condition and have no vacancy problems. (For phase two projects, phase one developments will not be considered to violate the delineation requirement).

(b) **SITE SUITABILITY (MAXIMUM 40 POINTS)**

- (1) Street and/or access road serving the proposed project can support the volume of new traffic. The street should have the necessary traffic controls (i.e. traffic lights, stop signs, turning lanes, etc.) to provide for safe access. Site does not enter or exit onto a major high-volume traffic artery. The speed limit and the number of travel lanes in each direction will also be considered. If adverse conditions exist, a traffic study may be required.
- (2) Sites must be integrated into a residential community and must not be isolated in areas with large amounts of undeveloped land. Surrounding uses must be compatible with the proposed project, and the proposed design compatible with existing architecture in the area. Incompatible uses include adjacent sites with environmental or other problems such as high-voltage transmission lines, sources of excessive noise, existing and proposed freeways and high traffic corridors, flood hazards, or close proximity to potential pollution from industrial, waste treatment, and agricultural sources.
- (3) No obvious physical barriers to development should be present. Examples include steep slopes, deep ravines, marshes, wetlands, and excessive overhead utilities. The ideal site for new construction and rehab should be usable and have all its acreage on a gently sloping grade. On renovation projects, the assessor should look at parking areas and sidewalks and their relation to the entryways of all dwelling units. An ideal renovation project would have all parking and sidewalks level with all dwelling unit entryways. The finished grade of all developments should not promote erosion from rainwater

The Agency will consider mitigation proposals as part of the site review. The proposals must be incorporated in the preliminary and full application, architectural plans and project specifications.

(c) **DEVELOPMENT COMPATIBILITY (MAXIMUM 20 POINTS)**

This category focuses on how the proposed development affects the existing neighborhood.

New Construction Projects:

- (1) Proposed development is compatible in use, scale, and aesthetics with existing neighborhood.
- (2) Proposed development does not add to an existing preponderance of assisted or subsidized units as determined by the Agency.

Rehab Projects:

- (1) Development/building is compatible in use, scale, and aesthetics with existing neighborhood.

- (2) Development/building requires the proposed rehab and improvements. Site inspection and scope of work will be used in evaluating this category.

Adaptive Reuse Projects:

- (1) Development/building is compatible in use, scale, and aesthetics with existing neighborhood.
- (2) Physical condition of the building is acceptable.
- (3) Building is suitable for residential use considering proposed floor plans, size, parking, structure and scale.
- (4) Proposed development does not add to an existing concentration of income targeted, assisted or subsidized units as determined by the Agency.

2. MARKET ANALYSIS

(PASS/FAIL)

The Agency will contract directly with market analysts to perform market studies. Applicants will still be able to contract independently with market analysts to conduct research to identify development sites, and will be allowed to submit such market information to the Agency as optional supplemental data that the Agency will take into consideration on an advisory basis only. In cases in which the findings of the Agency's market study differ from those of the applicant's market study, the Agency will rely on the analysis presented in its study. The Agency will make research assignments to analysts in such a way as to ensure that potential conflicts of interest in particular markets are eliminated. Applicants will have a structured opportunity to interact with market analysts in order to make appropriate project design and targeting adjustments that best fit their markets.

Market studies will be scored as PASS or FAIL based on the professional opinion of the market analysts. The market analyst will make their recommendations based on a comprehensive and integrated review as required under the guidelines in Appendix A.

B. RENT AFFORDABILITY

(MAXIMUM 85 POINTS)

1. Federal Rent Subsidies (Maximum 20 points)

- (a) A maximum of 15 points will be awarded for a firm commitment that provides project-based rental subsidies from the US Department of Agriculture, Rural Development for at least 95% of the units. Committed HUD Section 8 project based rental subsidies for 95% of the units earn 5 points. To receive points for HUD Section 8 project based rental subsidies, applicants must submit a letter from the issuing Agency committing to renew the subsidy contract for as long as possible subject to Congressional funding.
- (b) Five (5) points will be awarded for a written agreement between the owner and a public housing authority (PHA). The agreement must commit (i) the PHA to include the development in any listing of housing opportunities where households with tenant-based subsidies are welcome, and (ii) the project's management agent to actively seek referrals from the PHA to apply for units at the proposed development. This agreement should be in the form of a letter submitted to and signed by both the owner and the PHA following the format in Appendix H. If the PHA refuses to cooperate for any reason, a copy of the PHA declination letter must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA.

2. Mortgage Subsidies and Leveraging (Maximum 30 points)

Sources of mortgage subsidies include the Federal Home Loan Bank Affordable Housing Program, the Division of Community Assistance, a Public Housing Authority, local Community Development Block Grant funds, other local development funds and Rural Development. Other sources of public funding may qualify provided they are approved in writing in advance by the Agency.

Uncommitted RPP funds will not be considered in the calculation. Only loans from established lenders or foundations will be considered a subsidy. Interest rates cannot exceed 2% and the loan term must extend to at least 20 years.

IN ADDITION

Projects will earn points as described below:

Thirty (30) points will be awarded for projects that receive a commitment of public funds which finances at least 10% of total development costs. A commitment that finances at least 5% of the total development costs will receive fifteen (15) points.

3. Tenant Rent Levels (Maximum 20 points)

(PROJECTS WILL BE MONITORED FOR RENT RESTRICTIONS FOR THE GREATER OF THE PERIOD INDICATED IN THE EXTENDED USE AGREEMENT OR 15 YEARS, SUBJECT TO THE CODE.)

The applicant may earn points under one of the following scenarios:

If the project is in a high-income county:

- (a) Fifteen (15) points will be awarded for projects in which 100% of qualified units will be rent restricted and affordable to households with incomes at or below 50% of county median income adjusted for family size.
- (b) Five (5) points will be awarded for projects in which at least 50% of qualified units will be rent restricted and affordable to households with incomes at or below 50% of county median income adjusted for family size. The remaining units must be rent restricted and occupied by households with incomes at or below 60% of the county median income adjusted for family size.

If the project is in a low-income county:

- (a) Twenty (20) points will be awarded for projects in which at least 50% of qualified units will be rent restricted and affordable to households with incomes at or below 50% of county median income adjusted for family size. The remaining units must be rent restricted for households with incomes at or below 60% of the county area median adjusted for household size.
- (b) Fifteen (15) points will be awarded for projects in which at least 40% of qualified units will be rent restricted and affordable to households with incomes at or below 50% of county median income adjusted for family size. The remaining units must be rent restricted for households with incomes at or below 60% of the county area median adjusted for household size.
- (c) Five (5) points will be awarded for projects in which 100% of qualified units will be rent restricted and occupied by households with incomes at or below 60% of county median income adjusted for family size.

If an applicant is planning a mixed income project, they will receive the points described above based on the total number of qualified units for which tax credits are proposed and how deeply rents for these units are targeted. Market rate units will not be considered in the calculation.

4. Commitment to Extend Low-income Occupancy (Maximum 15 points)

Up to fifteen (15) points will be awarded for projects based on a binding commitment to extend the low-income occupancy requirement beyond the 15-year compliance period. Points will be added at 1 point for each additional year beyond 15 years up to 30 years. To receive these points, an applicant must sign a Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (a.k.a.: extended use agreement) that will be recorded with the register of deeds in the county the property is located. In doing so, the applicant binds the project to maintain affordable units for low-income occupancy as proposed in the application and extended use agreement.

C. FINANCIAL STRUCTURE (ONLY NEGATIVE POINTS AVAILABLE)

Below are areas where projects will lose points due to costs determined to be higher than typically warranted.

While the Agency uses both "per unit" and "per net square foot" standards to evaluate costs, we also recognize that a single standard cannot fairly measure every one of a wide array of project types. In order to more equitably compare costs between different development types, the Agency will apply either the following "per unit" or "per net square foot" standard as outlined in **Chart A** below, whichever is less. A separate standard has also been established for the following types of projects: detached single family developments, duplexes, 100% special needs housing and HOPE VI projects. **Chart B**

IN ADDITION

outlines the point structure for these types of projects. RPP loan funds will be bound by HOME Per-Unit Subsidy Limits and HOME Per-Unit Cost Limits.

The equity raised from historic preservation tax credits will be subtracted from the total development cost before this calculation is made.

The following points will be deducted for projects where the total costs less land and reserves are above \$74,000 per unit or \$74 per net square foot in Chart A or above \$84,000 per unit or \$84 per net square foot in Chart B.

CHART A				CHART B			
Per Unit	OR	Per Net Sq. Ft.	Points	Per Unit	OR	Per Net Sq. Ft.	Points
\$74,000 or less		\$74 or less	0	\$84,000 or less		\$84 or less	0
\$77,000		\$77	(-2)	\$87,000		\$87	(-2)
\$80,000		\$80	(-4)	\$90,000		\$90	(-4)
\$83,000		\$83	(-6)	\$93,000		\$93	(-6)
\$86,000		\$86	(-8)	\$96,000		\$96	(-8)
\$89,000		\$89	(-10)	\$99,000		\$99	(-10)
\$92,000		\$92	(-15)	\$102,000		\$102	(-15)
\$95,000		\$95	(-20)	\$105,000		\$105	(-20)
\$98,000		\$98	(-30)	\$108,000		\$108	(-30)
\$101,000		\$101	(-40)	\$111,000		\$111	(-40)
\$104,000		\$104	(-50)	\$114,000		\$114	(-50)
\$107,000		\$107	(-60)	\$117,000		\$117	(-60)
\$110,000		\$110	(-70)	\$120,000		\$120	(-70)
\$113,000		\$113	(-80)	\$123,000		\$123	(-80)
\$116,000		\$116	(-90)	\$126,000		\$126	(-90)
\$119,000		\$119	(-100)	\$129,000		\$129	(-100)

D. CAPABILITY OF THE PROJECT TEAM (MAXIMUM 60 POINTS)

1. **Development Experience:** (Maximum 30 points awarded based on applicant’s owner(s) and/or principal(s) meeting the requirements below for development experience).

A maximum of 30 points total will be awarded for projects based on the experience of the owner(s) or principal(s) in the ownership entity in successfully developing, placing in service, operating, and maintaining compliance in low-income rental and/or conventional market rate rental housing as owner(s) during the past 10 years. The Agency will score either in-state **or** out-of-state experience, not both. In order to derive the maximum potential points under this section, the applicant must complete the form in **Appendix C**. The Agency will have final discretion in determining whether to award experience points to owners or principals that formerly served as staff for an established development firm and are requesting owner experience points based on that prior work experience. Using the criteria above, the Agency will determine, on a case-by-case basis and upon detailed independent review, whether such experience credit is justified.

All owners **must** disclose all previous participation in the Low-Income Housing Tax Credit program. This must be included in Appendix C. Additionally, all owners that have participated in an out of state tax credit allocation, regardless of whether out of state points are desired, must complete the Authorization for Release of Information form and send it directly to each state identified. A copy of the release(s) must be included in the submitted application in Appendix C.

The Agency will require executed, written agreements that clearly specify division of duties, rights, and obligations, including compensation, among owners and principals in a project.

Local housing authority applicants and sponsors: The Agency will consider evaluations by HUD through the Public Housing Assessment System (PHAS) process to evaluate the performance of local housing authority applicants and sponsors. Authorities with a PHAS score of less than 90 will not receive points in this section, unless they partner with an experienced developer eligible to earn points in this section. Authorities with scores over 90 are eligible to receive points. They will be scored according to the number of units they have developed in the past 10 years.

- (a) **In-State Development Experience** (Maximum 30 Points)

- At least three (3) projects totaling at least 72 units developed and operating in compliance with applicable codes and regulations earns 15 points.
- Five (5) or more projects totaling at least 120 units developed and operating in compliance with applicable codes and regulations earns 30 points.

(b) **Out-of-State** Development Experience (Maximum 15 Points)

- At least three (3) projects totaling at least 72 units developed and operating in compliance with applicable codes and regulations earns 8 points.
- Five (5) or more projects totaling at least 120 units developed and operating in compliance with applicable codes and regulations earns 15 points.

(c) If the owner or principal applying for experience points is found to be directly or indirectly responsible for any other projects in which there is uncorrected significant noncompliance more than three months from the date of notification by the Agency or any other state's housing credit Agency, to the extent that the Agency at its discretion deems such noncompliance to be correctable within that period, the project may be assessed up to negative forty (-40) points at the Agency's sole discretion for each such other project.

The Agency reserves the right to determine the capacity of an owner or principal to undertake a project that is significantly different than anything successfully completed previously. The Agency may request individual and/or corporate credit reports, as well as request information from other federal and state agencies about development experience.

The owner(s) who receive points for owner experience in the project applying for the nonprofit set aside must, by the terms of the ownership entity agreement, remain an owner in the ownership entity for the applicable elected tax credit compliance period, unless such owner(s) receives prior written approval from the Agency to withdraw or be replaced in the ownership entity before the end of such compliance period. The owner(s) who receive points for owner experience in a project with for-profit owners must, by the terms of the ownership entity agreement, remain an owner in the ownership entity for at least five years from placed in service, unless such owner receives prior written approval from the Agency to withdraw or be replaced in the ownership entity before the end of such five year period.

2. Management Experience: (Maximum 30 points awarded based on the applicant's management agent(s) meeting the requirements below for management experience.)

The Agency will score either in-state **or** out-of-state experience, not both, in order to derive the maximum potential points under this section. Projects found out of compliance, in poor physical condition or with a history of financial problems will not be counted in awarding points.

The Agency will have final discretion in determining whether to award experience points to a management agent based on the prior management experience of the owner of the management agency that will be managing the project. The Agency will determine, on a case-by-case basis and upon detailed independent review, whether such experience credit is justified.

The management agent listed on application must be used by the ownership entity of the development for at least two years after project completion, unless the agent is guilty of specific nonperformance of duties. The Agency will require, prior to carryover allocation, the submission of an executed contract with at least a two-year term between the ownership entity and the management agent for management services for the project. Upon prior written notification to the Agency, a substitution of management agent prior to the end of the two-year period will be allowed if the replacement agent would score at least as many experience points as the agent listed in the application.

The Agency will look favorably on entities subcontracting with established management companies to supplement their management capacity.

(a) **In-State** Management Experience (Maximum 20 Points)

A maximum of 20 points will be awarded for projects based on the experience of the management agent to manage and maintain compliance of **low-income housing tax credit units in North Carolina during the past 10 years**

- 20 to 100 units managed earns 5 points;
- 101 to 250 units managed earns 10 points;
- 251 to 500 units managed earns 15 points; and
- 501 or more units managed earn 20 points.

OR

- Management companies managing over 500 units of other kinds of multifamily housing in compliance with applicable income restrictions will earn 10 points.

(b) Out-of-State Management Experience (Maximum 10 Points)

A maximum of 10 points will be awarded for projects based on the experience of the management agent to manage and maintain compliance of **low-income housing tax credit units outside North Carolina during the past 10 years.**

- 101 to 250 units managed earns 5 points;
- 251 to 500 units managed earn 8 points; and
- 501 or more units managed earn 10 points.

OR

- Management companies managing over 500 units of other kinds of multifamily housing in compliance with applicable income restrictions will earn 5 points.

In order to be eligible to receive points under section (b), the applicant must supply to the Agency, as part of the full application, letters from each appropriate state housing agency or designated monitoring agent from the state in which management experience is being claimed. Such letters must be on state housing agency letterhead, clearly identify each project name, the number of low income units as well as the number of total units. The letters must also verify that each development being proposed for consideration has no outstanding uncorrected significant noncompliance conditions. See the Definition section for a description of Significant Noncompliance.

(c) Management Questionnaire

A maximum of 10 points will be awarded for the satisfactory completion of the Management Questionnaire (Appendix C) to operate and maintain compliance at the proposed development.

- (d)** If the management agent is found to be directly or indirectly responsible for any other projects in which there is uncorrected significant noncompliance more than three months from the date of notification by the Agency or any other state's housing credit agency, to the extent that the Agency at its discretion deems such noncompliance to be correctable within that period, the project may be assessed up to negative forty (-40) points at the Agency's sole discretion for each such other project.

If the owner/principal qualifying for development experience and the management agent with respect to a project are the same person(s) or entity(ies), the Agency may, in its discretion, determine not to assess negative points to the project under both D.1.(c) and D.2.(d) for the same incident of noncompliance.

3. Project Team Negative Assessments and Restrictions:

Any owner, principal or management agent that has been debarred or received a limited denial of participation in the past 10 years by any federal or state agency may, in the Agency's discretion, be barred from participating in any Agency multifamily development program.

Any project with an owner, principal or management agent who is found to be directly or indirectly responsible for any other projects in which there is uncorrected significant noncompliance more than six months from the date of notification by the Agency, to the extent that the Agency at its discretion deems such noncompliance to be correctable within that period, with respect to any other tax credit project, may be disqualified at the Agency's sole discretion.

- (a)** Up to negative twenty (-20) points may be assessed against a project with an owner, principal or management agent who 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.

- (b) Up to negative twenty (-20) points may be assessed against a project with an owner or principal who has been in a mortgage default or arrearage of three months or more within the last five years on an FHA-insured project, an RD funded rental project, a tax-exempt bond funded mortgage, a tax credit project or any other publicly subsidized project. Resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing negative points.
- (c) Up to negative twenty (-20) points may be assessed against a project with an owner or principal who has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet compliance standards of the tax credit allocation. This includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed.

E. CREATION OF AFFORDABLE UNITS (MAXIMUM 10 POINTS)

- 1. Ten (10) points will be awarded for new construction projects.
- 2. Ten (10) points will be awarded for the substantial rehabilitation of a vacant building or the conversion of a vacant building to housing.
- 3. Ten (10) points will be awarded for the substantial rehabilitation of occupied low-income rental housing in which hard construction costs exceed \$15,000 per unit. These costs will be calculated using lines 2 through 7 in the Project Development Cost Description in Part A of the application that are directly attributable to the residential units (rather than to a community building) and certified at final cost certification.
- 4. Five (5) points will be awarded for the acquisition and substantial rehabilitation of a project to preserve low-income rental housing which might otherwise be converted from low-income tenancy, including Section 8 projects with expiring contracts.
- 5. Fifteen (15) points will be subtracted from any non-elderly, new construction project with more than 80 qualified units but less than 101 qualified units. Thirty-five (35) points will be subtracted from any non-elderly, new construction project with 101 or more qualified units but less than 125 qualified units and 50 points will be subtracted from any non-elderly, new construction project with 125 qualified units or more.

For bond financed projects, fifteen (15) points will be subtracted from any project with 101 or more qualified units but less than 151 qualified units. Twenty-five (25) points will be subtracted from any project with 151 or more qualified units but less than 180 qualified units and 50 points will be subtracted from any project with more than 180 qualified units. Bond financed projects with less than 76 qualified units will be awarded twenty-five (10) points.

The Agency reserves the right to waive the penalties in this section for proposals which foster overall low income and minority de-concentration through mixed income and mixed use strategies. If the current project application proposes to add a second phase to an existing development, the number of qualified units in the first phase of the existing project will be added to the number of qualified units in the proposed second phase in determining whether negative points should be assessed for large project size.

F. BONUS POINTS (MAXIMUM 30 POINTS)

- 1. **Economically Distressed Counties: (See Appendix N)** Ten (10) points will be awarded for projects that are developed in Tier One and Tier Two counties as determined under North Carolina General Statutes Section 105-129.3. These designations are based on standards compiled by the N.C. Department of Commerce.
- 2. **Rural Development Financing and Project-Based Rental Assistance:** Fifteen (15) points will be awarded to projects in rural areas that have an obligation of funds from the U.S. Department of Agriculture, Rural Development (RD), including Rental Assistance (RA) appropriate for the project.
- 3. **Target Populations**
 - (a) **Projects designated as elderly will receive five (5) points.**
 - (b) **Special Populations:** Five (5) points will be awarded for projects that are developed to give priority to assist special populations. The market study must show a clear demand (a low capture rate and low vacancy rates in potentially competing projects) for such housing or no points will be awarded. These populations include:
 - Mobility impaired handicapped (i.e., at least 25% or more of the units are fully handicap accessible)

- **Persons with any other disabilities recognized by the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NCDMHDDSAS) (at least 10% of units)** The Agency will require a written joint agreement between the applicant and NCDMHDDSAS, signed by both parties and submitted with the full application, in order to be considered for points in this section.
- **Other special needs target populations such as farm workers and homeless persons (at least 25% of units)**

Supportive Services Plan: Support service plans are required in all projects that specifically target special populations and must meet minimum criteria to receive points as determined by the agency. Points will be given to projects with service plans which are well targeted, carefully accounting for what the population of the proposed development will likely be, and their needs for supportive services, as well as a budget supporting such activities.

- The Agency reserves the right to require revisions to the applicant's Supportive Services Plan if it is deemed unsatisfactory.
 - An unsatisfactory Support Services Plan will result in no points being awarded either for targeting the Special Populations or for the Plan itself.
 - All Supportive Services Plans must follow the outline in **Appendix D**.
- (i) The following elements for Supportive Service Plans must be included:
- Appropriately targeted supportive services plan including general descriptions showing quality and depth of services to meet established goals.
 - Staffing plan: commitment of personnel, office space, supplies, and/or contracted services;
 - Community space: that meets the needs of the residents, community agencies providing services, and the supportive services coordinator.
 - A sources and uses budget: funding required to implement appropriate plan for the residents
 - Community support: evidence of service commitment and strong integration of available and specific services to be utilized in the plan. Note: General letters of community support do not constitute service commitments.
- (ii) Support service coordinators are required to attend educational workshops sponsored by the Agency. They include:
- In the first year, service coordinators should attend a two-day basic training workshop. They will receive a certificate and will not be required to attend this workshop again.
 - In the first year and every year after through the compliance period, service coordinators should attend two specialized Agency workshops on service provision. Four are held annually by the Agency.

Failure to follow through on previous Supportive Service Plan commitments will result in negative points for tax credit applications in subsequent years.

The following elections will be used as tiebreaker preference criteria to award credits in the event that the final scores of more than one project are identical.

1. **First Tiebreaker: Tenants with Children:** Projects that can serve tenant populations with children. Developments will qualify for this designation if at least 25% of the units are 3 or 4 bedrooms and include a Supportive Service Plan as outlined in Appendix D. No points will be awarded where a clear demand, in the Agency's discretion, is not shown in the market study for this population.
2. **Second Tiebreaker: Projects in Areas of Community Revitalization:** Projects that are (1) located within a qualified census tract and can demonstrate that they contribute to a concerted community revitalization plan according to the parties responsible for the plan; and/or (2) involve the use of existing housing (that is not necessarily located within a qualified census tract), the improvement of which has been designated as part of the

community revitalization plan. In both cases, the project site must be clearly within the geographic confines of the community revitalization plan. The plan also must clearly indicate that revitalization activities will take place in the neighborhood surrounding the proposed project (an area defined as one-half mile radius surrounding the site) within a fairly immediate time frame (no more than 2 years from the time the project would be funded).

3. **Third Tiebreaker: Tenant Ownership:** Projects that are intended for eventual tenant ownership and include a Supportive Service Plan as outlined in Appendix D, with particular emphasis on services that prepare tenants to become homebuyers. Such developments must include a detached single family site plan and building design. A business plan is also required that is acceptable to the Agency, in its discretion, to convert the project to tenant ownership at the end of the 15-year compliance period, foregoing the extended use period as rental housing, in order to receive these bonus points.

G. DESIGN STANDARDS

(MAXIMUM 100 POINTS)

All proposed measures must be shown on the plans or in specifications in the application in order to receive points. The Agency will not fund a project that scores below 65 points in this section. After final ranking is completed, the Agency reserves the right to condition a reservation of credits on the applicant's ability to improve their design score to at least 65 points. If the applicant cannot improve their score to at least 65 within a period of time established by the Agency at its discretion, the Agency reserves the right to pass over that project for a credit reservation,

1. **New and Adaptive Re-use Construction:** A maximum of 100 points will be awarded for projects based on evaluation of the site plan design and layout, building and floor plan design and construction characteristics as they relate to the development cost per unit. Design standards are found in **Appendix B** and must be used for all projects receiving low-income housing tax credits and/or RPP funding or points may be deducted for non-compliance.

- (a) **Site plan considerations:** A maximum of 25 points will be given for projects which

- Propose an attractive, scattered building layout focusing on visual appeal and privacy;
- Propose site amenities, including playgrounds, gazebos, garden spots, walking trails, picnic areas, ball fields, basketball/tennis courts, exercise rooms and swimming pools, have natural areas with trees between buildings (for new construction); create accessible walks linking buildings to each other, to common areas and to parking; have large open spaces for recreational activities, have a well-designed entry to the site with attractive signage, lighting and landscaping.

In order to receive points, the items listed above must be clearly indicated on the site drawings.

- (b) **Building and floor plan design:** A maximum of 45 points will be given for project which

- Propose creative and versatile architectural designs. Examples of exterior building designs include broken roof lines, front gables, dormers or front extended facades, wide banding and vertical and horizontal siding applications, some brick veneer, front porches and attractive deck rail patterns.
- Propose open, flowing floor plans. Examples include spacious kitchens, bathrooms, living rooms and dining rooms, dwelling units that exceed minimum square footages, bedrooms that exceed minimum square footages, bathrooms that are large with vanities and open floor spaces, kitchens that provides an abundance of counter top working space and cabinets, availability of storage space other than bedroom closets, and the adequacy of closet space, including large walk-in closets.

- (c) **Construction characteristics:** A maximum of 30 points will be given to projects which

- Propose low maintenance, high durability, energy efficient products, and quality components. Examples include: High-grade vinyl or VC tile in kitchens, bathrooms, entryways, and laundry areas.
- Propose energy efficient components that exceed Agency and/or building code minimum standards.
- Propose measures to provide good attic and roof ventilation, use vinyl or aluminum windows and steel insulated exterior doors.
- Propose to use quality exterior siding, such as vinyl, hardiplank, or brick veneer and have pre-finished aluminum exterior trim, including fascia, soffit, and porch posts.

- (d) **Completion of previously approved projects:** Negative points will be assessed for projects with owners, or principals of prior project(s) that were not built in accordance with the plans and specifications on which such prior project(s') Design Standards score was based, if deviation from such plans and specifications results in conditions that would justify a reduction in that prior project(s') original Design Standards

score(s). The number of negative points assessed to the project in the current year will be equal to the cumulative number of points by which each such prior project's original Design Standards score would have been so reduced to reflect the deviation, adjusted to reflect any change in the scale of the Design Standards scoring. For example, if the reduction in the prior project's Design Standards score as a result of the deviation from its plans and specifications is determined to be 10 points based on a scale of 50 maximum Design Standards points at the time such prior project was awarded credits, if there is a current scale of 100 maximum Design Standards points, the negative points assessed to the current project based on that prior project's deviation from its plans and specifications would be 20 points. Design and construction changes approved in writing by the Agency will not result in any negative points assessed under this section.

2. Substantial Renovation Projects

A maximum of 100 points will be given to projects which:

- Propose making some existing "common areas" that are handicap accessible, spending additional money on landscaping/fencing, creating or improving sidewalks, improving quality and durability of exterior by installing vinyl or hardiplank siding, installing new roof shingles, adding gutters, sealing brick veneers, applying exterior paint, and resurfacing or re-paving parking areas.
- Propose to improve site lighting and exterior dwelling lighting.
- Propose to make the exterior of buildings more aesthetically pleasing by adding gables, porches, dormers or roof sheds.
- Propose to use energy-efficient related products to replace inferior ones, including insulated windows and doors, and increasing insulation values by adding additional insulation.
- Propose to improve heating and cooling units in dwelling units, improving plumbing fixtures, water heaters, toilets, sinks, faucets and tub/shower units.
- Propose to improve quality of interior conditions and fixtures, including carpet, vinyl, interior doors, painting, drywall repairs, cabinets, appliances, light fixtures and mini-blinds.
- Propose a scope of rehabilitation that is reflected in the Physical Needs Assessment.

VI. GENERAL REQUIREMENTS

A. GENERAL REQUIREMENTS FOR PROJECT PROPOSALS

1. Set-Asides of Tax Credits

- (a) The Agency has established geographic set-asides of tax credits based on HUD population projections and the State's Consolidated Plan. Applications are allocated credits starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending score order through the last project that can be fully funded with credits in that geographic region. The remaining credits from all three geographic set-asides are then added together and allocated for the next highest scoring application(s) statewide.

If, after every application that has been fully funded with credits in each geographic region, the next highest scoring application statewide will receive the remaining credits.

- (b) If applications are not sufficient to use the credits within geographic regions, then the credits will be reallocated to other ranked projects that meet the minimum requirements of the Plan.
- (c) The Agency reserves the right to authorize a forward commitment of the next year's tax credits to the last application awarded credits for the year in an amount necessary to fully fund that application if it would otherwise receive a partial award of credits this year. The Agency also reserves the right, in its discretion, to authorize a forward commitment of tax credits, and to make a reservation and allocation of tax credits pursuant to any such forward commitment, to any project whose application was submitted in a prior year but that did not receive any award of credits in such prior year if, in the Agency's determination, such application meets all the minimum requirements of the Plan in the year credits are to be allocated to that project pursuant to such commitment.

Ten (10%) of the total tax credits will be set-aside for projects with nonprofit owners demonstrating material participation and meeting all other requirements for such nonprofit owners under the Plan and the Code.

Please note that, regardless of whether a project with qualified nonprofit ownership received a reservation of credits from the 10% set-aside, every application the Agency receives that chooses the nonprofit applicant designation will be required to comply with the requirements for projects with qualified nonprofit ownership, including but not limited to, material participation standards, set forth in the Plan and the Code.

2. Unit Types

- (a) Tax credits may be used for any type of rental unit, however, preference is given to certain types of units as described in the Plan, such as housing designed for the handicapped, elderly, special needs, and large families. Units must be rented using a lease of not less than six months.
- (b) There is no minimum or maximum number of units for an application, except no applicant may request tax credits in excess of the maximum county or principal set-asides in Section III of the Plan.
- (c) Projects must do at least one of the following:
 - (i) Provide new construction of affordable units.
 - (ii) Substantially renovate existing units. See the Agency definition for substantial renovation.
 - (iii) Acquire and substantially rehabilitate existing buildings. Owners may receive a 4% tax credit on the adjusted basis of an existing building that meets the following requirements: 1) The building is acquired by purchase, 2) A substantial renovation must be proposed as defined in the General Requirements, and 3) There is a period of at least 10 years between the date of acquisition by the taxpayer and the later of (i) the date the building was last placed in service, or (ii) the date of the last substantial rehabilitation costing 25% or more of the adjusted basis for which certain tax depreciation elections were made. Certain exceptions to the ten-year rule are specified in the Code.

B. AGENCY DEVELOPMENT THRESHOLD REQUIREMENTS AND CONSIDERATIONS

The Agency will promote the development of affordable housing on sites that are well configured, integrated into a residential community, and close to services and amenities. Sites must meet minimum threshold requirements described below to receive either tax credit or RPP funding. Projects whose sites do not meet all minimum site threshold requirements will be disqualified and a full application will not be accepted. After preliminary application review, applications meeting minimum Agency threshold requirements will be scored based on the Plan. All of these projects may submit full applications. Scores will be made known to applicants so that they may assess their chances of being funded in the full application process. Full applications will be evaluated on the basis of meeting all site and financial threshold requirements. Projects that do not meet one or more of the threshold requirements may not be considered for funding.

Applications for tax credits on buildings located on separate sites should be considered separate applications for purposes of the Agency's preliminary application process. Each application will require a separate initial application fee. Projects may be considered one application in the full application submission if, sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of the tax credit allocation.

1. Site And Market Threshold Requirements

- (a) Sites should be sized to accommodate the number and type of units proposed. Required zoning must be in place, including any special use permits, traffic studies, conditional use permits and other land use requirements as well as the conclusion of all public hearings required to develop the site by April 26, 2002 for full application submission. Land cost allocated to the project cannot include excess acreage unnecessary for the construction and use of the current project.
- (b) Site control (Valid Option/Contract or Warranty Deed reflective of filing).
- (c) Utilities (water, sewer, gas, and electricity) should be available with adequate capacity to service the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the applicant's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage, as well as document the applicant's right to perform such work through, for example, language in the real estate option/contract, separate contract or consent by the city or town.

- (d) Sites must be integrated into a residential community and must not be isolated in areas with large amounts of undeveloped land. Surrounding uses must be compatible with the proposed project, and the proposed design must be compatible with existing architecture in the area. Incompatible uses include adjacent sites with environmental or other problems such as high-voltage transmission lines, sources of excessive noise, existing and proposed freeways and high traffic corridors, flood hazards, or close proximity to potential pollution and odors from industrial, waste treatment, and agricultural sources.
- (e) A project will not receive tax credits or RPP funding if it is in the same market area as previously funded tax credit or RPP projects which have not reached stabilized occupancy (see definitions), unless a viable market is otherwise clearly substantiated by the market study. Projects within the same market area as existing competitive tax credit developments that have a recent history of high vacancy rates will not receive tax credits or RPP funding. If there are competing projects, including projects in this application round, in the same market where there is evidence all can not be supported, only such projects that can be supported will receive tax credits or RPP funding.
- (f) The quality, financial health and market absorption of phase one projects will be evaluated before phase two projects will receive tax credits or RPP funding. Phase two projects will not receive tax credits or RPP funding where the previous phase has had a recent history of high vacancy rates or a long lease up period. The total number of qualified units in both phases will be considered when scoring phase two projects in the Plan under Section V.E. 5.
- (g) There must be a strong market for the proposal. The market area must be realistically narrow enough to attract tenants to the project. The Agency will contract for an independent market analysis as outlined in **Appendix A**.
- (h) Physical structures in the neighborhood surrounding the proposed development should be in good condition. Specifically, the majority of structures should be occupied and/or well maintained for their use. If the surrounding neighborhood is dilapidated, there should be a plan and public commitment of funds to revitalize the area. Sponsors of proposed developments in distressed neighborhoods should submit with the preliminary application evidence of a community revitalization plan adopted and funded by a unit of government or nonprofit organization in order to qualify for a more favorable site evaluation score. This information should include evidence of recent revitalization activities as well as details and timing of planned development.
- (i) Proposed construction must not be located within a 100-year floodplain. Proposed construction includes driveways, parking areas, playgrounds, community building/office, residential buildings, maintenance buildings, refuse collection areas, laundry rooms, mail collection areas, or any other permanent structure or fixture. The Agency may waive this restriction in certain counties in the East Region where viable alternatives do not exist and where sound measures to mitigate flood hazards are proposed.

2. General Threshold Requirements

- (a) Projects with Historic Tax Credits

Buildings must be placed on the National Register of Historic Places entitling the project to receive historic credits by the submission date of the full application. If a building is not on the National Register, the building must be approved for the State Housing Preservation Office study list at the time of the full application. Evidence of meeting this requirement should be provided.

- (b) Nonprofit Entities seeking Nonprofit Set-Aside

For purposes of receiving a tax credit allocation from the nonprofit set-aside, a nonprofit entity involved in a project must meet several requirements. It must: 1) be qualified as a nonprofit under Section 501(c) (3) or (4) of the Code, 2) be domesticated in North Carolina for at least 12 months prior to submitting an application with a salaried full-time permanent staff of at least 3 persons, 3) have local community involvement on the board of directors, 4) materially participate (or a qualified corporation must materially participate) in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period, 5) have as one of its exempt purposes the fostering of low income housing 6) own (or its qualified corporation own), directly or indirectly, an equity interest in the applicant and 7) be (or its qualified corporation be) a managing member or general partner of the applicant. Material participation is defined in Section 469(h) of the Code and Treasury Regulations thereunder as being involved on a regular,

continuous, and substantial basis in the development and operation of the project throughout the full tax credit compliance period.

As a condition of every allocation of credits to an applicant applying for nonprofit set-aside, the Agency will require the submission of an attorney's opinion letter with the full application stating that condition 4 outlined above is true. At a minimum, the nonprofit or a qualified corporation must be a general partner or managing member in the ownership entity. Every applicant for the nonprofit set-aside must submit a narrative statement, certified by a resolution of the nonprofit's Board of Directors, with the full application describing the nonprofit's plan for material participation during the development of the project and compliance period.

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.

(c) Acquisition and Substantial Rehabilitation projects

- (i) The Agency will require that all proposals claiming acquisition tax credits submit an attorney's opinion letter, as a condition of an allocation of credits, which states that the proposed project meets the ten-year ownership or substantial rehabilitation rule and that the new ownership structure qualifies under the appropriate IRC Section 179(d)(2)(A) Related Person rules.
- (ii) In substantial rehabilitation projects, hard construction costs must exceed \$10,000 per unit. These costs will be calculated using lines 2 through 7 in the Project Development Cost Description in Part A of the application and certified at final cost certification. In order to receive ranking points, an owner of an occupied property must perform at least \$15,000 in hard construction cost renovations per occupied unit, calculated using lines 2 through 7 in the Project Development Cost Description in Part A of the application that are directly attributable to the residential units (rather than to a community building), and only if supported by the physical needs assessment.

Please note the special requirement for all projects using RPP funding that any rehabilitation project must involve substantial rehabilitation of at least \$25,000 per unit in total development cost. If any units are currently occupied, applicant must have a plan with the local government for tenant relocation, and must have funding for relocation using funds other than RPP funds.

- (iii) Environmental Hazards – All renovation projects must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCB's), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFC's), and other hazardous materials. 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.
- (iv) Appraisals - The Agency will not allow the project budget to include more for land costs than its appraised market value. Any project budgeting more than \$1,000 toward land costs must submit a real estate "as is" appraisal prepared by an independent, state certified appraiser, providing a land value with submission of the full application. All rehabilitations require an "as is" appraisal that breaks out the land and building values from the total value.

3. Other Considerations

- (a) Minority and low-income concentration: Projects cannot be in areas of minority and low-income concentration (this is measured by comparing the concentration in the site's census tract with the percentage of minority and low-income households in the community overall). An exception can be made for projects in economically distressed areas which have revitalization plans with public funds committed to support the effort. The Agency will analyze the market area to determine the appropriateness of the density and the diversity of the housing and population.
- (b) Displacement: Proposed projects must minimize displacement, as this activity is strongly discouraged. In every instance of displacement, the applicant must supply with the full application a plan describing how

displaced persons will be relocated, and the costs and source of relocation expenses. The applicant is responsible for all relocation expenses, and they must be included in the project's development budget.

For any project requesting a Rental Production Program (RPP) loan or any other federal funding that will result in displacement, the applicant must comply fully with all requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

For any projects requesting tax credits but not requesting RPP funds or any other federal funds that will result in either permanent or temporary displacement, the applicant must comply fully with all URA requirements, except as provided for by the guidelines outlined in **Appendix F**.

- (c) Tax Information Authorization: IRS Revenue Ruling 9-98 establishes a process for the Agency to obtain tax credit background information of applicants. The Agency has signed a Memorandum of Understanding with the Internal Revenue Service in order to implement this process. Applicants must submit an executed IRS Form 8821 with their full applications. Every owner should submit a separate form. The IRS will provide the Agency with all federal tax information pertaining to low income housing tax credits, including audit findings and assessments for all tax periods specified on Form 8821, Tax Information Authorization. The form and instructions are supplied in **Appendix Z**.

4. Underwriting Threshold Requirements

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements will not receive credits or RPP funding. Underwriting will be completed at the time of full application.

- (a) Loan Underwriting Standards
Projects applying for tax credits only will be underwritten with rents escalating at 3% and operating expenses escalating at 4%.

Projects applying for RPP (HOME) funds will be underwritten to ensure that they do not exceed the Fair Market Rents (FMR) established by HUD. Therefore, HOME regulations will be applied only to a subset of total affordable units. This subset will be defined by applying two tests:

1. HOME assistance proportionality 2. HOME maximum subsidy limits (Appendix R).

Once the subset of the total affordable units has been determined, the HOME units will be underwritten with rents escalating at 1.5%. The remaining units will be underwritten with rents escalating at 3%. All expenses will trend at 4%. If the Agency determines that the project is not financially viable, then, the project will be underwritten with expenses escalating at 3.5%. Please review page 33 for examples. The Agency reserves the right to underwrite income and expense projections as if the project was not applying for RPP funds if a county's higher FMR s permit.

This underwriting criteria does not apply to projects applying for RPP (HOME) funds along with Rural Development funds and proposing Rental Assistance.

The repayment schedule for RPP loans should be structured to achieve an appropriate level of subsidy while maintaining a 1.15 Debt Coverage Ratio (DCR). The Agency reserves the right to adjust the lending rate to avoid negative amortization of the loan.

All projects will be underwritten assuming a constant 7% vacancy and must reflect at least a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project.

- (b) Operating Expenses
Assumptions for projects over 16 units:

New construction: \$2,100 per unit per year not including taxes, reserves and resident support services

Renovation: \$2,300 per unit per year not including taxes, reserves and resident support services.

Owner projected operating expenses will be used if they are higher than Agency minimums. The owner must have the proposed management agent (or management staff if there is an identity of interest) sign a statement in the application that they have reviewed these costs and agree they are reasonable projections.

- (c) Equity Pricing

The Agency will examine the individual project pricing for tax credits and compare it to the average market price for tax credit syndications for open funds as published in the most current issue of the *Tax Credit Advisor at the start of the Agency's underwriting and review period*. Projects will be underwritten using equity pricing equal to at least the national market average. Owner equity projections will be used when an equity payment greater than average national pricing is projected. At application submission, applicants are required to submit a letter of intent from the investor confirming the financial assumptions of the purchase. Individual project pricing will be determined using the following formula:

Net equity from the projected sale of low-income housing tax credits - DIVIDED BY - Tax credit allocation request multiplied by Limited Partners percent of ownership (example: 99.99% multiplied by 10 years). Net 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.

(d) Reserves

- (i) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount should be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$200 per unit. These funds should be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the project development costs. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency 90 days prior to expected placed in service. All funds remaining in the rent-up reserve at the time the project reaches 93% occupancy must be transferred to the project operating reserve account.

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

- (ii) Operating Reserve: Required for all projects except those receiving loan funds from Rural Development. The operating reserve will be based on six month's debt service and operating expenses, and must be maintained for two full years starting after reaching stabilized occupancy.

Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits that exceed \$2,000 in aggregate during any three month period

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

For applicants seeking 4% housing credits with tax-exempt bond financing, the operating reserve will be based on four month's debt service and operating expenses. The period for which this reserve must be maintained can be established by the bond issuer.

- (iii) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Renovation projects involving an adaptive reuse effort must budget replacement reserves of \$350 per unit per year. Renovation projects involving a building currently or previously used as housing must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by 4% annually. This will be monitored by the Agency. Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.

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

IN ADDITION

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

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

Summary chart of the underwriting requirements for projects:

Project Type	Rent Up Reserve	Operating Reserve	Operating Expense	Replacement Reserve
New Construction	\$200/unit	6 Months of debt & operating expenses	\$2100/unit	\$250/unit
Rehab	\$200/unit	6 Months of debt & operating expenses	\$2300/unit	\$350/unit
Adaptive Reuse	\$200/unit	6 Months of debt & operating expenses	\$2300/unit	\$350/unit
Rural Housing	Considered part of 2% Operating and Maintenance		\$2100/unit – New \$2300/unit – Rehab	Established by Rural Development
Bond Project w/Tax Credits	\$200/unit	4 Months of debt & operating expenses	\$2100/unit – New \$2300/unit – Rehab and Adaptive Reuse	\$250/unit – New \$350/unit – Rehab and Adaptive Reuse

(e) **Deferred Developer Fees:**

Developer fees can be deferred to cover a gap in funding sources as long as fees are projected to be repaid within 10 years. The obligation to repay the deferred amounts owed to the developers must meet the standards required by the IRS to stay in basis. Repayment projections must not negatively impact the operations of the project using Agency underwriting standards. Applicants should include a statement describing the terms of the deferred repayment obligation to the project, including any interest rate charged and the source of repayment, with the application. Nonprofit organizations that are applicants applying for the nonprofit set-aside should include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The Agency will require a note evidencing the principal amount and terms of repayment of any deferred repayment obligation be submitted at the time of cost certification. The developer may not charge interest on this note beyond the long term AFR.

(f) **Financing Commitment:**

For all projects proposing **private** permanent financing, a letter of intent is required. This letter should clearly state the term of the loan is at least 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 18 years. The bank must complete a cover letter using the format in **Appendix E**, and submit it with the letter of intent. Applicants must submit a letter of commitment for financing within 90 days of receiving an award of tax credits.

For all projects proposing **public** permanent financing, binding commitments are required to be submitted by May 18, 2002. All loans must have a fixed interest rate and no balloon payments for at least 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 from a private lender must be included in the commitment. A sample commitment letter can be found in **Appendix E**.

It is not necessary to have Federal Home Loan Bank Affordable Housing Program (AHP) or NC Division of Community Assistance (DCA) Community Development Block Grant (CDBG) subsidy commitments in place at the time of the application. All projects applying for tax credits and the DCA's CDBG subsidy must submit the application to DCA at the same time as the Agency's application deadline. However, the Agency will only consider AHP financing that has been submitted in the FHLB's first offering round of the calendar year. FHLB, CDBG and any other financing from a foundation or alternative resource provided at below market terms must be committed by June 7, 2002. Public lenders must submit a cover letter outlined in **Appendix E** with the required letter of commitment. (Applicants using funds from the DCA refer to **Appendix Q**).

(g) **Developer/Builder Fees:**

- (i) Developer's fees shall be a maximum of 15%, or a lesser percentage adjusted for project size as described below. The Agency calculates developer's fees by adding lines 2-36 less lines 8 and 9 from the Project Development Cost Description in the application and multiplying by the applicable percentage to determine the maximum allowable developer fee.

0-60 units	15%
61-100 units	12.5%
101 units plus	10%

In addition to the fees described above, a maximum developer's fee of 4% is allowed on the acquisition cost of buildings (not including land value/cost) purchased for substantial renovation.

- (ii) Builder's general requirements shall be limited to 6% of hard costs.
- (iii) Builder's profit and overhead shall be limited to 10% (8% profit, 2% overhead) OF TOTAL HARD COSTS including general requirements.
- (iv) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to 8% (6% profit, 2% overhead).

- (h) Consulting Fees:

Consulting fees for a project must be paid out of developer fees, so that the aggregate of any consulting fees and developer fees is no more than the maximum developer fee allowed to that project.

- (i) Architects' Fees:

The total Architects' Fees, including design and inspection fees, shall be limited to 6% of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the Project Development Cost Description).

- (j) Investor Services Fees:

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

- (k) Project Contingency Funding:

All new construction projects shall have a hard cost contingency line item of NO LESS OR NO MORE THAN 3% of total hard costs, including general requirements, builder profit and overhead. Renovation projects shall include a hard cost contingency line item of NO LESS OR NO MORE THAN 6% of total hard costs.

- (l) Developments with Rural Development (RD) Financing Projects:

Those projects which apply for RPP funds that have a commitment of financing or rental assistance from the Rural Development, will be underwritten with the following guidelines.

RPP Loan Term: 30 years
Interest Rate: 0%
Amortization Period: 30 years
Income and Expenses shall trend to RD guidelines.

- (m) Project Ownership:

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

- (n) 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 as provided in **Appendices I and J** respectively. These limits are based on data published annually by HUD. If the Section 8 HAP 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 Congressional commitment to Section 8 rental assistance funding, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

C. AGENCY TARGETING REQUIREMENTS

1. Qualified units are all units receiving tax credits and/or RPP loan funds from the Agency and are rented to families with incomes at or below 60% of area median income adjusted for household size. Forty percent (40%) of the qualified units in projects with RPP funds must be affordable to and occupied by households with incomes of at or below 50% of the area median income adjusted for household size.

2. Mixed income projects which propose a mix of qualified units and market rate units may be financed with both tax credits and RPP funds; however, certain restrictions apply.

(a) Tax Credit Restrictions (Minimum Set-aside). There are two set-aside selections that an owner applying for tax credits must choose between:

(i) At least 20% of the units must be affordable to and occupied by tenants with incomes at 50% or less of the area median income. If this designation is chosen by the owner, no household in a unit for which the owner is receiving tax credits may earn more than 50% of the gross area median income adjusted for household size. OR,

(ii) At least 40% of the units must be affordable to and occupied by tenants with incomes at 60% or less of the gross area median income, adjusted for household size. If this designation is chosen by the owner, no household in a unit for which the owner is receiving tax credits may earn more than 60% of the gross area median income adjusted for household size. Owners who desire a mix of qualified units targeted to households at both 50% and 60% of median income should choose this set-aside.

See **Appendix I** for area median income amounts and income limits by family size. Tax credit rules dictate that the owner, at a minimum, must irrevocably elect to comply with either the 20%/50% or 40%/60% income and rent restrictions at the time of application but no later than the first tax return after the project is placed in service.

(b) Additional Set-aside: Additional units in excess of the minimum set-aside may be targeted as qualified units. However, if any units are targeted toward households at 60% of median income, then the minimum set-aside must be 40%/60%. If a 20%/50% minimum set-aside is chosen then all additional targeting must be at no greater than 50% of median income.

(c) Rental Production Program Restrictions: Market rate units are not considered qualified units and would not fall under the restrictions of the RPP program, or be counted in per unit calculations described in the RPP Loan Product Sheet.

3. Extended Use Requirements

The Extended Low-Income Occupancy election in the application binds the ownership entity to continue to use the building for low-income housing for an extended period of time beyond the first 15 years. If this election is not made, owners may elect to discontinue low-income occupancy at the end of 15 years by notifying the Tax Credit Allocation Committee through the Agency by the end of the 14th year. If the Agency cannot assist the ownership entity in finding a qualified buyer for the project, the low-income occupancy may be discontinued with certain restrictions. Restrictions include a ban on rent increases for three years for qualified low-income occupants beyond the applicable tax credit levels, and qualified low income occupants may not be evicted for other than good cause during this three year period.

4. Maximum Rent Calculation for Low-Income Housing Tax Credits and RPP Funds

Tax Credit Rent Calculation Requirements:

IN ADDITION

The Agency uses a two step process to determine maximum rents that may be charged on a project. Rents, including utilities, may not exceed the applicable low-income rent ceiling based on 30% of the household income limit calculated at 1.5 qualified occupants per bedroom known as the "maximum housing expense". Efficiency, studio, single room occupancy units are an exception as rents are calculated using 1.0 qualified occupants per bedroom. See Appendix I for area median income amounts and maximum housing expenses.

(As of _____, HUD had not yet published revised maximum family income limits for 2002. The Agency expects to forward the 2002 income limits, an updated **Appendix I** to applicants under separate cover as soon as we receive them from HUD.)

EXAMPLE 1:

Applicant chooses to target rents to families at 50% of the area median income in order to receive additional points under the QAP. Referring to **Appendix I**, the maximum housing expense allowable under the tax credit rules for a two bedroom unit in Alamance County for households at 50% of the area median income in 2001 would be calculated as follows:

2 bedrooms times 1.5 persons per bedroom	3-person income limit
Maximum Income of three persons	\$ 23,900.00
Divided by 12 months	\$ 1,992.00
Multiplied by 30%	\$ 597.00
Maximum Housing Expense:	\$ 597.00

Additionally, the Committee and the Agency require the maximum rents be set with a "Window of Affordability". Maximum housing expense for a project is to be no greater than 90% of the applicable total monthly housing expense ceiling (as calculated above) in high-income counties, or no greater than 95% of the applicable total monthly housing expense ceiling in low-income counties. This window of affordability will be monitored by the Agency during the compliance period for projects receiving an allocation of credits in 1998 and beyond. See **Appendix K** for list of high-income and low-income counties. Using the example above, Alamance County in considered a high-income county per **Appendix K**, therefore, the following calculation is required:

EXAMPLE:

Maximum Housing Expense:	\$597.00
Multiply by 90% (window of affordability)	\$537.00
Maximum Housing Expense Permitted by the Agency:	\$537.00

NOTE: The Maximum Housing Expense figures listed in Appendix I have been calculated to include the applicable Window of Affordability. Additionally, these rents include utilities. To calculate net rents (i.e. the rent collected by the development), utilities charged to the tenant must be subtracted from \$537.00.

Tax credit projects that select the minimum set-aside of 40% at 60% but also choose to target more deeply (i.e. 50% of the units at or below 50% or 100% of the units at or below 50%) will **not** be required to use the window of affordability when figuring the rents for these deeper targeted units.

Example 2:

The applicant is proposing a project with 24 units in Alamance County. The median income for this county is \$51,700. The project will have 12 one bedroom units and 12 two bedroom units. The applicant has not requested RPP (HOME) funds. The applicant has chosen the following set aside selections in Part B of the application:

1. 40% of the units at or below 60% of median income.
2. 100% of the units at or below 50% of median income.

Proposed Rent Structure:

Bedroom Size	#units	Monthly rent	Utilities	Total Monthly Cost
1	12	\$350	\$75	\$425
2	12	\$400	\$95	\$495

Tax Credit Limits for Alamance County:

Bedroom Size	50% Limit	60% Limit
1	\$448	\$538
2	\$538	\$645

Under this scenario the project's rents are well within the 50% rent limits. The project will be underwritten with rents escalating at 3% and expenses escalating at 4% annually.

RPP Rent Calculation Requirements:

Please note that while the same method mentioned in the above example can be used to calculate the Maximum Housing Expense, the window of affordability does not apply to projects choosing the minimum set aside of 40% at 60% and requesting RPP (HOME) funds. Since only a subset of the total number of units will have to comply with HOME regulations, two tests have to be applied in order to determine the subset of total affordable units:

HOME assistance proportionality
HOME maximum subsidy limits (Appendix R)

Test #1 - HOME Assistance Proportionality

Determine the proportion of HOME assisted units to total units. This proportion must be no less than the proportion of HOME dollars to the total development costs. For example, in a 46-unit development with a HOME fund request of \$862,575 and total development costs of \$3,528,752, the HOME loan constitutes 24.4% of the total development costs. Therefore, the subset of the total number of units that will be underwritten using the HOME underwriting criteria will be 24.4% of the total number of units. In this example, 24.4% of 46 units equals 11.22, which is rounded up to 12. Therefore, 12 units will be the number of HOME assisted units. **Please note that the HOME assisted units must be evenly distributed among all unit types.**

Test #2 - HOME Maximum Subsidy Limits

Determine that the amount of HOME assistance does not exceed the maximum per unit amounts set by HUD. These are the section 221 (d)(3) limits. These limits are determined by HUD's Office of Multi-Family Housing Programs. Limits for certain "base cities" are issued. The latest limit for a particular jurisdiction must be obtained from the appropriate HUD Multi-Family Housing Hub Office or Program Center. The per unit subsidy requirements are described in the HOME regulations at 24 CFR 92.250. The minimum HOME investment in rental housing is \$1,000 times the number of HOME assisted units as described in the HOME regulations at 24 CFR 92.205(c). For North Carolina, the maximum amounts are broken by 7 localities and by unit size. Each locality consists of various counties. Taking the same example mentioned in Test 1, the project is in Moore County, and is in the Charlotte locality. The current maximum subsidy set by HUD for two and three bedrooms is \$98,688 and \$127,668 respectively. These are well above the actual per unit HOME subsidy for this project since 24.4% represents only \$24,080/unit for two bedrooms and \$31,150 for three bedrooms.

Please note that the HOME assisted units must also comply with the 20/80 rule. In other words 20 % of these units must be at or below the Low Home rents and the other 80% of the units must be at or below the High Home/FMR rents.

EXAMPLE 1:

An applicant is proposing a 46 unit development in Moore County which will have 34 two-bedroom units and 12 three-bedroom units. The applicant has requested \$862,575 in RPP (HOME) funds. The proposed rent structure is as follows:

Bedroom Size	# Units	Monthly Rent	Utility Cost	Total Monthly Cost
2	17	\$394	\$95	\$489
2	17	\$394	\$95	\$489
3	6	\$465	\$115	\$580
3	6	\$465	\$115	\$580

The applicant has made the following set-aside selections in Part B of the application:

1. 40% of the units are at or below 60% of median income.
2. 40% of the units are at or below 50% of median income. (This selection is required for projects with RPP funds)
3. 50% of the units at or below 50% of median income. (Minimum setaside to receive points)

The following must be done to verify that the rents proposed meet both the tax credit and the HOME fund rent calculation rules.

**STEP 1: Check the Tax Credit Rent Limits, Appendix I.
Tax Credit Limits for Moore County**

IN ADDITION

Bedroom Size	50% Tax Credit Limit	60% Tax Credit Limit
2	\$563	\$651
3	\$675	\$781

Remember the rent figures in **Appendix I** include both the “window of affordability” and utility costs.

When the tax credit rents are compared with the proposed rents, it can be seen that all of the rents are well below the 50% and 60% rent limits. Therefore, the applicant has met the set-aside requirements selected:

- 1) All units are at or below 60% of median income
- 2) 40% of the units are at or below 50% of median income
- 3) of the units are at or below 50% of median income

**STEP 2: Check the HOME Program Rent Limits, Appendix J
HOME Rent Limits for Moore County**

Bedroom Size	Low HOME Rents	High HOME Rents
2	\$489	\$489
3	\$668	\$668

Since the Home rents are lower than the Tax Credit rents, the applicant must use the most restrictive rents.

STEP 3: Determining the Number of HOME assisted Units

We will use the same assumptions as in TEST 1. Since we determined that the RPP loan amount of \$862,575 comprises 24.4% of the total development cost of \$3,528,752 and that the maximum subsidy per unit requirements established by HUD has not been violated, 12 units of the 46 units will be underwritten using the HOME underwriting criteria. Since the 12 units will have to be evenly divided between the two and three bedroom units - 7 two bedroom and 5 three bedroom units must be underwritten at rents escalating at 1.5% and the remaining 34 units at Tax Credit rents escalating at 3%. Operating expenses must trend at 4%. The applicant must also ensure that 20% of his HOME assisted units are at or below the low HOME rent and the remaining are at or below the High Home rent/FMR. In this case, 3 units of the 12 must be at or below the Low HOME rent and the other 9 can be at or below the High or the FMR whichever is lower.

Example 2: Projects applying for State Credits

Using the same scenario as in Example 1, if the applicant has requested State Credits, then the following steps must be followed.

1. Check Appendix N to determine the county tier. Moore county is in Tier 5.
2. Check Appendix S to determine if additional targeting is required. In this case counties designated as Tier 5 must target 40% of their units at or below 35% of the median income.
3. Counties in Tier 3 and 4 must target 40% of their units at or below 50% of median income.
4. Counties in Tier 1 and 2 must follow LIHTC limits.
5. Low-income tenants must re-certify their incomes annually in projects with less than 100% low-income occupancy. Projects with 100% low-income occupancy must comply with this regulation unless a waiver of the annual income certification is obtained from the IRS, and a copy of the waiver is forwarded to the Agency.
6. A qualified low-income unit may remain designated as low-income as long as the tenant's income does not exceed 140% of the **current** qualifying low-income limit. If tenant income exceeds 140% of the limit, or a unit becomes vacant, it will continue to qualify, provided no other vacant units of comparable or smaller size are rented to nonqualifying families, the resident remains in that building, and the rent on that unit remains restricted.
7. Special Requirements
 - (a) The project must meet all applicable federal, state and local laws and ordinances including Section 42 of the Code.
 - (b) All 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 multifamily dwellings to include features of accessible design will be regarded as unlawful

discrimination. In general, these requirements apply to all ground floor units. The requirements of this Act are outlined further in **Appendix B**.

8. Native American Housing Assistance Self-Determination Act of 1996 (NAHASDA) NAHASDA assistance is not taken into account in determining whether a project is federally subsidized for purposes of tax credits, if certain requirements are met. Costs of projects funded with NAHASDA assistance will qualify for up to the 9% tax credits as long as deeper targeting rules consistent with the special targeting for HOME Program financed projects (i.e., at least 40% of the units at 50% of area median income or below) are followed by the project.

D. BASIS OF TAX CREDITS

1. Tax Credit Calculations

The Committee will allocate credits based on a project feasibility analysis and will award tax credits not to exceed the amount necessary to ensure project feasibility and viability throughout the project period. This will be the maximum credit amount that will be allocated. Annual credit allocations are equal to (a), (b) or (c) as follows:

- (a) Nine percent of the qualified basis of low-income units for newly constructed or substantially renovated projects or the "Applicable Percentage" that is computed under Code Section 42 (b) (2) (b) (i) based on the average annual applicable federal rate (the AFR; see **Appendix M**), whichever is less. The qualified basis of the proposed project may not include costs funded by federal subsidies or tax-exempt bond financing.
- (b) Four percent of the qualified basis of low-income units for newly constructed or substantially rehabilitated projects that are federally subsidized or financed with tax-exempt bonds, or for the acquisition cost of rehabilitated projects or the AFR computed under Code section 42 (b)(2)(B)(ii) (see **Appendix M**), whichever is less.
- (c) The percentage of the qualified project basis necessary to ensure project feasibility and viability throughout the credit period. If the amount of credits calculated in paragraphs (a) and/or (b) above is more than the amount of credits basis necessary to ensure project feasibility and viability throughout the credit period, in the Agency's determination, only the amount of credits needed to ensure project feasibility and viability throughout the credit period will be allocated for the project. The Agency's determination of the financial feasibility and viability of a project throughout the credit period will be determined in a manner consistent with Treasury Regulation Section 1.42-17.
- (d) The adjusted basis of any building located in a qualified census tract shall include the depreciable adjusted basis of property used throughout the taxable year in providing any community service facility, provided that such additional depreciable adjusted basis for such property shall not exceed 10% of the eligible basis of the qualified low-income housing project of which such property is a part.

2. Lock In Options for the AFR and Final Credit Calculation

- (a) Applicants who receive an allocation of tax credits will have the option of locking in the Applicable Federal Rate (AFR) for 4 or 9 percent tax credits at the time an allocation is made or at the time of the carryover allocation. This election is irrevocable. If the applicant does not choose to lock in, the rate will be locked in using the AFR as of the month the first low-income building is placed in service in accordance with Section 42 of the Code.
- (b) Applicants are advised that the actual allocation of tax credits or the RPP loan amount may be less than requested, as a result of the review of certified project costs at project completion. Specifically, if the final cost certification does not demonstrate enough eligible basis in the project for the tax credits allocated, the credits allocated on IRS Form(s) 8609 will be adjusted downward to reflect this amount. In no event will additional tax credits be allocated for projects which incur additional unforeseen costs. For projects with RPP loans, the loan amount may be decreased if there is not adequate justification for costs that vary from the initial application.
- (c) Applicants are encouraged to project a conservative applicable federal rate (AFR) in the application which realistically reflects the market. (A history of maximum applicable rates is located in **Appendix M**) This will guard against projecting more equity than can realistically be raised if the AFR falls.

3. Qualified Census Tracts (QCTs) and Difficult To Develop Areas (DDAs)

The qualified basis for tax credits may be increased by up to 30% in high-cost or hard-to-develop areas as designated by the Department of Housing and Urban Development. The Agency generally does not support using RPP funds for projects in qualified census tracts. If RPP funds are used in such areas, they must be loaned with an interest rate equal to at least the applicable federal rate defined in the Code in order to qualify for the 30% basis increase. There are other restrictions as well. See **Appendix L** for list of Qualified Census Tracts and Difficult to Develop Areas.

4. Carryover Provision

The Code requires more than 10% of a project's reasonably anticipated basis be incurred by the later of the date that is six months after the date the allocation was made or December 31 of the year in which the allocation is made in order for the project to receive a carryover allocation under Section 42(h)(1)(E) or (F) of the Code. For administrative purposes, the Agency is requesting that the 10% cost certification be submitted by November 15, 2002. The 10% cost certification should be submitted in accordance with the procedures outlined in Appendix X. The 10% that must be incurred is 10% of anticipated total costs of land and depreciable real or personal property, excluding the basis of any building(s) that will not be part of the completed property. The buildings in projects receiving a carryover allocation must be placed in service by the close of the second calendar year following the calendar year in which the allocation is made. For new construction and existing buildings, placed in service usually means the date the building receives a Certificate of Occupancy issued by the local governing body. For projects involving substantial rehabilitation, placed in service means the last day of the 24 month period (or shorter period, if elected by the owner) for aggregating rehabilitation costs, as long as the 10% cost certification requirements have been satisfied. Please note that owners that are awarded partial credits must meet the requirements for receiving a carryover allocation.

5. Rent Floor Selection

Applicants are permitted to use the initial maximum rents to serve as a floor preventing subsequent reductions in maximum rents for a tax credit building. Owners must execute this form prior to the placed in service date, or the applicable rents at the time of initial allocation of credits will apply.

6. Ten Year Credit Period

Tax credits may be used upon occupancy of the qualified unit, prorated for the 1st year, for each year for nine years thereafter with the unused amount from the first year's proration available in the 11th year. Compliance with income and rent restrictions will last a minimum of 15 years from the time the project is placed in service. This will be extended through the "Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits" (also referred to as the Extended Use Agreement).

7. Liability

Neither the Committee nor the Agency assumes any responsibility or accepts any liability for the interpretation of Section 42 of the Code, or whether any individual, partnership, corporation or entity that applies for and receives an allocation of tax credits qualifies for or can utilize tax credits allocated. Owners and their agents are encouraged to consult their own legal and tax advisors on these issues.

8. Tax Credit Regulations

The IRS has not issued final regulations for many issues that involve the use of tax credits. Additional rules and regulations are expected to be published at later dates. Any tax credit allocation made by the Committee prior to such issuance will be subject to the rules and regulations when issued.

9. Building Allocations

The tax credits are to be allocated on a per building basis or on a project basis. Costs of common facilities within the project may be prorated among the buildings or to the low-income units in each building.

E. APPLICATION PROCEDURE

IN ADDITION

The owner must complete the application in the Site and Market Analysis Application and submit it in a 3", 3-ring binder, with tabs separating each exhibit, by **January 18, 2002**. Projects with appropriate sites and markets will be allowed to submit a full application with required attachments (3-hole punched with tabs) and an application fee by **April 26, 2002**.

Deliver to:
North Carolina Housing Finance Agency
Rental Investment Group
3508 Bush Street
Raleigh, NC 27609

Mail to:
North Carolina Housing Finance Agency
Rental Investment Group
P.O. Box 28066
Raleigh, NC 27611-8066

Application Process

- (1) The Agency will evaluate all projects for appropriate sites and adequate market demand through a preliminary application process. The appropriate unit of government will be notified about the project at the time the preliminary site and market application is submitted to the Agency. The Agency will evaluate the response from the local government in approving or denying the application. The Agency reserves the right to reject applications that are opposed in writing by the chief elected official of the unit of local government (supported by their council or board), but is not obligated to do so. Reasons for opposition may include inconsistency with the local Consolidated Plan or an adopted local policy.
- (2) Detailed analysis of sites and market studies will be performed to score preliminary applications. Projects that do not meet the Agency's minimum threshold requirements described in this document may not be allowed to submit a full application. Applicants should carefully review the criteria the Agency uses to evaluate both the site and market study. Scoring criteria are found in the Plan (Part V) and market study requirements are in **Appendix A**. Applicants will receive the results of this preliminary ranking prior to submission of the full application.
- (3) Upon receipt of a full application, the Agency will log in and review each application and verify the application is complete.
- (4) The Agency will rank applications according to the criteria in the Plan for an allocation of tax credits according to the appropriate set-aside in the Plan.
- (5) The Agency will use the revenue and expense information submitted to analyze the project's financial feasibility. Project rents will be required to meet all requirements of the Plan. The Agency will use a national average price for tax credit pricing (currently 78 cents) in underwriting the project unless the owner proposes a higher amount. This minimum is subject to change depending on the syndication market for tax credits.
- (6) The Agency will make its recommendation to the Committee. The applicant will then be notified in writing of the decision. If approved, the Agency will notify the applicant of the amount and conditions of the tax credit allocation. If denied, the Agency will notify the applicant of the reasons for denial. The Agency will provide a written statement available to the general public for any allocation made not in accordance with the Agency's priorities and selection criteria as set forth in the QAP.
- (7) Once approved, the applicant will proceed to acquire, construct or rehabilitate the project. The applicant is required to update the Agency on the progress of development by submitting a Project Status Report (**Appendix W**). Sixty days prior to occupancy, the Agency must be notified in writing of the targeted project completion date. Upon completion for occupancy, the applicant must notify the Agency and furnish the Final Cost Certification form in **Appendix Y**. The cost certification must include all project costs along with a certification for any subsidies the project will receive. Final IRS Section 1.42-17 Regulations effective January 1, 2001 require that the taxpayer of all projects in excess of ten units, which are placed in service after January 1, 2001, regardless of the year of credit allocation, submit a schedule of project costs accompanied by a Certified Public Accountant's (CPA) audit report that details the project's total costs as well as those that may qualify for inclusion in eligible basis under Section 42(d). A third party CPA verification is required for cost certification on two or more units. This certification shall be in the form of **Appendix Y**. The Agency may require an independent cost analysis for projects that have an identity of interest between the applicant and the builder/general contractor.

Under the Code, the allocating agency is required to underwrite the project upon completion and adjust the amount of tax credits necessary to make the project feasible. Applicants must understand that the actual tax credits allocated will be the lesser of the tax credits initially allocated, the amount of tax credits in any carryover allocation, or the tax credits determined necessary after cost certification.

- (8) Allocated credits may also be returned to the Agency under the following conditions as further described in Treasury Regulation Section 1.42-14: (1) credits have been allocated to a project building that is not a qualified building within the time period required by Section 42, for example, because it is not placed in service within the period required under Section 42, (2) credits have been allocated to a building that does not comply with the terms of its allocation agreement, (3) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (4) 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) after close of calendar year in which allocation was made. Credits that are returned before October 1 in any calendar year are treated as credits returned in that calendar year, and all or a portion of such credits will be reallocated to the next highest ranked project(s) without a full allocation in that region and in that calendar year, pursuant to the terms of the Plan or, in the Agency's discretion, when appropriate and possible, carried over for allocation in the next calendar year. With respect to credits that are returned after September 30 in any calendar year, all or a portion of such credits may also be reallocated to the next ranked project(s) without a full allocation in that calendar year pursuant to the terms of the Plan, or all or a portion of such credits may be treated by the Agency, in its discretion, where appropriate and possible, as credits that are returned on January 1 of the succeeding calendar year to be allocated in that year.

By the time of the earlier of the date of the project is placed in service, in the case of a carryover allocation, or by the 10% cost certification, (1) the ownership entity must have been legally formed, and (2) qualifying expenditures must have been incurred in the ownership entity's name or incurred by the ownership entity pursuant to a reimbursement agreement with a third party and such third party has incurred such expenditures by the time of 10% cost certification, and (3) the ownership entity must have a tax identification number.

- (9) The Agency may conduct construction inspections for adherence to approved final plans and specifications.
- (10) The Agency will review the Final Cost Certification for compliance with the Code in addition to application requirements.
- (11) The owner must sign and record a "Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits" (Extended Use Agreement) in the county in which the project is located by the date the project is placed in service, or if a Section 42(f) election is made, by the first day of the succeeding tax year, and forward a copy to the Agency.
- (12) Tax credits will be allocated, based on applicable regulations, to those projects that have complied with the Code in addition to the application requirements.
- (13) The Agency may revoke credits after the project has been placed in service in accordance with Section 42 if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction.

F. ACCESS AND MONITORING

1. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria used to award bonus points, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in Section 42 and from time to time amended.
2. 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.

A monitoring fee must accompany the Final Cost Certification (Appendix Y) for a project to receive an allocation of tax credits. The monitoring fee will be published each year by the Agency. Refer to the Plan, Rental Production Program Information (Appendix R), and tax-exempt financing guidelines (Appendices U and V) for further information on Agency monitoring requirements.

G. PROJECT ANALYSIS PROCEDURE

1. The Agency will first conduct an analysis of the preliminary application to evaluate the site appropriateness and market feasibility of each project. See Site and Market Evaluation in Section V. A. of the Plan for scoring criteria. Projects must, **at a minimum, meet all Agency threshold requirements** to be allowed to submit a full application.
2. Upon submission of a full application, the Agency will use a computer spreadsheet program to perform a standard financial analysis of each project and to determine the appropriate tax credit amount. No project will receive an applicable percentage exceeding 9% for new construction and substantial rehabilitation costs and 4% for acquisition costs and certain new construction and substantial rehabilitation projects that are federally subsidized. The Agency will decrease the percentage where the tax credit amount is deemed to be excessive. Projects in qualified census tracts or difficult to develop areas are eligible for up to a 30% increase in the calculation of the project's qualified basis. Such increases will only be permitted when shown to be critical to the feasibility of the project. QCT's and DDA's are found in **Appendix L**.
3. The analysis of projects will generally use a three-step procedure to define the appropriate tax credit amount.
 - (a) The first step will establish and evaluate total development cost (i.e., land, construction and soft costs), eligible basis and rents that will be charged to tenants based on the application submitted.
 - (b) The second step will establish and evaluate the project's operating expenses and debt service costs based on projected commitments for financing.
 - (c) The third step will establish and use a pro forma financial analysis of the project's total costs, net operating income and projected total sources and uses of funding (See **Appendix G**). All projects must meet the underwriting requirements and the affordability windows described in C.4. Agency Targeting General Requirements. The maximum tax credit award will be determined using the total anticipated qualified basis amount multiplied by an AFR halfway between the April 2002 AFR and the maximum of 4% or 9%, or the annual credit amount necessary to ensure project financial feasibility and viability throughout the credit compliance period. This is the maximum amount of tax credits which will be allocated to a project (if it is approved for credits) to allow the Agency flexibility in allocating credits if the applicable percentage (based on the AFR) changes.
4. Ownership entities will be required to furnish cost certifications on completion of the project. These actual costs will be used in the same three-step process to determine if the tax credit amount provided at the allocation stage should be modified. Any material changes from the approved application not approved in writing by the Agency may result in cancellation by the Committee of the tax credit allocation or reduction of the tax credit amount.

Federal form 8609 will not be issued until the owner and/or 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. In addition, 8609s will not be issued until the Agency confirms that the monitoring fees have been paid and that the project has adhered to the design elements represented in the application and that landscaping and other amenities (play equipment, etc.) have been installed as per the applicant's site/landscaping plan. The Agency will exercise reasonable judgement in withholding the issuance of the 8609 considering the imposition of factors outside the developer's control, such as adverse seasonal and/or climatic conditions. Evidence of escrowed funds to complete landscaping may be required.

H. COMPLIANCE MONITORING

The Code requires the Committee to develop and implement a compliance monitoring program for completed projects that have received an allocation of low-income housing tax credits. A procedural manual has been developed and it will be distributed to applicants. Compliance monitoring is required for a minimum of 15 years after receipt of an allocation.

Applicants will be required to utilize the TCR Online Internet reporting system (or other system as designated by the Agency) to update the Agency database on project and building information and unit activity. The database should be updated within 30 days of any change in information. Applicants will also be required to submit to the Agency a copy of the IRS form 8609 and Schedule A filed with the IRS for the first year credits are claimed.

The Agency will annually conduct on-site inspections and desk audits of at least 33% of the projects under the Committee's jurisdiction. If projects are determined to be in noncompliance, monitoring may occur more often. The desk audit and inspection will include a project review of 20% of the units for the following:

- Tenant eligibility certifications
- Supporting eligibility documentation
- Leases
- Rent record (including utility documentation)
- Compliance with supportive services commitments
- Compliance with other commitments made in the application
- Inspection for compliance with HUD Uniform Physical Condition Standards

All projects, at a minimum, are expected to meet HUD's Section 8 Uniform Physical Condition Standards and comply with local and state health and building codes throughout the compliance period. A Memorandum of Understanding (MOU) has been executed with Rural Development (RD) to accept their physical inspections in lieu of performing the inspection. The Agency will use discretion in determining when to utilize the MOU. In any event, the Agency will continue to monitor compliance documentation.

The Agency will be monitoring rent levels relative to current median income levels. The Agency requires a window of affordability in calculating rents such that rents cannot exceed 90 percent of the Maximum Housing Expense for high-income counties and 95 percent of the Maximum Housing Expense for low-income counties as applied to all units meeting the project minimum set-aside election.

The county designation will be reviewed on an annual basis and published each year in the QAP. Tenant rents can not exceed the initial "window of affordability" from the original underwriting for the property without written permission of the Agency. In the event the county designation changes from low to high or high to low, requiring a change in the window of affordability, changes to the rent level will be handled as follows:

The Agency will not require a reduction in the existing rent structure because of a change in county designation. However, rent increases can only be implemented to the extent that they comply with the current required calculation, using the window of affordability that currently applies to the project. The Agency may waive this restriction if the ownership entity submits a written request and documentation demonstrating that the property will be financially jeopardized, and that it is unable to pay its operating expenses and debt service requirements while maintaining at least a 1.15 debt coverage ratio.

In mixed-use properties, 100% of the units may be monitored in any building receiving an allocation of tax credits.

The Agency will be monitoring projects to ensure the required monthly deposits to reserve for replacement accounts are made in accordance with the General Requirements.

During the compliance period the Committee and Agency reserve the right, under the provisions of Section 42 of the Code, to perform an audit of any project that has received an allocation of tax credits. This audit may include an inspection of all buildings, and a review of all tenant records and certifications, and documents supporting items for which the owner received points (or avoided point deductions) in the application for an allocation of credits.

Each applicant has chosen to utilize low-income housing tax credits to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met so that the project will benefit low-income tenants.

Under the provisions of the tax credits, the ownership entity of a low-income housing project will be required to keep records (as defined below) for each building within a particular development. These records must be retained by the owner for a minimum of six (6) years beyond the owner's income tax filing date (plus any extensions) for that year. However, first year project records must be maintained for six (6) years beyond the tax filing date of the final year of the project's compliance period, or for 21 years because those records are needed to prove the project's eligibility for tax credits. The ownership entity must annually report to the Agency and maintain records for each qualified low-income building in the project showing:

- Total number of residential rental units in the building; (including the number of bedrooms and the size in square feet of each such unit)
- Percentage of residential rental units in the building that are low-income units
- Rent charged on each residential rental unit in the building (including utility allowances)
- The size of each low-income household
- Low-income unit vacancies in the building and documentation of when and to whom, the next available units were rented
- Income certification and student status of each low-income tenant
- Documentation to support each low-income tenant's income certification
- Character and use of the nonresidential portion of each building included in the building's eligible basis (this includes separate facilities such as clubhouses or swimming pools whose eligible basis is allocated to each building)

Failure to report annually to the Agency is deemed as noncompliance and is reportable to the IRS.

It is the responsibility of the ownership entity to certify annually to the Agency that the project meets the requirements of whichever set-aside of Section 42 is applicable to the project. Failure to certify is deemed as noncompliance and reportable to the IRS. This annual certification requires that the ownership entity certify that:

- The project meets the minimum requirements of the 20/50% or 40/60% test under Section 42 of the code
- There has been no change in the applicable fraction as defined in Section 42 for any building in the project
- The applicant has received an annual Tenant Income Certification from each low income resident and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, a statement from the PHA certifying the household's size and amount of gross income; or the owner has a recertification waiver letter from the IRS in good standing that waives the requirement to obtain 3rd party verifications at recertification and has received an annual Tenant Income Certification from each low income household, and documentation to support the certification at their initial occupancy
- Each low-income unit was rent restricted in accordance with Section 42 of the Code.
- All units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless)
- No finding of discrimination under the Fair Housing Act, 42 USC 3601-3619, has occurred for this Project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgement from a federal court.
- Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project
- There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification
- All tenant facilities included in the eligible basis of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings
- If a low-income unit in the project has been vacant during the year, 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 were or will be rented to tenants not having a qualifying income
- 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) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income
- An extended low-income housing commitment was in effect, including the requirement that an ownership entity 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. Neither the ownership entity nor the management agent has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings allocated credits from years 1987-1989)
- If the applicant received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified nonprofit organizations" under Section 42(h)(5) of the Code and its nonprofit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code
- There has been no change in the ownership or management of the project

The ownership entity of any exempted project must certify to the Agency on an annual basis that the project is in compliance with the requirements for RD assistance or the tax-exempt bond financing guidelines, as applicable, and that all requirements of Section 42 of the Code are also being met. The ownership entity must inform the Agency of any noncompliance or if the owner is unable to make one or more of the required certifications.

The Agency may elect to subcontract the monitoring procedure to other agents. In doing so, the Agency would designate the subcontractor as the compliance monitoring agent who would perform the Committee's function.

In the event that any noncompliance with Section 42 of the Code is identified, a discrepancy letter detailing the noncompliance will be forwarded to the ownership entity and management company of the project.

The ownership entity must then respond in writing to the Agency within thirty (30) days after receipt of the discrepancy letter when noncompliance has been determined. The response must address all discrepancies individually and must indicate the manner in which corrections will be made. The owner will then have a cure period of sixty (60) days from the date of the discrepancy letter to correct the noncompliance detected and to provide the Agency with any documentation or certification found to be missing during the annual

IN ADDITION

management review. The cure period may be extended for periods of up to six (6) months. Extensions will be based on a determination by the Agency that there is good cause for granting the extension.

The Agency will notify the Internal Revenue Service within forty-five (45) days after the expiration of the cure period of any noncompliance that has been detected. All corrections made by the ownership entity within the cure period will be acknowledged within this notice. A copy of the applicant's response to the noncompliance will accompany the notice to the IRS.

If a potential noncompliance is discovered during a compliance monitoring review, the ownership entity will be required to have its managing agent attend a compliance training session within two months following the compliance monitoring review.

Monitoring Fees

In order to reimburse the Agency for the 15-year cost of the compliance monitoring program, the following fee must be paid prior to the issuance of federal form 8609:

	Federal Credits Only	Federal and State Tax Credits*
For federal tax credit projects without an Agency loan (RPP funding), including projects using tax-exempt bond financing and 4% credits	\$425 per unit	\$525 per unit
For projects financed under the Section 515 Program of Rural Development <u>without RPP funding</u>	\$250 per unit	\$350 per unit
For all projects receiving an Agency RPP loan, regardless of RD participation.	\$500 per unit	\$600 per unit

*All projects receiving state tax credits will have an additional monitoring fee of \$100 per unit.

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

Any person wishing to comment to the Agency on this proposed QAP should do so no later than November 15, 2001, to the attention of Steve Culnon, NCHFA Director of Rental Investment, (email: sculnon@nchfa.com).

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

CHAPTER 38 – STANDARDS DIVISION

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

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 38 .0701 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 119-55

Statement of the Subject Matter: This Rule adopts by reference, including subsequent amendments, certain national standards for storage and handling of liquefied petroleum gas (LP gas) and for installation of LP gas equipment and facilities. Proposed changes would modify current requirements for fire safety analyses.

Reason for Proposed Action: The 2001 edition of the National Fire Protection Association Pamphlet 58 (NFPA 58) requires a written fire safety analysis for LP gas tanks of a certain size. Previously, no written document was required. The Department believes the requirement for a written document is unnecessary for most installations and proposes to modify the adoption by reference to provide for an alternative means of complying with the fire safety analysis requirement.

Comment Procedures: Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

CHAPTER 42 – GASOLINE AND OIL INSPECTION BOARD

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

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 42 .0401. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 119-27

Statement of the Subject Matter: This Rule requires fuel dispenser labeling for gasoline/ethanol blends. When gasoline contains fuel grade ethanol up to and including 10 percent (E10), the retail dispenser must be labeled as "contains ethanol" or "contains alcohol."

Reason for Proposed Action: The North Carolina Energy Policy Council has requested the Board to consider repealing the requirement for fuel dispenser labeling for gasoline blended with up to 10 percent fuel grade ethanol. This would affect fuel dispenser labeling for gasoline/ethanol blends known as E10 (10 percent fuel grade ethanol blended with 90 percent gasoline).

Comment Procedures: Written comments may be submitted to Winston Sutton, Director, Standards Division, North Carolina Department of Agriculture and Consumer Services, PO Box 27647 SD, Raleigh, NC 27611.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 03 – FACILITY SERVICES

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 03C .3102, .4305 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113E-79, S.L. 2001, c. 410

Statement of the Subject Matter: The NC Medical Care Commission plans to adopt temporary rules at 10 NCAC 03C .3102 and .4305. These Rules pertain to hospital beds. The purpose of this action is to respond to a recent action of the NC General Assembly.

Reason for Proposed Action: The NC General Assembly recently ratified House Bill 1147 (Session Law 2001-410). This legislation amends G.S. 131E-83 and directs the Medical Care Commission to adopt temporary rules setting forth conditions for licensing all neonatal care beds. The Commission is proposing to adopt temporary rules that amend existing rules

found at 10 NCAC 03C .3102 and .4305 to meet this legislative mandate.

Comment Procedures: Written comments concerning the rule-making action must be submitted to Mark Benton, Rule-making Coordinator, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 01 – DEPARTMENTAL RULES

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 01C .0100-.0504. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-2, 133A-4, 113A-5, 113A-6, 113A-7, 113A-8, 113A-9, 113A-10, 113A-11, 113A-12, 143B-10

Statement of the Subject Matter: Conformity with the North Carolina Environmental Policy Act

Reason for Proposed Action: These Rules will be updated so the language is clearer. The Department of Administration, the administrating agency for the State Environmental Policy Act (SEPA) found the rules to be difficult to read and understand by the public. Agency staff will also change some of the minimum criteria thresholds.

Comment Procedures: Please mail comments to Kari Barsness at NCDENR, Secretary's Office, 1601 Mail Service Center, Raleigh, NC 27699-1601

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02B .0303, .0312, .0316. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.1; 143-215.1; 143-215.3(a)(1)

Statement of the Subject Matter:

15A NCAC 02B .0303 - The Environmental Management Commission (EMC) is proposing to reclassify a section of the Little Tennessee River (Macon and Swain Counties) in the Little Tennessee River Basin from Class C to Class B (Primary Recreation).

15A NCAC 02B .0312 - The Environmental Management Commission (EMC) is proposing to reclassify a section of Southwest Creek (Onslow County) in the White Oak River Basin from Class C to Class SC. The EMC is also proposing to reclassify three sections of the New River (Onslow County) in the White Oak River Basin from Class SC to Class SA HQW.

15A NCAC 02B .0316 - The Environmental Management Commission (EMC) is proposing to reclassify Swift Creek (Edgecomb, Franklin, Nash, Vance, and Warren Counties) in the Tar-Pamlico River Basin from Class C NSW/Class WS-IV NSW to Class C ORW NSW/Class WS-IV ORW NSW.

Reason for Proposed Action:

15A NCAC 02B .0303 - Asheville Regional Office DWQ staff requested the reclassification of a segment of the Little Tennessee River (Macon and Swain Counties, Little Tennessee River Basin) from Class C to Class B (Primary Recreation). This proposed reclassification consists of the main stem of the Little Tennessee River from approximately 0.4 miles upstream of the Highway 28 bridge (near Iotla, NC) to the Nantahala River Arm of Fontana Lake. Nearly 25 river miles are proposed to be reclassified. The purpose of this Rule change is to protect the existing waters' primary recreation uses. Primary recreation means swimming, skin diving, water skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. The proposed waters are used for swimming and water skiing as well as canoeing and kayaking. Usage gets progressively heavier as one travels the proposed segment downstream (towards Fontana Lake). Water quality studies conducted in May 2001 show that the waters proposed to be reclassified meet Class B criteria. If reclassified, new and expansions of NPDES wastewater discharges as well as existing such discharges with fecal violations to these waters will need to comply with reliability standards. In addition, new and existing NPDES wastewater discharges that contain fecal coliform will be required to have a fecal limit. However, no NPDES discharges exist along the river. In addition, there is only one planned discharger into the proposed waters, and this discharger intends on meeting Class B requirements. Forestry, animal, development, and agricultural practices will not be affected.

15A NCAC 02B .0312 - Wilmington Regional Office DWQ staff requested the reclassification of a segment of Southwest Creek (Onslow County, White Oak River Basin) from Class C to Class SC. This reclassification concerns the portion of the Southwest Creek main stem from approximately 1.0 mile upstream of Mill Creek to New River. Approximately 2.0 miles of the creek are proposed to be reclassified. The purpose of this Rule change is to reflect the saltwater nature of these waters. The current and proposed uses for these waters are secondary recreation (such as fishing, wading, and boating), agriculture, and aquatic life including propagation and survival. Water quality studies conducted in July 2001 show that these waters meet the criteria for Class SC. If reclassified, the ambient water quality standards for Class SC waters will apply.

Compared with the ambient standards for Class C waters, the Class SC standards are less restrictive, equal to, or more restrictive depending on which parameters are compared. Thus, the specific wastewater components of any NPDES facility's discharge to these waters would determine whether the discharge would be affected by this reclassification. However, there are no existing or planned NPDES discharges into these proposed waters. The NC Division of Environmental Health (DEH) has requested that three New River segments in Onslow County (White Oak River Basin) be reclassified to SA to recognize that these segments are currently open to and being used for the harvesting of shellfish. The three river segments, which represent approximately 3100 acres of surface water, are located slightly south of Jacksonville. One of the segments is currently SC NSW (Nutrient Sensitive Waters) whereas the two remaining segments are currently SC. The latter two segments are the only portions of the New River south (downstream) of the first mentioned segment that currently are not SA. Included in the proposed reclassification is one tributary that is currently classified as SC HQW (High Quality Waters). Two of the three segments were previously closed to shellfishing due to point source discharges according to NCDEH. NCDEH also stated that the discharges have been removed and the areas were approved by NCDEH for shellfish harvesting in 1998 after significant testing. All three segments meet the criteria for SA waters due to the lack of domestic dischargers, active and NCDEH approved shellfish harvesting, qualifying NCDEH fecal coliform data, and fully supporting use ratings by NCDWQ. SA waters are by definition HQW waters, and thus if reclassified, regulations required by SA and HQW classifications would apply. These regulations affect development activities, wastewater dischargers, and ambient fecal coliform standards. In addition, unnamed SC or C waters tributary to SA waters, or other waters in such close proximity as to adversely affect SA waters, cannot receive domestic sewage. The activities/development that exist and are projected to occur in the proposed waters are not covered in the SA and HQW regulations associated with the proposed reclassification. There are no current or planned dischargers in the proposed waters, and one nearby discharger has no plans to expand. There are no plans for significant development of land adjacent to the proposed waters. Finally, one contaminant plume near the shore of one of the proposed waters is not migrating off-site, continues to be monitored, and eventually will be remediated.

15A NCAC 02B .0316 - The Pamlico-Tar River Foundation has requested that Swift Creek (Edgecombe, Franklin, Nash, Vance and Warren Counties) in the Tar-Pamlico River Basin be reclassified to Outstanding Resource Waters (ORW). This proposed reclassification is for the entire Swift Creek watershed, and consists of nearly 207 surface water miles. This proposal would recognize these waters for their exceptional State and national ecological significance, and provide supplementary protection for the waters' resources and quality.

Water quality studies conducted in 1996 and 1997 indicate that only an approximately 14-mile segment of Swift Creek, which traverses from S.R. 1003 to S.R. 1004 in Nash County, has excellent water quality. In addition, these studies combined with additional data revealed that this segment contains many important species that carry a variety of State and federal designations. This segment contains the Tar River spiny mussel, which is a federally and State listed endangered species. Thus,

based on the water quality and existing resource values, this Swift Creek segment qualifies for the ORW designation. The remainder of the creek's watershed also contains several important resources. This area contains a variety of species that carry varying State and federal designations. The red cockaded woodpecker and dwarf wedgemussel which are federally (and in the case of the woodpecker also State) listed as endangered are located in this area as are three natural heritage areas of regional or state significance, four natural communities recognized by the Natural Heritage Program (NHP), a wading bird rookery, and a natural area registered with the NHP. Due to the presence of the resource values in the watershed and the excellent water quality of the 14-mile segment, it is proposed that the ORW special protection measures, or management strategy, be implemented throughout the entire watershed, but only the 14-mile segment actually receive the ORW classification. If reclassified, regulations that affect new development activities, wastewater dischargers, landfills, and DOT activities would apply. However, there are no proposed discharges or significant proposed development. Forestry, animal, and agricultural practices will not be affected.

Comment Procedures: The purpose of this announcement is to encourage those interested in this proposal to provide written comments. Written comments, data, or other information relevant to this proposal can be submitted. It is very important that all interested and potentially affected persons or parties make their views known to the Environmental Management Commission whether in favor or opposed to any and all provisions of the proposal being noticed. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083, extension 369.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02L .0202 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.1; 143B-282(a)(2)

Statement of the Subject Matter: This rulemaking proposes to change 11 of the current Groundwater Quality Standards in 15A NCAC 02L .0202 for substances in Class GA and Class GSA groundwaters. Groundwater Quality Standards that are shown in bold typeface are proposed to have the concentration level decreased (that is, made more restrictive and protective). Groundwater Quality Standards for which the numeric concentrations are proposed to be increased (that is, made less

RULE-MAKING PROCEEDINGS

restrictive) are displayed in normal typeface. These substances are shown with their current Groundwater Quality Standard and the proposed change. Unless otherwise noted, numeric

standards for these substances are shown in milligrams per liter as follows:

<u>SUBSTANCE</u>	<u>CURRENT CONCENTRATION</u> <i>(milligrams per liter or mg/L)</i>	<u>NEW CONCENTRATION</u> <i>(milligrams per liter or mg/L)</i>
Butylbenzyl Phthalate	0.100	0.140
# Coliform Organisms (Total)	1 per 100 milliliters	zero
Diethylphthalate	5.0	5.6
*Total Dioxins (2,3,7,8 – TCDD toxicity equivalency concentration)	2.2×10^{-10}	2.3×10^{-10}
Epichlorohydrin (1-chlor-2, 3-epoxypropane)	0.00354	0.00353
Hexachlorobenzene (perchlorobenzene)	0.00002	0.000021
Naphthalene	0.021	0.0060
** Nickel and Nickel soluble salts (excluding Nickel Carbonyl and Nickel Sulfide)	0.10	0.070
Phenol	0.30	0.031
Selenium	0.05	0.0175
Styrene (Ethenylbenzene)	0.10	0.065

- Coliforms Organisms (Total): Total coliforms are rod shaped bacteria found in the intestinal tract of warm-blooded animals and humans. Coliforms may appear in groundwater as a result of discharges from domestic, industrial and agricultural wastewater disposal operations and are far more numerous than disease causing bacteria that may also exist in wastewater. In circumstances where wastewater has impacted groundwater or water supply wells, coliforms are used as indicators that fecal material and possible pathogens may be present in water supplies. The Groundwater Quality Standard for total coliforms is used by well owners and health officials to determine if a water supply is safe to drink and if actions are necessary to remediate levels in water supplies. It also serves as regulatory guidance for permittees who discharge wastewater into groundwater in the subsurface. In addition, the Groundwater Quality Standard for this constituent may be used as a cleanup standard where releases have occurred. Note that the current Groundwater Standard for "Coliform Organisms (Total)" in 15A NCAC 02L .0202 is expressed as the concentration of a number of organisms per volume of water and is 1 organism per 100 milliliters of water. **It is proposed that the new Groundwater Quality Standard for "Coliform Organisms (Total)" be set at**

zero. Establishing a Groundwater Quality Standard of zero for total coliforms will mean that the detection of these microorganisms at or above the practical quantitation limit will be an exceedence of the standard.

*** Change in the Name for Dioxin:** The name of this substance in 15A NCAC 02L .0202 is Dioxin. The Division of Public Health has had recent discussions with the US Environmental Protection Agency (USEPA) concerning the proposed change in the Groundwater Quality Standard for Dioxin. Determining the exposure to Dioxin is based on a calculation of exposures from seventeen dioxin "congeners" present in a particular sample. The risk assessment from exposure to Dioxins is determined by taking the sum of the 2,3,7,8-TCDD toxicity equivalency concentrations for each of the seventeen dioxin congeners of Dioxin. Therefore, the name of "Dioxin" in the proposed rulemaking to title 15A NCAC 02L .0202 will read as **"Total Dioxins (2,3,7,8 – TCDD toxicity equivalency concentration)"**.

**** Change in the Groundwater Quality Standard for the element Nickel under title 15A NCAC 02L .0202 to specify that certain soluble salts of this substance are excluded from this standard:** The current Groundwater Quality Standard for Nickel

is expressed as the name "Nickel" and regulates all forms of this substance. Based on information from the USEPA Integrated Risk Information System, Nickel Subsulfide and Nickel Carbonyl vary in toxicity from the element Nickel and other soluble salts of this metal. Therefore, it is proposed that the standard for "Nickel" in 15A NCAC 02L .0202 be changed to read as "Nickel and Nickel Soluble Salts (excluding Nickel Carbonyl and Nickel Subsulfide)". Since there are no Groundwater Quality Standards listed for Nickel Carbonyl or Nickel Subsulfide, the standards for these substances are detection limits as described in 15A NCAC 02C .0202(c).

Reason for Proposed Action: The amendment to 15A NCAC 02L .0202, Groundwater Quality Standards, will revise the current groundwater standards for Butylbenzyl Phthalate, Coliform Organisms (Total), Diethylphthalate, Total Dioxins (2,3,7,8 - TCDD toxicity equivalency concentration), Epichlorohydrin, Hexachlorobenzene, Naphthalene, Nickel and Nickel soluble salts (excluding Nickel Carbonyl and Nickel Subsulfide), Phenol, Selenium, and Styrene. Action to amend the concentration levels for the eleven substances listed in 15A NCAC 02L .0202 is the result of a request for biennial review of Groundwater Quality Standards pursuant to 15A NCAC 02L .0202 (f). The proposed rule changes are being made to incorporate the most updated health information and substance concentrations as Groundwater Quality Standards in 15A NCAC 02L .0202. The 15A NCAC 02L .0202 Groundwater Quality Standards must be revised in accordance with the requirements of G.S. 150B.

Comment Procedures: Comments, data, statements and other information about this rulemaking may be submitted in writing to David Hance at ENR-DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, Phone: (919) 715-6189; Fax: (919) 715-0588; email: David.Hance@ncmail.net. The Environmental Management Commission will accept comments through December 15, 2001. The purpose of this notice is to obtain stakeholder involvement prior to issuing a notice of public hearing on a rule containing revisions for these substances.

CHAPTER 09 – DIVISION OF FOREST RESOURCES

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 09C .0400; .0500; .0600; .0900. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-8, 113-35, 113-81, 133A-176, 113A-183, 143B-10

Statement of the Subject Matter:
15A NCAC 09C .0400 – The Division of Forest Resources is considering amendment of the rules regarding referrals and

limitations and technical services of the forest management program.

15A NCAC 09C .0500 – The Division of Forest Resources is considering amendment of the rules regarding establishment of tree seedling prices, the custom sale of seedlings, payment for seedling and distribution of clonal material.

15A NCAC 09C .0600 – The Division of Forest Resources is considering amendment of the rules regarding custom forestry services of the Division of Forest Resources.

15A NCAC 09C .0900 – The Division of Forest Resources is considering amendment of the rules regarding the administration of the Forest Development Program and the Program's approved practice.

Reason for Proposed Action:

15A NCAC 09C .0400 – These Rules were promulgated prior to the development of the Forest Stewardship Program and the development of additional marketing options of forest products. These Rules will be changed to make it more consistent with the Division of Forest Resources Programs. To determine if the amendment is appropriate, DFR is studying these Rules and inviting written comments.

15A NCAC 09C .0500 – These Rules establish methods to establish tree seedling prices, custom sale of tree seedlings, application for tree seedlings, payment of tree seedlings, exchange and distribution of clonal material. These Rules will be changed to allow for year round tree seedling sales and to improve tree seedling price establishment and payment for seedlings. These Rules will also establish a mechanism for establishing fees for the storage of seedlings and place restrictions on hunting on nursery and orchard sites. To determine if the amendment is appropriate, DFR is studying these Rules and inviting written comments.

15A NCAC 09C .0600 – These Rules establish a mechanism to determine fees for custom forestry services. These Rules will be changed to modify the methods used to establish the fee for services. To determine if the amendment is appropriate, DFR is studying these Rules and inviting written comments.

15A NCAC 09C .0900 – These Rules were promulgated prior to the 1997 revision to the general statute and the identification of additional approved practices. These Rules will be changed to include the revision to the general statute and include additions and clarifications of the approved practices. To determine if the amendment is appropriate, DFR is studying these Rules and inviting written comments.

Comment Procedures: Written comments may be submitted to the Division of Forest Resources, Forest Management and Forest Development Section, Attention: Michael L. Thompson, 1616 Mail Service Center, Raleigh, NC 27699-1616.

CHAPTER 13 – SOLID WASTE MANAGEMENT

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 13A .0104, .0111 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-294(c); 150B-21.6

Statement of the Subject Matter:

15A NCAC 13A .0104 – Public Information – Part 2 – Establishes freedom of information and confidential information requests procedures.

15A NCAC 13A .0111 – STDS for the Management of Specific HW/Types HWM Facilities – Part 266 – Establishes standards for specific hazardous waste and special types of hazardous waste management facilities, for example, recyclable materials and energy recovery facilities.

Reason for Proposed Action:

15A NCAC 13A .0104 – Public information – Part 2 – Changes are to update the address for an address substituted in 40 CFR 2.106(a) and 2.213(a). Also, this Rule has been revised to correct the mailing address of the Division of Waste Management.

15A NCAC 13A .0111 – STDS for the Management of Specific HW/Types HWM Facilities – Part 266 – The proposed amendment redesignates Paragraph (f) "The Appendices" as Paragraph (g) and adds 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal" to this Rule.

Comment Procedures: Written comments may be submitted to Jill Pafford, Chief, Hazardous Waste Section, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 18A .2801-.2835. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 110-91

Statement of the Subject Matter: A committee is looking at the current child care rules and changing them to reflect current sanitation issues.

Reason for Proposed Action: This committee will be assessing and changing child care rules as necessary to reflect current sanitation issues and trends within the child care industry.

Comment Procedures: Please send written comments to Wayne Jones, 229 North Country Club Drive, Kenansville, NC 28349 or e-mail wayne.jones@ncmail.net.

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 18D .0105; .0205. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 90A-21(c)

Statement of the Subject Matter: Rule .0105 "Definitions" needs to be revised to include a definition of "acceptable experience" for distribution operators. Rule .0205 "Classification of Water Treatment Facilities" needs to be revised to clarify the original intent of Class D systems. Also, miscellaneous grammatical corrections and clarifications are necessary throughout the Rule itself which includes Sections .0100 through .0701.

Reason for Proposed Action: The definition of "acceptable experience" as it applies to distribution operators needs to be added to the rules. The Class D treatment plant classification was originally intended to include only water systems requiring minimal treatment and operational expertise. The current classification includes larger and more sophisticated systems requiring more training and expertise, therefore, the classification needs to be amended to reflect the original intent.

Comment Procedures: Send comments to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or phone (919) 715-3225.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 17 – BOARD OF DIETETICS/NUTRITION

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

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 17 .0113. *Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: G.S. 90-356(9); 90-364

Statement of the Subject Matter: *Fees*

Reason for Proposed Action: *In the 2001 Session of the North Carolina General Assembly, the Legislature granted the Board statutory authority to increase fees. This change is being made to cover increases in operational costs that have occurred since 1996 when fees were last revised.*

Comment Procedures: *Direct comments to Kim M. Dove, RD, LDN, NC Board of Dietetics/Nutrition, P.O. Box 1509, Garner, NC 27529.*

TITLE 25 – OFFICE OF STATE PERSONNEL

CHAPTER 01 – OFFICE OF STATE PERSONNEL

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01L .0104. *Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: G.S. 126-4(10); 126-16; 126-19

Statement of the Subject Matter: *This Rule sets forth guidelines and requirements for state agencies and universities in developing and implementing equal employment opportunity programs and plans.*

Reason for Proposed Action: *This Rule is proposed to be amended in order to provide agencies and universities a choice of three options for analyzing their workforce when measuring under-representation of each demographic group. Each option will allow agencies and universities to consider a geographical recruiting area in determining the pool of available workers. Modifications by the Office of Federal Contract Compliance to the standard currently in the Rule became effective December 13, 2000.*

Comment Procedures: *Written comments may be submitted on the subject matter of the proposed rulemaking to Nellie Riley, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.*

PROPOSED RULES

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

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0301, .0304-.0305, .0307, .0401, .0406, .0408-.0409, .0505, .0601, .0603, .0606, .0705-.0708, .0710-.0712, .0905, .0907-.0909, .0915, .0917, .1004-.1005, .1204-.1205, .1307, .1404-.1405, .1604-.1605, .2104. Notice of Rule-making Proceedings was published in the Register on April 16, 2001 for 15A NCAC 10B .0301, .0304-.0305, .0307, .0401, .0406, .0408-.0409, .0505, .0601, .0603, .0606, .0708, .0905, .0907-.0909, .0915, .0917, .1004-.1005, .1204-.1205, .1404-.1405, .1604-.1605, .2104 and on August 15, 2001 for 15A NCAC 10B .0705-.0707, .0710-.0712, .1307.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: October 31, 2001

Time: 9:00 a.m.

Location: Old Education Building, Room G22, 114 W. Edenton St., Raleigh, NC 27602

Reason for Proposed Action:

12 NCAC 10B .0301 - Minimum Standards for Justice Officers - Paragraph is to be amended to require justice officers who are the subject of Domestic Violence Orders to notify their agency head and the Division. Notification is accepted by phone, fax, or mail.

12 NCAC 10B .0304 - Medical Examination - The N.C. General Assembly recently passed legislation which allows forms that are required to be conducted and signed by licensed physicians to be conducted and signed instead by physician=s assistants and/or nurse practitioner. Since this Rule specifies that the medical examination bear a licensed physician=s signature, it is being modified to be consistent with the new state law.

12 NCAC 10B .0305, .0406, .0408-.0409 - Amendments to the above rules will result in same documentation and process being required for lateral transferees as is currently required for probationary officers, which will result in Background Investigations and Personal History Statements (which serve as the basis for the background) being submitted on every applicant.

12 NCAC 10B .0307 - Criminal History Record - Amendments to this Rule will be made to make this Section parallel the requirements set out in the already existing Rule .0204.

12 NCAC 10B .0401 - Certification of Personnel - Language added to make it clarify and parallel the existing practice to apply this Section in conjunction with the applicable training requirements set out in Sections .0500 for Deputy Sheriffs, .0600 for Detention Officers, and .1300 for Telecommunicators.

12 NCAC 10B .0505 - Evaluation for Training Waiver - Amendments to rule to clean-up some language for clarification which involve adding additional paragraphs within the rule.

12 NCAC 10B .0601 - Detention Officer Certification Course - Proposed amendment to reallocate the existing 162 hours of instruction to: reduce the Fire Emergencies block of instruction from 12 hours to 4 hours, add a new 3-hour block of instruction on Ethics, add a new 5-hour block of instruction on Communication Skills; and rename the Special Populations block of instruction to Aspects of Mental Illness. As there is no increase in total hours of instruction there is no additional cost.

12 NCAC 10B .0603 - Evaluation for Training Waiver - The first change reflects a change in the Detention Officer Certification Course which will actually require less training of transferring Correctional Officers. The second change is necessitated by the fact that the North Carolina Criminal Justice Education and Training Standards Commission adopted temporary rule changes regarding the training requirements for correctional officers which will no longer set out the blocks of instruction that correctional officers are required to complete which went into effect 1/1/01. Permanent rules are expected to be effective in August of 2002. Currently a Correctional Officer who becomes employed as a Detention Officer and who completed the required Correctional Officer training after January 1, 1981 are eligible for a training waiver and only required to complete part of the Detention Officer Certification Course. That provision will still exist but will apply to transfers who completed their training between January 1, 1981 and August 1, 2002. A new provision is being added to allow individuals who cannot qualify for a partial training waiver under the existing waiver to submit documentation showing the specific curriculum they completed as a correctional officer, which will be compared to the existing Detention Officer Certification Course and a case-by-case determination made by the Division staff as to what portions of the Detention Officer Certification Course can be waived. This is necessary because we have no other way to ensure that the training a Correctional Officer received after the Criminal Justice Commission=s rule change, will remain as it is currently allocated. As long as Correctional Training remains as it is currently written, then no more than 46 hours of training would be required. If it were to change significantly, applicants could be granted a more or less comprehensive waiver. Since there is consideration for waiving training, costs to local agencies may be reduced from the normal requirement for the full training course.

12 NCAC 10B .0606 - Comp Written Exam - Detention Officer Certification Course - Due to the revisions to the course as explained under Rule .0603, the state examination will need to be re-written. That re-write may result in changes to the examination format.

12 NCAC 10B .0705 - Certification: School Directors - Provision to deny School Director Certification if the applicant has had any other type of adverse action against certification for cause.

12 NCAC 10B .0706 - Terms and Conditions of School Director Certification - Provisions to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.

PROPOSED RULES

Amend existing certifications to expire concurrently with other certification the individual may hold.

12 NCAC 10B .0707 – Suspension: Revocation: or Denial: School Director Certification – Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.

12 NCAC 10B .0708 - Administration of Telecommunicator Certification Course - Technical change to amend erroneous language. No change in existing practice.

12 NCAC 10B .0710 – Certification: School Directors, Telecommunicator Certification Course – Provision to deny School Director Certification if the applicant has had any other type of adverse action against certification for cause.

12 NCAC 10B .0711 – Terms and Conditions of Telecommunicator School Director Certification – Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause. Amend existing certifications to expire concurrently with other certification the individual may hold.

12 NCAC 10B .0712 – Suspension: Revocation: or Denial: Telecommunicator School Director Certification – Provision to take adverse action against certification for cause.

12 NCAC 10B .0905, .0907-.0909, .0915, .0917 - Various amendments will be made to the rules within this Section to make the instructor certification simpler to administer and less burdensome for the instructors who must maintain their certifications to track and maintain certification. To have an individual=s multiple instructor certifications become due for renewal or termination concurrently. Changes would require instructors who hold General Instructor Certification to teach in the Detention and Telecommunicator Certification Courses whose certification lapse for failure to instruct the minimum number of hours required for their certification periods, to re-apply and meet not only the initial certification requirements, but to have audited the minimum numbers of hours that they failed to teach in a delivery of the respective course to ensure their familiarity and competency to teach the material. Changes would allow instructors who hold Limited Lecturer certification to teach in the Detention Officer Certification Course to submit documentation of hours taught in a similar area of their expertise to satisfy their hourly instructional requirements during their certification periods. As no transcript of the course hours audited is required, there should be no fees from the college or institution at which the instructor audits the minimum hours required.

12 NCAC 10B .1004-.1005, .1204-.1205, .1404-.1405, .1604-.1605 - Due to the increase in hours for basic training in all Commission-mandated programs, the existing formulas for awarding intermediate and advanced certificates permits individuals to qualify for these certificates with less additional training than those who applied years ago when the basic courses were much shorter. Therefore, the changes in the above Sections are sought to revise the Professional Certificate Programs in such a way as to equitably adjust the program so that basic training is not too heavily weighted in the formula for awards at the intermediate and advanced levels, but is given credit to the same degree that applicants received at the inception of these programs. There should be no impact as this program is a voluntary program existing to reward justice

officers for achieving training and education above the state-minimum mandate.

12 NCAC 10B .1307 – Comprehensive Written Exam – Telecommunicator Certification Course – Change to broaden that language setting out the format of state examination. Change to erroneous language where "detention officer" should have read "Telecommunicator."

12 NCAC 10B .2104 - In-Service Training Requalification Specifications - The task analysis for law enforcement in North Carolina was recently updated. As a result, the Basic Law Enforcement Training Course was revised, including an upgrading of the instruction given to and qualifications required of new recruits. Since new officers are now being required to qualify at night with a shotgun, the in-service standard is being raised to require the same standards for veteran officers.

Comment Procedures: Please contact Peggy B. Bilbrey at P.O. Box 629, Raleigh, NC 27602 with any questions or comments concerning these Rules, e-mail pbilbrey@mail.jus.state.nc.us. Comments will be received through November 14, 2001.

Fiscal Impact

- State**
- Local** 12 NCAC 10B .0305, .0406, .0408-.0409, .2104
- Substantive** (>\$5,000,000)
- None** 12 NCAC 10B .0301, .0304, .0307, .0401, .0505, .0601, .0603, .0606, .0705-.0707, .0708, .0710-.0712, .0905, .0907-.0909, .0915, .0917, .1004-.1005, .1204-.1205, .1307, .1404-.1405, .1604-.1605

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0300 - MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) have produced a negative result on a drug screen administered according to the following specifications:
 - (A) the drug screen shall be a urine test consisting of an immunoassay method and a confirmatory test on an initial positive result using a gas

- chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
- (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and
- (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Rule;
- (G) every agency head shall be responsible for making adequate arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician.
- (7) within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is ~~charged; charged and all Domestic Violence Orders (50B) which are issued by a judicial official and which provide an opportunity for both parties to be present;~~ and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal ~~charges; charges and Domestic Violence Orders (50B).~~ This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided he has knowledge of the officer's ~~charge(s);-charge(s) and Domestic Violence Orders (50B)~~ shall also notify the Division within 30 days of the date the case ~~or order~~ was disposed of in court. Receipt by the Standards Division of ~~a single timely~~ notification, of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;
- (8) be of good moral character;
- (9) have a thorough background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.
- (b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.
- Authority G.S. 17E-7; 95-230 et seq.*

12 NCAC 10B .0304 MEDICAL EXAMINATION

(a) Each applicant for certification or enrollee in a Commission-accredited basic training course shall complete, sign and date the Commission's Medical History Statement Form (F-1) and shall be examined by a ~~physician or surgeon licensed physician, surgeon, physician=s assistant or nurse practitioner~~ licensed in North Carolina to help determine his/her fitness in carrying out the physical requirements of the position of justice officer.

(b) Prior to conducting the examination, the physician shall:

- (1) read the "Medical Screening Guidelines Implementation Manual for Certification of Justice Officers" in the State of North Carolina as published by the North Carolina Department of Justice. Copies of this publication may be obtained at no cost at the time of the adoption of this Rule by contacting the North Carolina Department of Justice, Sheriffs= Standards Division, PO Box 629, Raleigh, North Carolina 27602; and
- (2) read, sign, and date the Medical History Statement Form (F-1); and
- (3) read the F-2A Form attached to the Medical Examination Report Form (F-2).

(c) The examining ~~physician-physician, surgeon, physician=s assistant or nurse practitioner~~ shall record the results of the examination on the Medical Examination Report Form (F-2) and sign and date the form.

(d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid one year from the date the examination was conducted and shall be completed prior to:

- (1) the applicant's beginning the Detention Officer Certification Course, the Basic Law Enforcement Training Course, or the Telecommunicator Certification Course; and
- (2) the applicant's applying to the Commission for Certification.

(e) Although not presently required by these Rules, it is recommended by the Commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, to determine his/her suitability to perform the essential job functions of a justice officer.

Authority G.S. 17E-7.

12 NCAC 10B .0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability to perform essential job functions, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(c) The employing agency shall ensure the proper dates, signatures, and notarizations are affixed to the Personal History

Statement (F-3); and shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3), and if not, provide the applicant the opportunity to update the F-3 prior to submission to the Division.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character. The investigator shall summarize the results of the investigation on a ~~commission approved form—the~~ Commission-mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator.

~~(e) Each applicant shall provide to the employing agency a certified copy of a check of the applicant's criminal history record from the Clerk of Court in each county where the applicant has resided within the preceding six months. The employing agency shall perform a criminal history records check of the agency's own files for each applicant. A certified copy of the results of all required criminal history records checks shall be forwarded with the applicant's Report of Appointment form (F-4) to the Division. Additionally, a photocopy of the results of all required criminal history records shall be retained by the agency in the applicant's personnel file. The Background Investigation Form (F-8) shall include records checks from:~~

- ~~(1) a state-wide search of the Administrative Office of the Courts (AOC) computerized system;~~
- ~~(2) the National Criminal Information Center (NCIC);~~
- ~~(3) the North Carolina Department of Motor Vehicles, if the applicant has ever possessed a driver=s license issued in North Carolina; and~~
- ~~(4) out-of-state motor vehicles check from the appropriate agency, if the applicant has ever been issued a driver=s license by a state other than North Carolina.~~

~~(f) The Background Investigation must also include, if available, county-wide and certified records checks from each jurisdiction where the applicant has resided as indicated in response to question number 17 on the Personal History Statement (Form F-3), and from the jurisdiction where the applicant attended high school. These records shall be performed on each name by which the applicant for certification has ever been known.~~

~~(g) The employing agency shall also forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History Statement (F-3) or both. The employing agency shall explain to the satisfaction of Division staff that charges or other violations which may result from the records checks required in Paragraph (e) of this Section do not pertain to the applicant for certification. This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.~~

~~(h) The employing agency shall include a signed and notarized Release Authorization Form which authorizes the Division staff to obtain documents and records pertaining to the applicant for certification which may be required in order to determine whether certification can be granted.~~

Authority G.S. 17E-7.

12 NCAC 10B .0307 CRIMINAL HISTORY RECORD

(a) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal or military court of:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two ~~years; or~~ years.

(b) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina should not have committed or been convicted by a local, state, federal or military court of:

- ~~(3)~~(1) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment; or
- ~~(4)~~(2) four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of conviction or commission; or
- ~~(5)~~(3) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant can be employed if the last conviction or commission occurred more than two years prior to the date of ~~appointment.~~ appointment; or
- (4) a combination of four or more AClass A or B Misdemeanors@ regardless of the date.

~~(b)~~(c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

Authority G.S. 17E-7.

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

12 NCAC 10B .0401 CERTIFICATION OF PERSONNEL

(a) Every person performing the duties of a deputy sheriff or a detention officer as defined in 12 NCAC 10B .0103(13) and (14), except those certified pursuant to 12 NCAC 10B .0407; and every person performing the duties of a telecommunicator as defined in 12 NCAC 10B .0103(15) and who is under the direct supervision and control of the Sheriff, shall meet the certification requirements of this Subchapter.

(b) Every person performing the duties of a telecommunicator as defined in 12 NCAC 10B .0103(15) who is not under the direct supervision and control of the Sheriff, may be appointed to the Division by the employing entity for purposes of obtaining certification; and if so appointed, shall meet the requirements of this Subchapter.

(c) This Section governs the application requirements for certification and agency responsibilities. Training requirements for Deputy Sheriffs, Detention Officers, and Telecommunicators are set out in Sections .0500, .0600, and .1300, respectively.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .0406 LATERAL TRANSFER/REINSTATEMENTS

(a) The General or Grandfather Certification of an~~An~~ officer meeting the requirements of 12 NCAC 10B .0103(9) may laterally transfer to an agency and be certified upon compliance with this Rule.

(b) The employing agency shall verify the applicant's certification status with the Division prior to submission of the application for certification as a justice officer.

(c) In order for an officer to be certified pursuant to this Rule, the employing agency shall submit to the Division, along with the Report of Appointment (F-4), the documents required in 12 NCAC 10B .0408. ~~following documents:~~

- ~~(1) fingerprint cards and criminal history records checks as specified in 12 NCAC 10B .0303;~~
- ~~(2) the applicant's Medical History Statement (F-1) and Medical Examination Report (F-2) as specified in 12 NCAC 10B .0304;~~
- ~~(3) evidence of a negative result on a drug screen administered according to the specifications as outlined in 12 NCAC 10B .0301(6);~~
- ~~(4) a copy of the Oath of Office for applicants requesting certification as a deputy sheriff;~~
- ~~(5) evidence of satisfactory completion of the employing agency's in-service firearms training and requalification program pursuant to 12 NCAC 10B .2000 and .2100;~~
- ~~(6) documentary evidence of high school, college or university graduation. Documentary evidence consists of diplomas from recognized public schools or approved high schools, colleges or universities which meet approval guidelines of the North Carolina Department of Public Instruction or a comparable out of state agency. Documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination will be acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214.~~

(d) An officer whose certification has been suspended pursuant to 12 NCAC 10B .0204(b)(1) may have that certification reinstated provided that:

- (1) the period of suspension has been one year or less; and
- (2) the officer has successfully completed the basic training requirements as prescribed in 12 NCAC 10B .0500 or .0600 or .1300.

(e) Requirements of Paragraph (c) of this Rule are waived for officers whose certifications are reinstated pursuant to Paragraph (d) of this Rule.

(f) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .0408 VERIFICATION OF RECORDS TO DIVISION

(a) Prior to ~~the probationary-issuing~~ certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the Division, along

with the Report of Appointment (F-4), ~~copies of~~ the following documents:

- (1) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);
- (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (3) the applicant's Medical History Statement (F-1);
- (4) the applicant's Medical Examination Report (F-2 and F-2A);
- (5) the applicant's notarized Personal History Statement (F-3);
- (6) ~~a summary of the applicant's background investigation; the Commission-mandated Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B .0305;~~
- (7) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6); ~~and~~
- (8) ~~certified copies of criminal charges and dispositions as required in 12 NCAC 10B .0305(e) and (f); and~~
- (9)(8) verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b), if the applicant is a deputy sheriff or a detention officer.

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0408(a)(9), for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid Probationary or General certification as either a deputy sheriff, detention officer, or telecommunicator with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) Where the Division has previously received a complete Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B .0305 in connection with another application for certification to this Commission, the Background Investigation need only be updated with recent documentation of compliance with 12 NCAC .0305(e)(1), (e)(2), (e)(3), and a county-wide and certified records check for each name used by the applicant for each jurisdiction where the applicant has resided in North Carolina since the initial Background investigation (Form F-8) was completed. In addition:

- (1) If the applicant has been issued an out-of-state driver's license by a state other than North Carolina since obtaining certification, then compliance with 12 NCAC 10B .0305(4), is required; and
- (2) If the applicant has resided in a state other than North Carolina since obtaining certification, a certified and county-wide record check from

each jurisdiction (if available) shall be provided.

~~(e)(d)~~ All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .0409 EMPLOYING AGENCY RETENTION OF CERTIFICATION RECORDS

(a) Each employing agency shall place in the appropriate justice officer's personnel file the official notification of either probationary or general certification. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. Each personnel file shall also ~~contain:~~ contain copies of the original documentation submitted to the Division in accordance with 12 NCAC 10B .0408.

- (1) ~~a copy of the applicant's Report of Appointment (F-4);~~
- (2) ~~verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B .0302(a);~~
- (3) ~~a certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;~~
- (4) ~~the results of the applicant's fingerprint records check and the criminal history records check;~~
- (5) ~~the applicant's Medical History Statement (F-1);~~
- (6) the applicant's Medical Examination Report (F-2 and F-2A);
- (7) ~~the applicant's Personal History Statement (F-3);~~
- (8) ~~a summary of the applicant's background investigation;~~
- (9) ~~a copy of a commission approved Firearms Requalification Record Form for deputy sheriffs and detention officers who have been authorized to carry a weapon;~~
- (10) ~~documentation of negative results on drug screen pursuant to 12 NCAC 10B .0301(a)(6); and~~
- (11) ~~verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B .0403(b).~~

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0408(a)(9), .0408(a)(8), for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification as a deputy sheriff, detention officer, or telecommunicator with the employing agency requesting dual certification; and
- (2) the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) Where the Division has previously received a complete Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B .0305 in connection with another application for certification to this Commission,

and a subsequent hiring agency requests a copy of such documentation, the Division shall comply with that request upon submission of a commission-approved Release Authorization Form for Law Enforcement Agencies.

~~(e)~~(d) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

Authority G.S. 17E-4.

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

12 NCAC 10B .0505 EVALUATION FOR TRAINING WAIVER

The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in 12 NCAC 10B .0504(a). ~~Applicants for certification with prior law enforcement experience shall have been employed and certified in a full-time sworn law enforcement position for at least two years prior to their application in order to be considered for training evaluation under this Rule.~~ The following rules shall be used by Division staff in evaluating an applicant's training and experience to determine eligibility for a waiver of training.

- (1) Persons who separated from a ~~sworn law enforcement Deputy Sheriff~~ position during their probationary period after having completed a commission-accredited Basic Law Enforcement Training Course and who have been separated from a ~~sworn law enforcement Deputy Sheriff~~ position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (2) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-accredited Basic Law Enforcement Training Course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (3) Persons transferring to a Sheriff's Office from another law enforcement agency who held certification and who have previously completed a commission-accredited Basic Law Enforcement Training Course beginning on or after October 1, 1984, and continuing to July 1, 2000 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law

Enforcement Training Course and pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).

(a)	Civil Process	24 hours
(b)	Sheriffs' Responsibilities: Detention Duties	4 hours
(c)	Sheriffs' Responsibilities: Court Duties	6 hours
	UNIT TOTAL	34 hours

- (4) Persons who have training and experience as a military law enforcement officer and are appointed as a deputy sheriff in North Carolina shall be required to complete a commission-accredited Basic Law Enforcement Training Course in its entirety regardless of previous military training and experience and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (5) Persons transferring to a sheriff's office from another law enforcement agency who have previously completed a commission accredited Basic Law Enforcement Training Course beginning on or after January 1, 1996 and continuing to July 1, 1997, and who did not complete the Commission's Driver Training curriculum, and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall be required to complete the following enumerated topics of a commission-accredited Basic Law Enforcement Training Course within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1):
 - (a) Law Enforcement Driver Training-40 hours
- (6) Qualified North Carolina applicants shall:
 - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
 - (b) have had a break in service exceeding one year;
 - (c) have previously received General or Grandfather certification as a sworn law enforcement officer by either the Commission or the North Carolina Criminal Justice Education and Training Standards Commission, and such certification has not been denied, revoked or suspended by either Commission; and
 - (d) have held general powers of arrest.
- (7) Qualified out-of-state transferees shall:
 - (a) have a minimum of two years full-time sworn law enforcement

- (b) experience which occurred ~~immediately~~ prior to their application; have held certification in good standing as a sworn law enforcement officer from the appropriate Peace Officer's Standards and Training entity in the transferee's respective state;
 - (c) have had general powers of arrest; and
 - (d) submit documentation verifying their qualified status.
- (8) Qualified Federal Transferees shall:
- (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
 - (b) have held certification or commissioning as a sworn law enforcement officer from the appropriate federal entity authorized to issue such sworn law enforcement officers certification or commission;
 - (c) have held general powers of arrest; and
 - (d) submit documentation verifying their qualified status.
- (9) Qualified North Carolina applicants; qualified out-of-state transferees; and qualified federal transferees shall be allowed to select one of the following two options for gaining North Carolina certification as a deputy sheriff:
- (a) Undertake and successfully complete Basic Law Enforcement Training in its entirety during a one year probationary period and successfully pass the State Comprehensive Examination;
 - (b) Successfully pass the following entry criteria:
 - (i) Challenge the Basic Law Enforcement Training Comprehensive State Examination to be delivered at the end of an ongoing Basic Law Enforcement Training Course and successfully pass each unit examination of the comprehensive examination with a minimum score of 70%. Any applicant failing to pass any unit examination will be required to enroll in each topic area which comprises that unit taught in a subsequent BLET course and submit to the unit examination at the end of the course and pass that unit examination;
- (ii) Each applicant shall demonstrate satisfactory knowledge of the following skills related activities before an appropriate instructor certified by the North Carolina Criminal Justice Education and Training Standards Commission. Successful completion of the skills related activities will be documented on a ~~Commissioned~~ ~~Commission~~ approved form by the certified instructor;
 - (A) First Responder;
 - (B) Firearms;
 - (C) Law Enforcement Driver Training;
 - (D) Physical Fitness; and
 - (E) Subject Control Arrest Techniques.
 - (iii) Any applicant failing to pass a test ~~reference~~ ~~referenced~~ in Rule 12 NCAC 10B .0505(9)(B)(i) of a unit examination ~~after~~ ~~remediation~~ will be required to complete Basic Law Enforcement Training in its entirety; and
 - (iv) All criteria referenced in 12 NCAC 10B .0505(9)(B)(i) and (ii) must be successfully completed within ~~12 months~~. ~~the one-year probationary period~~.
- (10) Persons transferring to a sheriff=s office from another law enforcement agency who held certification and who have previously been granted a training waiver by the North Carolina Criminal Justice Commission and who have been separated from a sworn law enforcement position for no more than one year or who had no break in service shall not be required to complete the Basic Law Enforcement Training course, but shall have the waiver honored by this Commission.

Authority G.S. 17E-4; 17E-7.

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR DETENTION OFFICERS

12 NCAC 10B .0601 DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current standard by which Sheriffs' Office and district confinement personnel shall receive detention officer training. These Rules will serve to raise the

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level of detention officer training heretofore available to law enforcement officers across the state. The Detention Officer Certification Course shall consist of a minimum of 162 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Detention Officer Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

(1)	Orientation	2 hours
(2)	Criminal Justice System	3 hours
(3)	Legal Aspects of Management & Supervision	19 hours
(4)	Contraband/Searches	6 hours
(5)	Processing Inmates	5 hours
(6)	First Aid & CPR	10 hours
(7)	Medical Care in the Jail	5 hours
(8)	Patrol & Security Functions of the Jail	5 hours
(9)	Key and Tool Control	2 hours
(10)	Supervision & Management of Inmates	5 hours
(11)	Suicides & Crisis Management	5 hours
(11)	Introduction to Rules & Regulations Governing Jails	2 hours
(13)	Stress	2 hours
(14)	Investigative Process in the Jail	9 hours
(15)	Subject Control Techniques	24 hours
(16)	<u>Special Populations/Aspects of Mental Illness</u>	4 hours
(17)	Transportation of Inmates	6 hours
(18)	Fire Emergencies	12 hours 4 hours
(19)	Fingerprinting and Photographing Arrestees	6 hours
(20)	Physical Fitness for Detention Officer	20 hours
(21)	<u>Communication Skills</u>	5 hours
(22)	<u>Ethics</u>	3 hours
(21) (23)	Review/Testing	7 hours
(22) (24)	State Comprehensive Examination	3 hours
	TOTAL HOURS	162 hours

(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide", the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual is forty dollars (\$40.00) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" as published by the North Carolina Justice Academy is hereby incorporated by reference and shall automatically include any later amendments, editions of the incorporated matter to be

used by certified school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the certified school director. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

Authority G.S. 17E-4(a).

12 NCAC 10B .0603 EVALUATION FOR TRAINING WAIVER

~~(a)~~—Applicants for certification with prior detention or correctional officer experience shall have been employed and certified as a detention or correctional officer in order to be considered for a training evaluation under this Rule. The following rules shall be used by division staff in evaluating a detention officer's training and experience to determine eligibility for a waiver of training:

- (1) Persons who have separated from a detention officer position during the probationary period after having completed a commission-accredited detention officer training course and who have been separated from a detention officer position for more than one year shall complete a subsequent commission-accredited detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).
- (2) Persons who separated from a detention officer position during their probationary period after having completed a commission-accredited detention officer training course and who have been separated from a detention officer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a detention officer position during the probationary period without having completed a detention officer training course or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1) and who have remained separated or suspended for over one year shall complete a commission-accredited detention officer training course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (4) Persons holding General Detention Officer Certification who have completed a commission-accredited detention officer training course and who have separated from a detention officer position for more than one year shall complete a subsequent commission-accredited detention officer training course in its entirety and pass the State Comprehensive Examination within the 12

- month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (5) Persons holding Grandfather Detention Officer Certification who separate from a detention officer position and remain separated from a detention officer position for more than one year shall be required to complete a commission-accredited detention officer training program in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's office from another law enforcement agency who hold a detention officer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. The Division staff shall determine the amount of training, which is comparable to that received by detention officers pursuant to 12 NCAC 10B .0601(b), required of these applicants.
- (7) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:
- (A) completed training as a correctional officer ~~after~~ between January 1, ~~1981-~~ 1981 and August 1, 2002; and
- (B) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (C) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a) and shall complete the following topic areas in a commission-accredited detention officer certification course and take the state examination in its entirety during that probationary period:
- | | | |
|-------|---|------------------------|
| (i) | Orientation | 2 hours |
| (ii) | Legal Aspects of Jail Management & Supervision | 19 hours |
| (iii) | Medical Care in the Jail | 5 hours |
| (iv) | Investigative Process in the Jail | 9 hours |
| (v) | Suicides and Crisis Management | 5 hours |
| (vi) | Introduction to Rules and Regulations Governing Jail Facilities | 2 hours |
| (vii) | Fire Emergencies in the Jail | 12 4 hours |
| | TOTAL HOURS | 54 46 hours |

- (8) Persons holding general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission and who:
- (A) completed training as a correctional officer after August 1, 2002; and
- (B) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (C) have had less than a one year break in service, or no break in service, shall serve a 12-month probationary period as prescribed in 12 NCAC 10B .0602(a); may apply for a waiver to the Division by submitting documentation of the training completed as a correctional officer.
- Division staff will compare the completed correctional officer training to the existing Detention Officer Certification Course and determine whether any of the Detention Officer Certification Course blocks of instruction can be waived. The Division will notify the employing agency of the resulting training requirements. The detention officer shall complete the required training in a commission-accredited Detention Officer Certification Course and take the state examination in its entirety during the probationary period.

~~(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Detention Officer Training Course would be impractical, the director may exercise his/her discretion in determining the amount of training, which is comparable to that received by detention officers pursuant to 12 NCAC 10B .0601(b), those persons shall complete during their probationary period.~~

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .0606 COMP WRITTEN EXAM – DETENTION OFFICER CERTIFICATION COURSE

- (a) At the conclusion of a school's offering of the "Detention Officer Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.
- (b) The examination shall be an objective test ~~consisting of multiple-choice, true false, or similar questions~~ covering the topic areas as described in 12 NCAC 10B .0601(b).
- (c) The Commission's representative shall submit to the school director within ten days of the administration of the examination a report of the results of the test for each trainee examined.
- (d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.
- (e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated

satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a detention officer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Detention Officer Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

Authority G.S. 17E-4; 17E-7.

SECTION .0700 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 10B .0705 CERTIFICATION: SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a commission-accredited detention officer training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for certification as school director of the Detention Officer Certification Course, the applicant shall:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated school director.
- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Attend or must have attended the most current offering of the school director's orientation as

- developed and presented by the Commission staff; and
- (4) Attend or must have attended the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

(c) School Director certification shall not be granted where the applicant for such certification has had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect at the time of application.

Authority G.S. 17E-4.

12 NCAC 10B .0706 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the Commission issues the certification unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0705(b)(1).

(b) As of August 1, 2002, the expiration dates of any existing commission-issued Detention Officer School Director Certification will be amended to expire concurrently with the expiration of the instructors = General Instructor Certification issued by the Criminal Justice Commission. New certifications will be issued and will be valid for a two-year term, at the end of which, the certification must expire or be renewed.

~~(b)~~(c) To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0704; and
- (2) Maintain an updated copy of the "Detention Officer Certification Training Manual" assigned to each accredited school; and
- (3) Ensure compliance with the Commission's accreditation requirements as set forth in 12 NCAC 10B .0703 and .0802.

(d) The person holding School Director certification shall not have had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect.

Authority G.S. 17E-4.

12 NCAC 10B .0707 SUSPENSION: REVOCATION: OR DENIAL: SCHOOL DIRECTOR CERT

The Commission may deny, suspend, or revoke certification of a school director when the Commission finds that the ~~person has failed to meet or continuously maintain any of the requirements~~

~~for qualification, or any of the terms and conditions as specified in 12 NCAC 10B .0706, or through performance fails to comply with rules of the Commission or otherwise demonstrates incompetence, person:~~

- ~~(1) has failed to meet or continuously maintain any of the requirements for qualification; or~~
- ~~(2) has failed to meet or continuously maintain any of the terms and conditions as specified in 12 NCAC 10B .0706; or~~
- ~~(3) through performance fails to comply with rules of the Commission or otherwise demonstrates incompetence; or~~
- ~~(4) has had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect.~~

Authority G.S. 17E-4.

12 NCAC 10B .0708 ADMINISTRATION OF TELECOMMUNICATOR CERTIFICATION COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Telecommunicator Certification Course shall have primary responsibility for implementation of these Rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member who is certified by the Commission who may apply to be the school director. No more than two school directors shall be certified at each accredited institution/agency to deliver a Telecommunicator Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored ~~detention-officer-telecommunicator~~ certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0709(b).

(c) The executive officers of the institution or agency sponsoring the Telecommunicator Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director; and
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Telecommunicator Certification Course Management Guide."

Authority G.S. 17E-4.

12 NCAC 10B .0710 CERTIFICATION: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE

(a) Any person designated to act and who performs the duties of a school director in the delivery or presentation of a commission-accredited telecommunicator training course as of the effective date of this rule shall remain certified by the Commission as a school director, so long as they maintain compliance with 12 NCAC 10B .0711 and .0712.

(b) To qualify for certification as school director of the Telecommunicator Certification Course, the applicant shall:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated school director;
- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Have attended the most current offering of the school director's orientation as developed and presented by the Commission staff; and
- (4) Attend the most current offering of the school director's conference as presented by the Commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

~~(c) School Director certification shall not be granted where the applicant for such certification shall not have had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect at the time of application.~~

Authority G.S. 17E-4.

12 NCAC 10B .0711 TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the Commission issues the certification unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0710(b).

~~(b) As of August 1, 2002, the expiration dates of any existing commission-issued Telecommunicator School Director Certification will be amended to expire concurrently with the expiration of the instructors = General Instructor Certification issued by the Criminal Justice Commission. New certifications will be issued and will be valid for a two-year term, at the end of which, the certification must expire or be renewed.~~

~~(b)(c)~~ To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0709; and
- (2) Maintain an updated copy of the "Telecommunicator Certification Training Manual" assigned to each accredited school.

(d) The person holding School Director certification shall not have had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect.

Authority G.S. 17E-4.

12 NCAC 10B .0712 SUSPENSION; REVOCATION: OR DENIAL: TELECOMMUNICATOR SCHOOL DIRECTOR CERT

The Commission may deny, suspend, or revoke certification of a school director when the Commission finds that the ~~person has failed to meet or continuously maintain any of the requirements for qualification, or any of the terms and conditions as specified in 12 NCAC 10B .0706, or through performance fails to comply with rules of the Commission or otherwise demonstrates incompetence. person:~~

- (1) has failed to meet or continuously maintain any of the requirements for qualification; or
- (2) has failed to meet or continuously maintain any of the terms and conditions as specified in 12 NCAC 10B .0711; or
- (3) through performance fails to comply with rules of the Commission or otherwise demonstrates incompetence; or
- (4) has had any other type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards= standards, revoked, suspended or denied for cause and such period of sanction is still in effect.

Authority G.S. 17E-4.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

12 NCAC 10B .0905 TERMS AND CONDITIONS OF DETENTION OFFICER INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a Detention Officer Instructor ~~shall, for the first 12 months of certification, be in a probationary status. shall serve a probationary period. The probationary period will be set to expire concurrently with the expiration of the instructors= General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. The Detention Officer Instructor Certification, probationary status, shall automatically expire 12 months from the date of issuance. As of August 1, 2002, the expiration dates of any~~

existing commission-issued Probationary General Detention Officer Instructor Certifications will be amended to expire concurrently with the expiration of the instructors= General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification will be issued provided all other conditions for Full status as set out in Paragraph (b) of this Section are met.

(b) The probationary instructor shall be awarded full Detention Officer Instructor Certification at the end of the probationary period if the instructor, through application, submits to the Division:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Detention Officer Certification Course during his/her probationary year; or
- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Detention Officer Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Detention Officer Certification Course during his/her probationary year; and
- (3) documentation that certification required in 12 NCAC 10B .0904(a)(2) remains valid.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Detention Officer Instructor Certifications will be amended to expire concurrently with the expiration of the instructors= General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification will be renewed. Full Detention Officer Instructor Certification is continuous so long as the instructor submits to the Division every two years:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Detention Officer Certification Course during the previous two year period. The date full Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or
- (2) a favorable written evaluation by a commission member or staff member based on a minimum eight hours, on-site classroom

observation of the instructor in a commission-accredited Detention Officer Certification Course; and

- (3) a renewal application to include documentation that certification required in 12 NCAC 10B .0904(a)(2) remains valid.

~~(d) If an instructor does not teach a minimum of eight hours during each two year period following the awarding of his full Detention Officer Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements.~~

(d) In the event a General Detention Officer Instructor Certification (either Probationary or Full) is terminated for failure to have been evaluated for eight-hours of instruction in a Detention Officer Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited eight-hours of instruction in a delivery of an accredited Detention Officer Certification Course.

Authority G.S. 17E-4.

12 NCAC 10B .0907 TERMS AND CONDITIONS OF PROFESSIONAL LECTURER CERT

As of August 1, 2002, the expiration dates of any existing commission-issued Professional Lecturer Certifications, where the individual also holds another instructor certification(s) issued through this Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by this Commission. In the event such instructor does not hold another instructor certification under this Commission, but holds an instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by the North Carolina Criminal Justice Education and Training Standards Commission. Where the instructor holds no certification through either Commission certification Certification as a professional lecturer shall remain effective for 24 months from the date of issuance. The lecturer shall apply for recertification at or before the expiration date. end of the 24 month period.

Authority G.S. 17E-4.

12 NCAC 10B .0908 LIMITED LECTURER CERTIFICATION

(a) The Commission may issue a Limited Lecturer Certification to an applicant who has developed specific or special skills by virtue of specific or special training. Limited Lecturer Certification may be issued in the following topical areas:

- (1) First Aid and CPR;
- (2) Subject Control Techniques;
- (3) Fire Emergencies in the Jail;
- (4) Medical Care in the Jail;
- (5) Physical Fitness for Detention Officers; and
- (6) Fingerprinting and Photographing Arrestees.

(b) To be eligible for a Limited Lecturer Certificate for topic areas set forth in Rule .0908(a), the applicant must ~~possess a current valid CPR certification and~~ meet the qualifications as follows:

- (1) First Aid and CPR: Certified Standard First Aid Instructor with the American Red Cross or a licensed physician, Family Nurse Practitioner, Licensed Practical Nurse (LPN), Registered Nurse (RN), Physician's Assistant, or EMT;
- (2) Subject Control Techniques: certified by N.C. Criminal Justice Education and Training Standards Commission as Defensive Tactics Instructor and compliance with Rule .0903(c) of this Section;
- (3) Fire Emergencies in the Jail: Certified Fire Instructor;
- (4) Medical Care in a Jail: A Licensed Physician, Family Nurse Practitioner, LPN, RN, or EMT, or Physician's Assistant;
- (5) Physical Fitness for Detention Officer: certified as a Physical Fitness Instructor by the North Carolina Criminal Justice Education and Training Standards Commission; and
- (6) Fingerprinting and Photographing Arrestees: certified as a General Instructor by the North Carolina Criminal Justice Education and Training Standards Commission.

(c) In addition to the requirements set out in Paragraph (b) of this Section, applicants for Limited Lecturer Certification, with the exception of Fingerprinting and Photographing Arrestees, must possess current certification to perform CPR and which was obtained through the applicant having shown proficiency both cognitively and through skills testing.

Authority G.S. 17E-4.

12 NCAC 10B .0909 TERMS AND CONDITIONS OF A LIMITED LECTURER CERTIFICATION

(a) An applicant meeting the requirements for certification as a Limited Lecturer ~~shall, for the first 12 months of certification, be in a probationary status. The Limited Lecturer Certification, Probationary Status, shall automatically expire 12 months from the date of issuance. shall serve a probationary period. As of August 1, 2002, the expiration dates of any existing commission-issued Limited Lecturer Certifications, where the individual holds instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by the North Carolina Criminal Justice Education and Training Standards Commission. In the event such instructor does not hold instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, but holds also holds another instructor certification(s) issued through this Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by this Commission. Where the instructor holds no certification through either Commission, certification as a Limited Lecturer shall remain effective for 12 months from the date of issuance. The lecturer shall apply for recertification at or before the expiration date. If the time-period before the expiration date is less than one year, then the four hours of instruction shall be waived for this shortened term and Full Limited Lecturer Certification will be~~

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issued provided all other conditions for Full status as set out in this Section are met.

(b) The probationary instructor ~~certified pursuant to 12 NCAC 10B .0908(a)(1), (a)(3), (a)(4) and 12 NCAC 10B (a)(6)~~ shall be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the Commission:

(1) ~~either: documentation on a commission-approved Form LL1 of at least four hours of instruction occurring within the probationary period in an area of the instructor=s expertise related to each topic for which Limited Lecturer Certification was granted; and~~

(A) ~~a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor taught at least four hours in each of the topics for which Limited Lecturer Certification, Probationary Status was granted. Such instruction must have occurred in a commission-accredited detention officer training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or~~

(B) ~~a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited detention officer training course. Such evaluation must be certified on a commission Instructor Evaluation Form completed where the probationary instructor taught a minimum of four hours in each topic for which Limited Lecturer Certification, Probationary Status was granted;~~

(2) documentation that all other certifications required in 12 NCAC 10B .0908 remain ~~valid;~~ **and valid.**

(3) possess a current valid CPR certification.

(c) ~~The probationary instructor certified pursuant to 12 NCAC 10B .0908(a)(2) and 12 NCAC 10B (a)(5) shall be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the Commission: As of August 1, 2002, the expiration dates of any existing commission-issued Full Limited Lecturer Certification will be amended to expire concurrently with the expiration of the corresponding instructor= certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. In the event such instructor does not hold instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, but also holds another instructor certification(s) issued through this Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by~~

~~this Commission. The lecturer shall apply for recertification at or before the expiration date. If the time period before the expiration date is less than two years, then the four hours of instruction shall be waived for this shortened term and Full Limited Lecturer Instructor Certification will be renewed provided all other conditions for Full status as set out in Subparagraph (2) of this Paragraph are met. Full Limited Lecturer Certification shall be continuous so long as the lecturer submits to the Division every two years:~~

(1) ~~either: documentation on a commission-approved Form LL1 of at least four hours of instruction occurring within the two-year certification period in an area of the instructor=s expertise related to each topic for which Limited Lecturer Certification was granted; and~~

(A) ~~a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor taught at least four hours in the topic area for which Limited Lecturer Certification, Probationary Status was granted. Such instruction must have occurred in a commission-accredited detention officer training course or a commission-accredited basic law enforcement training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or~~

(B) ~~a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited detention officer training course or a commission-accredited basic law enforcement training course. Such evaluation must be certified on a commission Instructor Evaluation Form completed where the probationary instructor taught a minimum of four hours in each topic for which Limited Lecturer Certification, Probationary Status was granted;~~

(2) ~~documentation that all other certifications required in 12 NCAC 10B .0908 remain valid; and a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.~~

(3) ~~possess a current valid CPR certification.~~

(d) ~~Full Limited Lecturer Certification for instructors certified pursuant to Rule .0908(a)(1), (a)(3), (a)(4) and (a)(6) shall be continuous so long as the lecturer submits to the division every two years: In the event a Limited Lecturer Instructor Certification (either Probationary or Full) is terminated for~~

~~failure to have provided documentation of at least four hours of instruction in occurring within the respective certification periods in an area of the instructor=s expertise related to each topic for which Limited Lecturer Certification was granted, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation on a commission-approved Form LL2 that he/she has audited four hours of instruction in the topic area for which Limited Lecturer Certification was granted in a delivery of an accredited Detention Officer Certification Course.~~

- ~~(1) either:

 - ~~(A) a favorable written recommendation from a school director accompanied by certification on a commission instructor evaluation form that the lecturer successfully taught at least four hours in each of the topics for which Limited Lecturer Certification was granted during the previous two-year period. Such instruction must have occurred in a commission-accredited detention officer training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or~~
 - ~~(B) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited detention officer training course or a commission-accredited basic law enforcement training course. Such evaluation must be certified on a commission Instructor Evaluation Form completed where the probationary instructor taught a minimum of four hours in each topic for which Limited Lecturer Certification. Probationary Status was granted;~~~~
 - ~~(2) a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid; and~~
 - ~~(3) possess a current valid CPR certification.~~

~~(e) Full Limited Lecturer Certification for instructors certified pursuant to 12 NCAC 10B .0908(a)(2) and 12 NCAC 10B (a)(5) shall be continuous so long as the lecturer submits to the Division every two years:~~

- ~~(1) either:

 - ~~(A) a favorable written recommendation from a school director accompanied by certification on a commission instructor evaluation form that the lecturer successfully taught at least four hours in each of the topics for which Limited Lecturer Certification was granted during the previous~~~~

~~two-year period. Such instruction must have occurred in a commission-accredited detention officer training course or a commission-accredited basic law enforcement training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or~~

- ~~(B) a favorable written evaluation by a commission member or staff member based on an on-site classroom observation of the lecturer while teaching a minimum of four hours in each of the topics for which Limited Lecturer Certification was granted. Such instruction must have occurred in a commission-accredited detention officer training course or a commission-accredited basic law enforcement training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation.~~

- ~~(2) a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid; and~~

- ~~(3) possess a current valid CPR certification.~~

~~(f) The date Full Limited Lecturer Certification is originally issued shall be the anniversary date from which each two-year period is figured.~~

~~(g) If a lecturer does not teach a minimum of four hours, in each of the topics for which Limited Lecturer Certification was granted, during each two-year period following the awarding of Full Limited Lecturer Certification, his/her certification automatically expires, and the lecturer must then apply for probationary limited lecturer certification and must meet all applicable requirements.~~

Authority G.S. 17E-4.

12 NCAC 10B .0915 TERMS AND CONDITIONS OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a Telecommunicator Instructor ~~shall, for the first 12 months of certification, be in a probationary status shall serve a probationary period.~~ The Telecommunicator Instructor Certification probationary period status, shall be set to automatically expire concurrently with the expiration of the instructor=s General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission, 12 months from the date of issuance. As of August 1, 2002, the expiration dates of any existing commission-issued Probationary General Telecommunicator Instructor Certifications will be amended to expire concurrently with the

expiration of the instructors = General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Officer Instructor Certification will be issued provided all other conditions for Full status as set out Paragraph (b) of this Section are met.

(b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if the instructor, through application, submits to the Division:

(1) Either:

(A) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; or

(B) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited Telecommunicator Certification Course. Such evaluation shall be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during his/her probationary year; and

(2) documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Telecommunicator Instructor Certifications will be amended to expire concurrently with the expiration of the instructors = General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification will be renewed Full Telecommunicator Instructor Certification is continuous so long as the instructor submits to the Division every two years:

(1) Either:

(A) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the

instructor satisfactorily taught a minimum of eight hours in a commission-accredited Telecommunicator Certification Course during the previous two year period. The date full Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or

(B) a favorable written evaluation by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-accredited Telecommunicator Certification Course; and

(2) a renewal application to include documentation that certification required in 12 NCAC 10B .0914(a)(2) remains valid.

~~(d) If an instructor does not teach a minimum of eight hours during each two year period following the awarding of his full Telecommunicator Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements. In the event a General Instructor Certification (either Probationary or Full) is terminated for failure to have been evaluated for eight hours of instruction in a Telecommunicator Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited eight hours of instruction in a delivery of an accredited Telecommunicator Certification Course.~~

Authority G.S. 17E-4.

12 NCAC 10B .0917 TERMS AND CONDITIONS OF PROFESSIONAL LECTURER CERT: TELECOMMUNICATOR CERTIFICATION COURSE

As of August 1, 2002, the expiration dates of any existing commission-issued Professional Lecturer Certification, where the individual also holds another instructor certification(s) issued through this Commission will be amended to expire concurrently with the other instructor certification(s) issued by this Commission. In the event such instructor does not hold another instructor certification under this Commission, but holds an instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, the expiration date will be amended to expire concurrently with the other instructor certification(s) issued by the North Carolina Criminal Justice Education and Training Standards Commission. Where the instructor holds no certification through either Commission, certification Certification as a professional lecturer shall remain effective for 24 months from the date of issuance. The lecturer shall apply for recertification at or before the expiration date, end of the 24 month period.

Authority G.S. 17E-4.

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS

PROPOSED RULES

12 NCAC 10B .1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training and years of law enforcement training experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>
<i>Years of Law Enforcement Experience</i>	8	6	4	4	2
<i>Minimum Law Enforcement Training Points</i>	20	35	50	24	23
<i>Minimum Total Education and Training Points</i>	39	69	99	24	23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the national accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>	<i>Doctoral, Professional or Master</i>
<i>Years of Law Enforcement Experience</i>	12	9	9	6	4
<i>Minimum Law Enforcement Training Points</i>	35	50	33	27	23
<i>Minimum Total Education and Training Points</i>	69	99	33	27	23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .1200 - PROFESSIONAL CERTIFICATE PROGRAM FOR DETENTION OFFICERS

12 NCAC 10B .1204 INTERMEDIATE DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Intermediate Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Detention Officer Professional Certificate and shall have

PROPOSED RULES

acquired the following combination of educational points or degrees, detention officer or corrections training points and years of detention officer experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>
<i>Years of Detention Officer Experience</i>	8	6	4	4	2
<i>Minimum Detention Officer Training Points</i>	6	12	16	24	23
<i>Minimum Total Education and Training Points</i>	13	23	33	24	23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the national accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1205 ADVANCED DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Advanced Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate Detention Officer Professional Certificate and shall have acquired the following combination of educational points or degrees, detention officer or corrections training points and years of detention officer experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>	<i>Doctoral, Professional or Master</i>
<i>Years of Detention Officer Experience</i>	12	9	9	6	4
<i>Minimum Detention Officer Training Points</i>	12	16	27	26	26
<i>Minimum Total Education and Training Points</i>	23	33	27	26	26

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .1300 - MINIMUM STANDARDS OF TRAINING FOR TELECOMMUNICATORS

12 NCAC 10B .1307 COMPREHENSIVE WRITTEN EXAM - TELECOMMUNICATOR CERTIFICATION COURSE

(a) At the conclusion of a school's offering of the "Telecommunicator Certification Course", an authorized representative of the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be an objective test ~~consisting of multiple-choice, true false, or similar questions~~ covering the topic areas as described in 12 NCAC 10B .1302(b).

(c) The Commission's representative shall submit to the school director within 10 days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of a commission-approved training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum

PROPOSED RULES

score of 70 percent on the Commission's comprehensive written examination may request the Director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the Commission's form within 30 days after the original examination and shall be received by the Division before the expiration of the trainee's probationary certification as a ~~detention officer~~ telecommunicator.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Telecommunicator Certification Course".
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety within 90 days after the original examination.
- (4) A trainee will be assigned in writing by the Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety before further examination may be permitted.

Authority G.S. 17E-4; 17E-7.

SECTION .1400 - PROFESSIONAL CERTIFICATE FOR RESERVE DEPUTY SHERIFFS

12 NCAC 10B .1404 INTERMEDIATE RESERVE DEPUTY SHERIFF CERTIFICATE

In addition to the qualifications set forth in Rule .1402 in this Section, applicants for the Intermediate Reserve Deputy Sheriff Certificate shall possess or be eligible to possess the Basic Reserve Deputy Sheriff Certificate and shall have acquired the following law enforcement training points and years of service as a reserve law enforcement officer:

- (1) 8 years of reserve officer law enforcement experience; and
- (2) 35 points minimum reserve officer law enforcement training. No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E.

12 NCAC 10B .1405 ADVANCED RESERVE DEPUTY SHERIFF CERTIFICATE

In addition to the qualifications set forth in Rule .1402 of this Section, applicants for the Advanced Deputy Sheriff Certificate shall possess or be eligible to possess the Intermediate Reserve Deputy Sheriff Certificate and shall have acquired the following law enforcement training points and years of service as a reserve law enforcement officer:

- (1) 12 years of reserve officer law enforcement experience; and
- (2) 50 points minimum total of reserve officer law enforcement training. No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

Authority G.S. 17E.

SECTION .1600 - PROFESSIONAL CERTIFICATE PROGRAM FOR TELECOMMUNICATORS

12 NCAC 10B .1604 INTERMEDIATE TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator training experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>
<i>Years of Telecommunicator Experience</i>	8	6	4	4	2
<i>Minimum Telecommunicator Training Points</i>	5	10	14	12	10
<i>Minimum Total Education and Training Points</i>	12	20	28	12	10

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the national accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

PROPOSED RULES

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

12 NCAC 10B .1605 ADVANCED TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator experience:

<i>Educational Degrees</i>	<i>None</i>	<i>None</i>	<i>Associate</i>	<i>Bachelor</i>	<i>Doctoral, Professional or Master</i>
<i>Years of Telecommunicator Experience</i>	12	9	9	6	4
<i>Minimum Telecommunicator Training Points</i>	10	12	17	14	12
<i>Minimum Total Education and Training Points</i>	20	23	17	14	12

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

Authority G.S. 17E-4.

SECTION .2100 - DEPUTY SHERIFFS' AND DETENTION OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

12 NCAC 10B .2104 IN-SERVICE FIREARMS REQUALIFICATION SPECIFICATIONS

(a) All deputy sheriffs and detention officers who are authorized by the sheriff to carry a handgun shall qualify a minimum of once each year with their individual and department-approved service handgun. The course of fire shall not be less stringent than the "Basic Law Enforcement Training Course" requirements for firearms qualification.

(b) All deputy sheriffs and detention officers who are issued, or otherwise authorized by the sheriff to carry a shotgun, rifle, or automatic weapon shall be required to qualify with each weapon respectively a minimum of once each year. The course of fire shall not be less stringent than the Basic Law Enforcement Training Course@ requirements for firearms qualification.

(c) Qualifications conducted pursuant to Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or duty-type ammunition meeting the specifications of the duty ammunition as to type projectile, weight and velocity.

(d) All deputy sheriffs and detention officers who are authorized by the sheriff to carry off duty handguns shall qualify with their off duty handgun a minimum of once each year pursuant to 12 NCAC 10B .2103 and .2104(a) and (b) with each handgun the

officer carries off duty using ammunition approved by the sheriff.

(e) All deputy sheriffs and detention officers who are issued or have access to any weapons not stated in this Rule must qualify with these weapons once each year using ammunition approved by the sheriff.

(f) In cases where reduced-sized targets are used to simulate actual distances, a modified course of fire may be used.

(g) To satisfy the minimum training requirements for all in-service firearms requalifications, a deputy sheriff or detention officer shall attain a minimum qualification score of 70 percent accuracy with each weapon once in three attempts with no more than three attempts on each course of fire per day.

(h) The "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments or editions of the referenced materials to apply as a minimum guide for conducting the annual in-service firearms qualification. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Authority G.S. 17E-4; 17E-7.

PROPOSED RULES

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 rule cited as 15A NCAC 02B .0302. Notice of Rule-making Proceedings was published in the Register on August 1, 2001.

Proposed Effective Date: August 1, 2002

Public Hearing:

Date: November 8, 2001

Time: 6:00 p.m.

Location: Centura Bank Building (Basement Meeting Room), 118 Peachtree St., Murphy, NC

Reason for Proposed Action: *Proposed Reclassification of Hiwassee River from WS-IV to WS-IV Critical Area (CA) - McGill Associates, P.A. and the Town of Murphy have requested that a Hiwassee River segment above the town's current intake in Cherokee County (Hiwassee River Basin) be reclassified to WS-IV CA. Reasons cited by the town and consultant for the reclassification are to relocate the raw water intake approximately 0.5 miles upstream of the existing intake, and a need to expand the existing critical area accordingly to incorporate existing and proposed intake facilities; the new intake is necessary due to construction of a new Department of Transportation (DOT) highway in the current intake's CA and Division of Environmental Health (DEH) Public Water Supply (PWS) Section and town concerns that the highway will contaminate the water supply. The new intake, which is proposed to be located upstream of the DOT road (bridge), is to be built and operational prior to construction of the new bridge per the DEH PWS Section and town. DOT will start bridge construction in June 2003. The DEH PWS Section will not allow the intake to be operational until the reclassification for the new intake is effective. The river segment requested for reclassification is currently WS-IV and extends from the current WS-IV CA boundary on the river, which is also approximately 3000 feet due west of N.C. Highway 141 and where the proposed intake will be placed, to a point 0.5 miles linearly upstream on the Hiwassee River. The new WS-IV CA will be designated to the area measured 0.5 miles linearly upstream and draining to the intake. The current intake including its CA will stay intact. The remainder of the Protected Area (PA) for the existing intake that will not be reclassified to WS-IV CA will remain intact, too. Because the existing PA is measured as 10 miles as-the-crow*

flies from the existing intake by the town, rather than by the run-of-the-river which is how the area of a WS-IV PA has most recently been reinterpreted by the EMC, the PA affiliated with the proposed intake measured by the run-of-the-river method falls within the existing PA. Thus, the existing PA will serve as PA for the existing and new intakes. No letter confirming that the water is suitable for treatment for potable use was required from the DEH PWS Section, and DWQ did not collect water samples from the waters to be reclassified in order to determine if these waters meet the water quality standards required by a WS-IV classification; this letter and sampling were not required because the waters proposed to be reclassified are located in a current water supply (WS-IV) watershed, and thus meet water quality standards for a water supply classification. Local government/s that have land use jurisdiction within the water supply watershed are responsible for developing and implementing water supply watershed ordinances within the PA and CA. The designated local government/s have 270 days after the effective date of the proposed rule to develop and/or modify their watershed protection land use ordinances that must at least meet the state's minimum requirements (15A NCAC 2B .0100 and .0200). In this case, Cherokee County is the only local government that will need to modify its ordinance, and it has opted to do so in the very near future as DWQ staff stated the new intake can be established prior to the reclassification effective date if these modifications are in place. If reclassified, additional regulations will be required in the new CA. More specifically, where land disturbing activities require a Sedimentation and Erosion Control Plan in either a WS-IV CA or WS-IV PA, a low density option and a high density option are available. The high density option permits development at up to 50% built upon area in the CA but 70% built upon area in the PA. Furthermore, for either low or high density options, development may take place up to three dwelling units/acre or 36% built upon area for developments without curb and gutter street systems in the PA but not in the CA. However, please note that Cherokee County has no high density development provision in their ordinance, plus very little development exists and very little development is projected in the affected area. In a WS-IV CA, new industrial process wastewater discharges will have additional wastewater treatment requirements although no new such discharges are proposed in the new CA. No new permitted landfills are allowed in a WS-IV CA, and there are no new landfills proposed to be located in the new CA. The table below summarizes and compares the existing and proposed classifications' requirements.

Classification	Area Affected	Low Density Development Option	High Density Development Option ³	Allowable Wastewater Discharges	Landfills Allowed
WS-IV Critical Area (Proposed)	½ mile and Draining to Intake	1 DU / 0.5 acre or 24% BUA and 30' Buffers	24-50% BUA and 100' Buffers	Domestic and Industrial (new industrial discharges will require additional treatment)	No New Landfills
WS-IV Protected Area (Existing)	Rest of Water Supply Watershed ¹	1 DU / 0.5 acre or 24% BUA and 30' Buffers ²	24-70% BUA and 100' Buffers ²	Domestic and Industrial	No Specific Restrictions

DU = Dwelling Unit; BUA = Built Upon Area

¹Measured as 10 miles run-of-river upstream and draining to intake

²Optional: 3 DU / acre or 36% BUA w/o curb and gutter street system

³High Density Option requires control of runoff from first 1" of rainfall by engineered stormwater controls. Local governments must assume ultimate responsibility for operation/maintenance of these in a WS-IV.

Comment Procedures: *The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed reclassification. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification. You may attend the public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. You may also submit written comments, data or other relevant information by November 19, 2001. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, or by calling Elizabeth Kountis at (919) 733-5083, ext. 369.*

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B – SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 – ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0302 HIWASSEE RIVER BASIN

- (a) Places where the schedule may be inspected:
 - (1) Clerk of Court:
Cherokee County
Clay County;
 - (2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office Interchange Building
59 Woodfin Place
Asheville, North Carolina.
- (b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr."
- (c) The Hiwassee River Basin Schedule of Classifications and Water Quality Standards was amended effective:
 - (1) August 9, 1981;
 - (2) February 1, 1986;
 - (3) March 1, 1989;
 - (4) August 1, 1990;
 - (5) August 3, 1992;
 - (6) July 1, ~~1995-1995~~;
 - (7) August 1, 2002.
- (d) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective March 1, 1989 as follows:
 - (1) Fires Creek (Index No. 1-27) and all tributary waters were reclassified from Class C-trout

and Class C to Class C-trout ORW and Class C ORW.

- (2) Gipp Creek (Index No. 1-52-23) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters(with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective July 1, 1995 with the reclassification of the Hiwassee River [Index Nos. 1-(42.7) and 1-(48.5)] from McComb Branch to the Town of Murphy water supply intake including tributaries from Classes WS-IV and WS-IV CA to Classes WS-IV, WS-IV CA, WS-V and C.

(g) The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin was amended effective August 1, 2002 with the reclassification of the Hiwassee River [portion of Index No. 1-(16.5)] from a point 1.2 mile upstream of mouth of McComb Branch to a point 0.6 mile upstream of McComb Branch (Town of Murphy proposed water supply intake) from Class WS-IV to Class WS-IV CA.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 01 – NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to amend the rule cited as 21 NCAC 01 .0301. Notice of Rule-making Proceedings was published in the Register on December 15, 2000.

Proposed Effective Date: *August 1, 2002*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Call Diana Mills, Executive Secretary, North Carolina Acupuncture Licensing Board, 919-773-0530, or submit in writing to NCALB, 893 US Hwy 70 W., Suite 202, Garner, NC 27529.*

Reason for Proposed Action: *This action will clarify the continuing education requirements of licensees.*

PROPOSED RULES

Comment Procedures: Comments may be submitted to Diana Mills, Executive Secretary, North Carolina Acupuncture Licensing Board, 893 US Hwy 70 W., Suite 202, Garner, NC 27529, 919-773-0530. Comments should be received by November 14, 2001.

Fiscal Impact table with checkboxes for State, Local, Substantive (>=\$5,000,000), and None.

SECTION .0300 - CONTINUING EDUCATION

21 NCAC 01 .0301 STANDARDS FOR CONTINUING EDUCATION

- (a) Applicants for license renewal shall obtain 40 continuing education units (CEU) every two years:
(1) 30 hours of the CEU's must be taken in courses which have content related to acupuncture and Oriental Medicine.
(2) 10 hours may be undertaken in any health service related area.
(b) CEU hours are not retroactive nor cumulative.
(c) Except for the 10 hours in Subparagraph (a)(2) of this Rule, all CEU programs must be approved by the Board as follows:
(1) Applications for CEU program approval shall be submitted to the Board office at least 45 days prior to the date of presentation.
(2) Each CEU program application shall contain:
(A) a detailed program outline or syllabus;
(B) a current curriculum vitae of each speaker or lecturer;
(C) the procedure to be used for recording attendance; and
(D) a fee as established in Rule .0103 of this Chapter.
(3) The Executive Secretary of the Board shall notify the provider of the Board's decision on each application.
(4) Upon approval of a CEU, the Board shall assign an identification number to that program.
(d) If a CEU is not approved by the Board, the reasons for the rejection shall be stated by the Executive Secretary in a letter to the provider.
(e) The provider may identify an approved program as "approved by the North Carolina Acupuncture Licensing Board for purposes of Continuing Education Units" in any advertisement.
(f) One continuing education unit is defined as one contact hour or 50 minutes.
Applicants for license renewal shall complete 40 Continuing Education Units (CEU) every two years. One CEU is defined as one contact hour or fifty minutes.
(1) All CEUs shall be completed during the two calendar years immediately preceding the:
(a) license renewal date; or
(b) date on which the license renewal is approved by the Board.
(2) The following requirements shall apply to the total number of CEUs submitted by a licensee for license renewal:
(a) A minimum of 25 CEUs must be obtained from formally organized courses which have content relating to the scope of "practice of acupuncture" as defined by the G.S. 90-451(3). Each course shall be:
(i) Pre-approved by the NCALB; or
(ii) Sponsored or accredited by one or more of the following organizations or their member organizations:
(A) National Acupuncture and Oriental Medicine Alliance (NAOMA);
(B) American Association of Acupuncture and Oriental Medicine (AAAOM);
(C) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM);
(D) Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM);
(E) National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);
(F) National Academy of Acupuncture and Oriental Medicine (NAAOM);
(G) Society for Acupuncture Research;
(H) Center for Oriental Medical Research and Education (COMRE);
(I) National Acupuncture Detoxification Association;
(J) National Acupuncture Teachers Association;
(K) American Academy of Medical Acupuncturists (AAMA);
(L) The acupuncture licensing board of another U.S. State; or
(M) North Carolina Association of Acupuncture and Oriental Medicine (NCAAOM).
(b) A maximum of 15 CEUs may be obtained from:
(i) Formally organized courses which have content relating to any health service and are relevant to the practice of acupuncture. Such topics include courses in acupuncture adjunctive therapies as defined in G.S. 90-451(3), Western sciences and medical practices, medical ethics, and cardiopulmonary resuscitation. Each course shall be:
(A) Pre-approved by the NCALB; or

PROPOSED RULES

- (B) Meet the requirements of 21 NCAC 01.0301(2)(a)(ii); or
- (C) Sponsored or accredited by one or more of the following organizations:
 - (I) World Health Organization (WHO);
 - (II) National Institutes of Health (NIH);
 - (III) National Institutes of Health Office of Alternative Medicine (NIHOAM);
 - (IV) American Medical Association (AMA);
 - (V) American Nurses Association (ANA);
 - (VI) American Holistic Medical Association;
 - (VII) American Psychiatric Association (APA);
 - (VIII) American Hospital Association (AHA);
 - (IX) American Lung Association (ALA);
 - (X) Red Cross;
 - (XI) Accredited colleges or universities;
 - (XII) Accredited hospitals;
 - (XIII) American Heart Association; or
 - (XIV) Accreditation Council for Continuing Medical Education.
- (ii) Personal training in non-accredited programs which assist a licensee to carry out their professional responsibilities, including, but not limited to Qi Gong and Tai Qi.
- (iii) Training in accredited programs which will assist a licensee to carry out their professional responsibilities, including, but not limited to Foreign language training for translation of relevant texts. All courses must be pre-approved by the NCALB.
- (iv) Teaching acupuncture diagnosis and treatment. All CEUs for teaching must be approved by the NCALB prior to the date of the class.
- (v) No CEUs shall be obtained from courses devoted to administrative or business management.
- (3) All programs submitted as CEUs must meet these requirements:
 - (a) A complete record of attendance shall be maintained on file by the sponsor of the course, program, or activity. These records shall be made available to the NCALB upon request; and
 - (b) All instructors must be competent to teach their designated courses by virtue of their education, training, and experience.
- (4) CEUs from any given course, program, or activity may only be used to satisfy the requirements of one biennium.
- (5) At the time of license renewal, each licensee shall sign a statement under penalty of perjury indicating whether s/he has or has not complied with the continuing education requirements.
- (6) Each licensee shall retain for a minimum of four years records of all continuing education programs attended, indicating:
 - (a) title of the course or program;
 - (b) sponsoring organization or individual;
 - (c) accrediting organization (if any); and
 - (d) course hours in attendance.
- (7) The Board may choose to audit the records of any licensee who has reported and sworn compliance with the continuing education requirement. No licensee shall be subject to audit more than once every two years. Those licensees selected for audit shall be required to document their compliance with the continuing education requirements of this article.
- (8) Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to inactive status at the end of the renewal period.
- (9) Continuing education is not required to maintain licensure in inactive status. An inactive licensee is exempt from the continuing education requirements set forth in this article.
- (10) When an inactive licensee has requested in writing to the Board return to active status, the licensee must document completion of 40 CEUs which were completed in the two years immediately preceding reactivation.
- (11) It shall constitute unprofessional conduct for a licensee to misrepresent completion of required CEUs. In the event of misrepresentation, disciplinary proceedings may be initiated by the Board.
- (12) A licensee may apply to the Board for an extension of time to complete the portion of his/her continuing education requirements that s/he is unable to meet due to such causes as a prolonged illness or family emergency. The Board may, at its discretion, grant such an extension for a maximum of one licensing period. This request shall be received by the Board no later than 30 days prior to the license renewal date, be signed under the penalties of perjury, and contain the following:
 - (a) An explanation of the licensee's failure to complete his/her continuing education requirements;
 - (b) A list of continuing education courses and hours that the licensee has completed; and
 - (c) The licensee's plan for satisfying his/her continuing education requirements.

Authority G.S. 90-454.

CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Real Estate Commission intends to adopt the rule cited as 21 NCAC 58A .0616; amend the rules cited as 21 NCAC 58A .0104, .0107-.0110, .0114, .0503, .0507, .1401; 58C .0216, .0302-.0304, .0603, .0605; 58E .0203, .0302, .0406, and repeal the rules cited as 21 NCAC 58C .0106, .0215. Notice of Rule-making Proceedings was published in the Register on August 15, 2001.

Proposed Effective Date: July 1, 2002

Public Hearing:

Date: November 14, 2001

Time: 9:00 a.m.

Location: 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: The Commission is attempting to clarify its record-keeping standards, case processing and licensure procedures, referral fee rules, and certain educational requirements for licensure.

Comment Procedures: Comments regarding the rules may be made at the public hearing or addressed to Pamela Millward prior to the hearing at the NCREC P.O. Box 17100 Raleigh, NC 27619-7100. Comments may also be emailed to Ms. Millward at pamela@ncrec.state.nc.us. Comments will be accepted through November 14, 2001.

Fiscal Impact

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

CHAPTER 58 – REAL ESTATE COMMISSION

SUBCHAPTER 58A – REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 – GENERAL BROKERAGE

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate sales transaction other than a buyer agency agreement shall be in writing from the time of its formation. Every-An oral buyer agency agreement which seeks to shall not bind the buyer for a period of time or to restrict the buyer's right to work with other agents or without an agent agent shall be in writing from its formation. A broker or salesperson who undertakes to represent a buyer in a real estate sales transaction without a written buyer agency agreement shall clearly disclose his or her agency relationship to the buyer. In any event, a buyer agency agreement must be in writing not later than the time an offer to purchase is presented to a seller or the seller's agent. A broker or salesperson shall not continue to represent a buyer without a

written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate sales transaction shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period.

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

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

(d) Except as provided in Subsection (a) of this Rule, a real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the express, written-express authority of each party. Such written authority must be obtained in writing not later than the time one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to the other party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

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

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

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

(i) A firm which represents both the buyer and the seller in the same real estate sales transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the buyer and seller.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior written approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

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

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

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

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

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

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

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

Authority G.S. 41A-3(1b); 93A-3(c); 41A-4(a).

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

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

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

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

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds

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in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include but not be limited to:

- (1) Bank statements.
- (2) Canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall clearly identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks provided that such images are legible reproductions of the front and back of the original instruments with no more than four instruments per page and no smaller images than 2.75 x 6 inches, and provided that the licensee's bank retains the original checks on file for a period of at least five years and makes them available to the licensee and the Commission upon request.
- (3) Deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.
- (4) A payment record sheet for each property or interest for which funds are collected and

deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency.

~~(4)~~(5) A separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.

~~(5)~~(6) A journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

~~(6)~~(7) Copies of contracts, leases and management agreements.

~~(7)~~(8) Closing statements and property management statements.

(9) Covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association.

~~(8)~~(10) Invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

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

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition and or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

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

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

was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

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

Authority G.S. 93A-3(c).

21 NCAC 58A .0108 RETENTION OF RECORDS

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

Authority G.S. 93A-3(c).

21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION

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

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

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

(d) Except as provided in Paragraph (e) of this Rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts

performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration not exceeding one hundred fifty dollars (\$150.00) per transaction to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
- (2) the travel agent has arranged air, land, or ocean travel for the tenant in connection with the vacation rental and the introduction is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental. For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by IATA/ARC. Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years complete records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

Authority G.S. 93A-3(c).

21 NCAC 58A .0110 BROKER-IN-CHARGE

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

as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
 - (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
 - (3) the proper conduct of advertising by or in the name of the firm at such office;
 - (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
 - (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
 - (6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
 - (7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and
 - (8) the proper supervision of all brokers and salespersons employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.
- (b) When used in this Rule, the term:
- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
 - (2) "Office" means any place of business where acts are performed for which a real estate license is required.
- (c) A broker-in-charge must continually maintain his or her license on active status.
- (d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.
- (e) A licensed real estate firm which demonstrates on a form prescribed by the Commission that it has qualified for licensure solely for the purpose of receiving compensation for brokerage

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services furnished by its principal broker through another firm, and that no person is affiliated with it other than its principal broker, shall not be required to designate a broker-in-charge.

(f) Every broker-in-charge shall complete the Commission's broker-in-charge course at least once every five years following the effective date of this Rule. Every broker designated as a broker-in-charge after ~~the effective date of this Rule~~ **October 1, 2000** shall complete the Commission's broker-in-charge course within ~~90~~ **120** days following designation and at least once every five years thereafter for so long as he or she remains broker-in-

charge. If a broker who is a designated broker-in-charge fails to complete the broker-in-charge course within the prescribed time period, the broker-in-charge status of that broker shall be immediately terminated, and the broker must complete the broker-in-charge course before he or she may again be designated as a broker-in-charge.

Authority G.S. 93A-2; 93A-3(c); 93A-4.

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by G.S. 47E-1, G.S. 47E-2, and G.S. 47E-3, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

**STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check ? one of the boxes for each of the 20 questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must describe the problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
 - * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you are still responsible for completing and delivering the Statement to the purchasers; and the broker or salesperson must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

PROPOSED RULES

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
 Owner's Name(s): _____
Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
 Owner Signature: _____ Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date _____, ____
 Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	Yes*	No	Repre- sentation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	?	?	?
a. Siding is ? Masonry ? Wood ? Composition/Hardboard ? Vinyl ? Synthetic Stucco ? Other _____			?
b. Approximate age of structure? _____			?
2. ROOF (leakage or other problem)?	?	?	?
a. Approximate age of roof covering? _____			?
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?	?	?	?
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?	?	?	?
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?	?	?	?
6. HEATING AND/OR AIR CONDITIONING?	?	?	?
a. Heat Source is: ? Furnace ? Heat Pump ? Baseboard ? Other _____			?

PROPOSED RULES

- b. Cooling Source is: ? Central Forced Air ? Wall/Window Unit(s)
? Other _____ ?
- c. Fuel Source is: ? Electricity ? Natural Gas ? Propane ? Oil ? Other _____ ?
7. WATER SUPPLY (including water quality, quantity and water pressure)? ? ? ?
- a. Water supply is: ? City/County ? Community System ? Private Well
? Other _____ ?
- b. Water pipes are: ? Copper ? Galvanized ? Plastic ? Other _____
? Unknown ?
8. SEWER AND/OR SEPTIC SYSTEM? ? ? ?
- a. Sewage disposal system is: ? Septic Tank ? Septic Tank with Pump
? Community System ? Connected to City/County System
? City/County System available ? Straight pipe (wastewater does not go into a septic
or other sewer system [note: use of this type of system violates state law]) ?
? Other _____ ?
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN,
DISHWASHER, DISPOSAL, etc.)? ? ? ?
- Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:**
10. PROBLEMS WITH PRESENT INFESTATION, OR DAMAGE FROM PAST
INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has
not been repaired? ? ? ?
11. PROBLEMS WITH DRAINAGE, GRADING OR SOIL STABILITY OF LOT? ? ? ?
12. **PROBLEMS WITH** OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM,
POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP,
IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER
SYSTEMS? ? ? ?
13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ? ? ?
14. ENVIRONMENTAL HAZARDS (substances, materials or products) including
asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground
storage tank, or other hazardous or toxic material (whether buried or covered),
contaminated soil or water, or other environmental contamination)? ? ?
15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting
the property? ? ? ?
16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE
COVENANTS OR OTHER LAND-USE RESTRICTIONS? ? ? ?
17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR
ENCROACHMENTS FROM OR ON ADJACENT PROPERTY? ? ? ?
18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX
LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS'
LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title
to the property? ? ? ?

(b) Forms for application for payment from the Real Estate Recovery Fund shall be available from the Commission on request.

(c) The Commission, in its discretion, may accept an application for payment which is not submitted on the form prescribed by the Commission, provided that the application describes a meritorious claim and otherwise fulfills the requirements of Article 2, of Chapter 93A of the General Statutes.

Authority G.S. 93A-3(c); 93A-17.

SUBCHAPTER 58C – REAL ESTATE PRELICENSING EDUCATION

SECTION .0100 - SCHOOLS

21 NCAC 58C .0106 PROGRAM CHANGES

~~Approved schools must obtain advance approval from the Commission for any changes to be made with respect to instructors, textbooks or locations where courses are to be conducted. Requests for approval of such changes must be in writing.~~

Authority G.S. 93A-4(a),(d).

SECTION .0200 – PRIVATE REAL ESTATE SCHOOLS

21 NCAC 58C .0215 QUARTERLY REPORTS

~~Schools shall submit quarterly reports to the Commission upon a form prescribed by the Commission. Such reports shall include information on all courses completed during the previous quarter and all students enrolled in such courses, and shall be due on October 10, January 10, April 10, and July 10.~~

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0216 CHANGES DURING THE LICENSING PERIOD

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

Authority G.S. 93A-4(a),(d); 93A-33.

SECTION .0300 – PRE-LICENSING COURSES

21 NCAC 58C .0302 PROGRAM STRUCTURING

Real estate pre-licensing education programs shall include a salesperson course consisting of at least 67 classroom hours of instruction and a broker course consisting of at least 60 classroom hours of instruction. Completion of the North Carolina salesperson course within the previous three ~~years or~~

years, possession of a current North Carolina salesperson license, or possession of a current salesperson or broker license in another state must be a prerequisite for enrollment in the broker course.

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0303 COURSE CONTENT

(a) All courses shall consist of instruction in the subject area and at the competency and instructional levels prescribed in the Commission's course syllabi.

(b) Courses may also include coverage of additional related subject areas not prescribed by the Commission; however, any such course must provide additional class time above the minimum requirement ~~of 30 classroom hours~~ for the coverage of such additional subject areas.

(c) Classroom time and instructional materials may be utilized for instructional purposes only and not for promoting the interests of or recruiting employees or members for any particular real estate broker, real estate brokerage firm or real estate franchise.

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0304 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion must reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade must be based solely on his or her performance on examinations and on graded homework and classwork assignments.

(b) Course completion requirements must ~~include~~ include, at a minimum, obtaining a grade of at least 75 percent on a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course ~~satisfactorily completing any mandatory graded homework or classwork assignments. Schools and instructors may utilize other course tests in addition to the final course examination provided that a student's grade on the final course examination accounts for at least 75 percent of the student's grade for the course. The development or acquisition of appropriate salesperson course examinations shall be the responsibility of approved instructors and schools. The broker course final examinations provided by the Commission shall be utilized by schools and instructors unless the school or instructor has obtained written approval from the Commission of any other final examinations to be utilized.~~ Final-All course examinations are subject to review and approval by the Commission as provided in G.S. 93A-4(a) and (d) and Rule .0304(a) of this Section. Take-home or open-book final course examinations are prohibited. Schools may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course; however, any makeup examination must be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup examination must be different from those used on the initial examination.

(c) Schools and instructors shall take appropriate steps to protect the security and integrity of course examinations at all times. These steps shall include, but not be limited to:

- (1) Maintaining examinations and answer keys in a secure place accessible only to the instructor or appropriate school officials;
- (2) Prohibiting students from retaining copies of examinations, answer sheets, and closing statement forms or scratch paper containing notes or calculations that jeopardize examination security; and
- (3) Monitoring students at all times when examinations are being administered.

(d) Any student who is found by an instructor or other school official to have cheated in any manner on any course examination shall be dismissed from the course in which enrolled and shall not be awarded a passing grade for the course or any credit for partial completion of the course. The cheating incident shall be reported in writing to the Commission within ten days of the incident.

~~(e)~~(e) The minimum attendance required for satisfactory course completion is 80 percent of all scheduled classroom hours for the course.

Authority G.S. 93A-4(a),(d).

SECTION .0600 – REAL ESTATE COMMISSION HEARINGS

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a pre-licensing course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: A current North Carolina real estate broker license; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years; 120 classroom hours of real estate education excluding company or franchise in-service sales training; and 60 semester hours of college-level education at an institution accredited by a nationally recognized college accrediting body.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of an instructor seminar prescribed by the Commission and shall submit a ~~two-one~~ -hour videotape which depicts the applicant teaching a real estate pre-licensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The videotape must comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or

who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to fully satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission may in its discretion extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted videotape, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances. An individual applying for instructor approval shall be allowed the authorized six-month period to satisfy the requirements stated in this Paragraph only once.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0605 REQUEST FOR EXAMINATIONS AND VIDEOTAPE

(a) Upon request of the Commission, an instructor shall submit to the Commission copies of final course examinations, with answer keys, used in pre-licensing courses taught by the instructor.

(b) Upon request of the Commission, an instructor must submit to the Commission a videotape which depicts the instructor teaching portions of a pre-licensing course specified by the Commission and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0604 of this Section.

(c) Any videotape submitted to the Commission in connection with an instructor application ~~or in response to a request from the Commission~~ must be approximately ~~two hours one hour~~ in length and must depict the instructor teaching ~~either one continuous block of instruction on a single topic or two separate one hour blocks of instruction on different topics~~. ~~The Any~~ videotape submitted in connection with an instructor application or in response to a request from the Commission must have been made within 12 months of the date of submission, must be in VHS format, must be unedited, must include a label identifying the instructor and dates of the videotaped instruction, and must have visual and sound quality sufficient to allow viewers to clearly see and hear the instructor.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

SUBCHAPTER 58E – REAL ESTATE CONTINUING EDUCATION

SECTION .0200 – UPDATE COURSE INSTRUCTORS

21 NCAC 58E .0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

~~(1) Possession of a baccalaureate or higher degree with a major in the field of real estate.~~

~~(2)(1)~~ Possession of a current North Carolina real estate broker license, a current continuing education record, three years active full-time experience in general real estate brokerage brokerage, including substantial experience in real estate sales, within the previous ~~ten~~seven years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.

~~(3) Possession of a current North Carolina real estate broker license and experience teaching at least ten real estate prelicensing courses within the previous five years.~~

~~(4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years, with a substantial emphasis on real estate practice.~~

~~(5)(2)~~ Possession of qualifications found by the Commission to be equivalent to ~~one or more of the above standards, provided that the requirement for a current North Carolina real estate broker license shall be waived only for applicants who qualify under Subparagraph (e)(1) or (4) of this Rule~~ the standard stated in Subparagraph (c)(1) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a videotape portraying the instructor teaching a live audience. The applicant must submit for Commission review a videotape in VHS format. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The videotape must have been made within the previous three years. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he or she is a Commission-approved real estate prelicensing instructor who has satisfied all requirements for an unconditional approval or possesses a current North Carolina real estate broker ~~license~~license, a current continuing education record, and a current designation as a Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0300 – ELECTIVE COURSES

21 NCAC 58E .0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate continuing education purposes between June 11 and June 30, inclusive, of any approval period.

(c) The sponsor of an approved "distance education" elective course, as defined in Rule .0310 of this Subchapter, shall not permit students to register for any such course between June 11 and June 30, inclusive, of any approval period. The sponsor of any such distance education course shall require students registering for any such course to satisfactorily complete the course within 15 days of the date of registration for the course or the date the student is provided the course materials and permitted to begin work, whichever is the later date, provided that the deadline for course completion in any approval period shall not be later than June 15 of that approval period. The sponsor shall advise all students registering for a distance education course, prior to accepting payment of any course fees, of the deadlines for course completion.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 – GENERAL SPONSOR REQUIREMENTS

21 NCAC 58E .0406 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall ~~be completed on forms include students' names, students' license numbers, course date, sponsor and course codes and similar course information presented in the format~~ prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information ~~on in~~ such reports. Such reports shall, in accordance with instructions provided by the Commission, be transmitted electronically via the Internet, provided on a computer disk, or provided in some other manner acceptable to the Commission that permits the Commission to electronically post the information on course completion to the Commission's computer records. Sponsors must submit these reports to the

PROPOSED RULES

Commission in a manner that will assure receipt by the Commission within fifteen calendar days following the course, but in no case later than June 15 of any approval period for courses conducted ~~prior to that date~~ during that approval period, provided that the last reporting date shall be June 20 of any approval period for distance education courses where students registered for the courses between June 1 and June 10, inclusive, of that approval period.

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

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

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall

not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses ~~on forms prescribed by the Commission, on computer disk or by electronic means,~~ provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar (\$5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the ~~course,~~ course, but not later than the last course reporting dates for an approval period specified in Paragraph (a) of this Rule. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

Authority G.S. 93A-3(c); 93A-4A.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Rule-making Agency: Department of Administration

Rule Citation: 01 NCAC 40 .0104-.0106, .0205-.0208

Effective Date: October 9, 2001

Findings Reviewed and Statement does not meet criteria for Temporary Rule: Agency filed over objection

Authority for the rulemaking: G.S. 115C-566

Reason for Proposed Action: During its 1999 session, the General Assembly further expanded its 1997 student driving eligibility certificate program for those teenagers under age 18 who do not yet possess a high school diploma or its equivalent. SB 57 added more student offenses (at school or school-related functions) for which a NC drivers license could be revoked effective July 1, 2000. The General Assembly cited its action as an act that allowed the Department of Administration to adopt additional temporary rules to cover the program's expansion. The rules for non-public schools now being submitted were originally submitted in mid April, 2000 to our then DOA Rulemaking Coordinator who, for whatever reason, indicated it was being taken care of. However, it was just recently discovered that it was not and that he had even let the former original temporary rule expire in May 2000.

Comment Procedures: All persons wishing to comment on these temporary rules may do so by sending written comments to Brooks Skinner, General Counsel, Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 40 NCAC .0104-.0106, .0205-.0208. Notice of Rule-making Proceedings was published in the Register on August 16, 1999.

Proposed Effective Date: August 1, 2002

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Request for public hearing should be directed to Rod Helder, Division of Non-Public Education, Department of Administration, 1309 Mail Service Center, Raleigh, NC 27699-1309. The request must be received by the agency no later than October 30, 2001.

Reason for Proposed Action: During its 1999 session, the General Assembly expanded its 1997 student driving eligibility certificate program for those under age 18 who do not possess a high school diploma. SB 57 added more student offenses for which a drivers license could be revoked effective July 1, 2000.

DOA was given authority to adopt temporary rules to cover the programs expansion.

Comment Procedures: Comments should be directed in writing to Rod Helder, Director, Division of Non-Public Education, Department of Administration, 1309 Mail Service Center, Raleigh, NC 27699-1309. Comments must be received by the agency no later than November 14, 2001.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)
- None

CHAPTER 40 – NONPUBLIC EDUCATION

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 40 .0104 PURPOSE

The Division of Nonpublic Education is the agency of State government responsible for administering the provisions of Article 39 of Chapter 115C of the General Statutes and is the "duly authorized representative of the State" for such purposes, as defined in G.S. 115C-563(b).

History Note: Authority G.S. 115C-553; 115C-561; 115C-563; 115C-566;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001.

01 NCAC 40 .0105 ORGANIZATION

The Division of Nonpublic Education is located in the Department of Administration pursuant to the assignment of said division from the Office of the Governor, as designated by order of the Governor dated May 20, 1998, and effective July 1, 1998.

History Note: Authority G.S. 115C-553; 115C-561; 115C-563; 115C-566; 143B-12;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001.

01 NCAC 40 .0106 DEFINITIONS

- The following definitions shall apply throughout this Chapter:
- (1) "Conventional nonpublic school" means a school operating only under either Part 1 or Part 2 of Article 39, G.S. 115C.
 - (2) "Division" means the Division of Nonpublic Education, except where otherwise identified.
 - (3) "Educational program" means an alternative academic program of instruction found by a court prior to July 1, 1998, to comply with the

Compulsory Attendance Law, Part 1 of Article 26, G.S. 115C.

- (4) "Home school" means a nonpublic school operating under Part 3 of Article 39, G.S. 115C.

History Note: Authority G.S. 115C-547 through 115C-566; Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001; Temporary Adoption Eff. October 9, 2001.

SECTION .0200 – DRIVING ELIGIBILITY CERTIFICATES

01 NCAC 40 .0205 DEFINITIONS

For the purposes of G.S. 20-11, G.S. 20-13.2(c1) and G.S. 115C-566, the following definitions shall apply:

- (1) "High school diploma or its equivalent" means a high school diploma issued by a non-public school which meets the requirements of the G.S. 115C, Article 39, and also includes the General Equivalency Diploma and the adult high school diploma.
- (2) "Making progress toward obtaining a high school diploma or its equivalent" means that the student must meet standards established by the chief administrator, or the chief administrator's designee, in the case of conventional nonpublic school or by the chief administrator of the home school or the educational program.
- (3) "Substantial hardship" means a demonstrable burden on the student or the student's family as evidenced by circumstances such as the following:
- (a) The parent/guardian is unable to drive due to illness or other impairment and the student is the only person of driving age in the household.
- (b) The student requires transportation to and from a job that is necessary to the welfare of the student's family and the student is unable to obtain transportation by any means other than driving.
- (c) The student has been unable to attend a conventional nonpublic school due to documented medical reasons, but the student is demonstrating the ability to maintain progress toward obtaining a high school diploma or its equivalent.
- (4) A "student who cannot make progress toward obtaining a high school diploma or its equivalent" shall mean a student who has been identified by the chief administrator, or the chief administrator's designee, in the case of a conventional nonpublic school or by the chief administrator of the home school or the educational program, as not having the capacity to meet the requirements for a high

school diploma or its equivalent due to a disability.

- (5) "Exemplary student behavior" means the student has not received school disciplinary action as described in G.S. 20-11(n1)(1)c for the enumerated student conduct listed in G.S. 20-11(n1)(1)d in accordance with G.S. 20-11(n1)(2) through (4).
- (6) "Successful completion of a drug or alcohol treatment counseling program" means the student has completed all requirements of the counseling program which the chief administrator or the chief administrator's designee of the non-public school or educational program has determined best suits that student's needs.

History Note: Authority G.S. 115C-566; Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001; Temporary Adoption Eff. October 9, 2001.

01 NCAC 40 .0206 ISSUANCE OF DRIVING ELIGIBILITY CERTIFICATES

- (a) Each conventional nonpublic school, home school and educational program shall be responsible for the issuance of driving eligibility certificates on forms which must be supplied only by the Division, and which are non-transferable to or from any other conventional nonpublic school, home school, educational program, or public school.
- (b) Before any conventional nonpublic school or home school can issue a driving eligibility certificate, that school must have on file with the Division a currently valid Notice of Intent to Operate and must be in compliance with all laws and regulations applicable to conventional nonpublic schools or home schools which enroll students subject to compulsory attendance laws. Once the school is in compliance with such laws and regulations as apply to it, the appropriate forms may be requested from, and supplied by, the Division.
- (c) Before any educational program can issue a driving eligibility certificate, that program must have on file with the Division for at least six months:
- (1) A letter stating the name of the educational program, its address and telephone number, and contact person; and
- (2) Legal documentation in the form of a certified court order or judgment that the program was found to be in compliance with the Compulsory Attendance Law, Part 1 of Article 26, G.S. 115C, prior to July 1, 1998. Once the educational program is in compliance with such laws and regulations as apply to it, the appropriate forms may be requested from, and supplied by, the Division.
- (d) Notwithstanding 01 NCAC 40 .0206(b), all nonpublic schools may not request driving eligibility certificate forms from the Division until after the school's currently valid Notice of Intent to Operate has been on file with the Division for at least six calendar months. This provision shall not apply in the case of any student that is newly resident in the State of North Carolina within the 30 days immediately preceding the request

for a driving eligibility certificate from a school affected by this provision.

(e) A nonpublic school student under the age of 18 who wishes to obtain a limited learner's permit, a limited provisional license or a full provisional license under G.S. 20-11 must first request and obtain a driving eligibility certificate signed by the chief administrator, or the chief administrator's designee, in the case of a conventional nonpublic school or the chief administrator of the home school or the educational program. It must be obtained no more than 30 days before the student applies for a learner's permit or driver's license.

(f) Before a nonpublic school student is eligible to receive a driving eligibility certificate, the student must be currently and properly enrolled in a nonpublic school which is meeting all the appropriate requirements of G.S. 115C, Article 39, or in an educational program at the time the certificate form is issued and meet one of the following requirements:

- (1) The student is making progress toward obtaining a high school diploma or its equivalent -- unless the student is unable to make such progress -- and is exhibiting exemplary student behavior while on school property and at all school-sponsored and school-related activities; or
- (2) The student will have a substantial hardship placed on the student or the student's family if the certificate is not issued.

(g) If a student is denied a certificate, the chief administrator of the nonpublic school or the educational program shall inform the student of the school's or the program's decision and the availability and details of the school's or program's appeals process.

History Note: Authority G.S. 115C-566; Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001; Temporary Adoption Eff. October 9, 2001.

01 NCAC 40 .0207 REVOCATION OF DRIVING ELIGIBILITY CERTIFICATES

(a) Each nonpublic school and educational program shall revoke a driving eligibility certificate held by one of its students, no matter whether it was issued by that school or program or not:

- (1) When the student fails to meet the requirements for the certificate set out in 01 NCAC 40 .0206; or
- (2) When the student is no longer enrolled in the school or program and does not possess a high school diploma or its equivalent upon the student's removal from the school's or program's rolls, if the student will not be enrolled in another school (public, conventional nonpublic, home school, educational program or community college).

(b) Upon revocation of a certificate, the chief administrator of the school or program shall send written notification of the revocation to the Division within five calendar days of the revocation, unless the student protests the decision. If the Appeals Committee upholds the school's or program's decision to revoke the certificate, the notification to the Division will be

made within five days from the school's or program's receipt of the committee's decision.

(c) The notification to the Division shall include:

- (1) The student's legal name (first, middle and last name as on the student's birth certificate);
- (2) The student's social security number;
- (3) The student's residence address (including street, city and zip code);
- (4) The student's date of birth;
- (5) The student's gender;
- (6) The student's race;
- (7) The student's learner's permit or driver's license number;
- (8) The name of the parent/guardian with whom the student is living;
- (9) A statement of the reasons for the revocation of the certificate;
- (10) The date of the student's ineligibility or removal from the school's or program's rolls;
- (11) The type of nonpublic school, whether conventional or home school, or educational program;
- (12) The name of the nonpublic school or educational program;
- (13) The county in which the nonpublic school or educational program is located;
- (14) The name of the chief administrator of the nonpublic school or educational program.

(d) Within five calendar days of the Division's receipt of the written notification of revocation from the nonpublic school, or educational program, the Director of the Division or the Director's designee, shall inform the North Carolina Division of Motor Vehicles of the revocation.

(e) If a student's certificate is revoked, the chief administrator of the nonpublic school or educational program, or the chief administrator's designee, shall inform the student of the school's or program's decision and the availability and details of the school's or program's appeals process.

History Note: Authority G.S. 115C-566; Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001; Temporary Adoption Eff. October 9, 2001.

01 NCAC 40 .0208 STUDENT APPEALS PROCESS

(a) Each conventional nonpublic school and educational program that enrolls students that are at least 15 years of age shall establish a Driving Eligibility Certificate Appeals Committee to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked. All student protests shall be made within five days of the school's or program's decision and directed to the chief administrator of the conventional nonpublic school or educational program. The Appeals Committee shall:

- (1) Be appointed by and serve at the pleasure of the chief administrator of the conventional nonpublic school or educational program, or the chief administrator's designee; and
- (2) Consist of at least three members, each of which shall be a member of the school's or program's governing board, administration or

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staff, or a parent/guardian with a child currently enrolled in the school or program.

(b) The Division shall establish a Home School Driving Eligibility Certificate Appeals Committee exclusively to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked by a home school. All home school student protests shall be made within five days of the school's decision and directed to the Director of the Division or the Director's designee, at Division of Nonpublic Education, Department of Administration, 1309 Mail Service Center, Raleigh, North Carolina 27699-1309. The Home School Driving Eligibility Certificate Appeals Committee shall:

- (1) Be appointed by, and serve on a voluntary basis at the pleasure of, the Director of the Division or the Director's designee; and
- (2) Consist of at least three members, each being the chief administrator of a home school currently operating under G.S. 115C, Part 3, Article 39. The members shall not receive per diem or any other type of compensation for their service. The Director, or the Director's designee, shall appoint a chairperson from the committee's membership. The chairperson shall then direct the decision-making work of the committee.

(c) All Driving Eligibility Certificate Appeals Committees shall:

- (1) Consider the written protest of the student as to why the driving eligibility certificate was improperly denied or revoked;
- (2) Decide the protest based on whether the requirements for the certificate were met or whether the certificate was properly revoked; and
- (3) Render its decision within 30 calendar days of receipt of the written protest from the student, and promptly notify the student and the chief administrator of the school or program of the decision.

(d) The decision of the appropriate appeals committee shall be final.

History Note: Authority G.S. 115C-566; Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001; Temporary Adoption Eff. October 9, 2001.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Social Services Commission*

Rule Citation: *10 NCAC 35E .0303; 42E .0901, .1103; 42Z .0502, .0804*

Effective Date: *October 1, 2001*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rulemaking: *G.S. 131D-6; 143B-153*

Reason for Proposed Action: *S.L. 2001-90 amended G.S. 131D-6 making the provision of transportation an optional service for adult day care programs rather than a required service. These Rules are being proposed for amendment to be consistent with this change in the General Statute.*

Comment Procedures: *If you wish to make comments please contact Ms. Shannon Crane, Division of Aging, 2101 Mail Service Center, Raleigh, NC 27699-2101, (919) 733-0440, fax (919) 715-0868.*

CHAPTER 35 – FAMILY SERVICES

SUBCHAPTER 35E – SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0300 – SERVICE DEFINITIONS

10 NCAC 35E .0303 DAY CARE SERVICES FOR ADULTS

(a) Primary Service. Day care services for adults is the provision of an organized program of services during the day in a community group setting for the purpose of supporting adults' personal independence, and promoting their social, physical, and emotional well-being. Services must include a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are medical examinations required for individual participants for admission to day care and periodically thereafter when not otherwise available without cost, and food and food services to provide a nutritional meal and snacks as appropriate to the ~~program, program and transportation to and from the service facility when needed and not otherwise available.~~ Services must be provided in a home or center certified to meet state standards for such programs. Services include recruitment, study and development of adult day care programs, evaluation and period re-evaluation to determine if the programs meet the needs of the individuals they serve, and consultation and technical assistance to help day care programs expand and improve the quality of care provided. Transportation to and from the service facility is an optional service that may be provided by adult day care programs.

- (b) Components. None.
- (c) Resource Items. None.
- (d) Target Population. Adults who because of age, disability or handicap need the service to enable them to remain in or return to their own homes. Within the target population, eligible clients shall be provided day care services for adults in the following order of priority:

- (1) adults who require complete, full-time daytime supervision in order to live in their own home or prevent impending placement in substitute care (e.g. nursing home, domiciliary home), and adults who need the service as part of a protective services plan;
- (2) adults who need help for themselves with activities of daily living or support for their caregivers in order to maintain themselves in their own homes or both;

- (3) adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care;
- (4) individuals who need time-limited support in making the transition from independent living to group care, or individuals who need time-limited support in making the transition from group care to independent living.

History Note: Authority G.S. 143B-153; Eff. February 8, 1977; Amended Eff. July 1, 1982; October 1, 1979; July 1, 1979; October 1, 1977; Transferred from T10.43D .0204 Eff. July 1, 1983; Amended Eff. May 1, 1990; July 1, 1984; Temporary Amendment Eff. October 1, 2001.

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42E – ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0900 – ADMINISTRATION

10 NCAC 42E .0901 GOVERNING BODY

(a) Responsibility for sound management rests with the governing body of the day care program. In a private for-profit program, responsibility for management rests with the owner or board of directors; in a private, non-profit program, with the board of directors; in a public agency, with the board of that agency.

(b) The governing body of a day care center shall establish and maintain sound management procedures, including:

- (1) approval of organizational structure;
- (2) adoption of an annual budget;
- (3) regular review of financial status, making sure that the program is under sound fiscal management; This includes an annual budget, monthly accounts of income and expenditures to reflect against the projected budget, and an annual audit;
- (4) appointment of the program director who may delegate responsibility for conduct of specific programmatic and administrative activities in accordance with approved policies;
- (5) establishment of written policies regarding operation, including:
 - (A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;
 - (B) personnel policies;

- (C) any other policies deemed necessary, such as agreements with other agencies and organizations;
- (D) all policies affecting clients shall be written in the most direct and understandable language.

(c) The operator of a day care home shall establish and maintain sound operating procedures, including the following:

- (1) develop an annual budget;
- (2) maintain monthly accounts of income and expenditures;
- (3) establishment of written policies regarding operation, including:
 - (A) program policy statement outlining program goals; enrollment criteria and procedures; hours of operation; types of services provided, including transportation if offered; rates and payments; medications; and any other information considered appropriate to include in this document; the policy statement must be designed so copies can be given to interested parties who request information about the day care program;
 - (B) personnel policies;
 - (C) any other policies deemed necessary, such as agreements with other agencies and organizations;
 - (D) all policies affecting clients shall be written in the most direct and understandable language.

History Note: Authority G.S. 143B-153; Eff. July 1, 1978; Amended Eff. July 1, 1990; January 1, 1981; Temporary Amendment Eff. October 1, 2001.

SECTION .1100 – PROGRAM OPERATION

10 NCAC 42E .1103 TRANSPORTATION

(a) ~~The When the day care program shall provide transportation in keeping with the needs of participants. provides transportation.~~ The the following requirements must be met to ensure the health and safety of the participants:

- (1) Each person transported must have a seat in the vehicle.
- (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
- (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

(b) It is desired that participants use public transportation, if available. Relatives and other responsible parties should be encouraged to provide regular transportation, if possible.

History Note: Authority G.S. 143B-153; Eff. July 1, 1978; Amended Eff. January 1, 1981;

Temporary Amendment Eff. October 1, 2001.

SUBCHAPTER 42Z – ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0500 – INTRODUCTION AND DEFINITIONS

10 NCAC 42Z .0502 DEFINITIONS

(a) Adult day health services is the provision of an organized program of services during the day in a community group setting for the purpose of supporting an adult's personal independence, and promoting his social, physical, and emotional well-being. Services must include health care services as defined in Rule .0803(a) of this Subchapter and a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are food and food services to provide a nutritional meal and snacks as appropriate to the program. Transportation to and from the service facility is an optional service that may be provided or arranged for when needed and not otherwise available within the geographical area specified by the day health program.

- (b) The community group setting is:
 - (1) a day health center, which is a program operated in a structure other than a single family dwelling; or
 - (2) a day health home, which is a program operated in a single family dwelling limited to two to five adults; or
 - (3) a day health program in a multi-use facility, which is a day health center established in a building which is used at the same time for other activities; or
 - (4) a combination program, which is a program offering both adult day care and adult day health services.

(c) In addition to Paragraphs (a) and (b) of this Rule, the definitions of terms set forth in 10 NCAC 42E .0800 shall apply.

History Note: Authority G.S. 131D-6; Eff. September 1, 1990; Temporary Amendment Eff. October 1, 2001.

SECTION .0800 – PROGRAM OPERATION

10 NCAC 42Z .0804 TRANSPORTATION

(a) When the day health program provides transportation in keeping with the needs of participants transportation, the following requirements must be met to ensure the health and safety of the participants:

- (1) Each person transported must have a seat in the vehicle;
- (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop;
- (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.

(b) It is desired that participants use public transportation, if available. Relatives and other responsible parties shall be encouraged to provide transportation if possible.

History Note: Authority G.S. 131D-6; Eff. September 1, 1990; Temporary Amendment Eff. October 1, 2001.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Environmental Management*

Rule Citation: *15A NCAC 02H .0801-.0808, .0810*

Effective Date: *October 1, 2001*

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

Authority for the rulemaking: *G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; 150B-23*

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Environmental Management Commission intends to amend the rules cited as 15A NCAC 02H .0801-.0808, .0810. Notice of Rule-making Proceedings was published in the Register on June 1, 2001.

Proposed Effective Date: *August 1, 2002*

Public Hearing:
Date: *October 30, 2001*
Time: *2:00 p.m.*

Location: *Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27504*

Reason for Proposed Action: *The agency staff is required to ensure that the most recently promulgated methods and technology are used in reporting data to the State of North Carolina. The amendments proposed reference the most currently updated methodology for analysis of water and wastewater determinations. Certifications are proposed to include those facilities that were previously exempted from certification due to the nature of the analyses and staff constraints. Additional analytical methods have been included which were previously not promulgated by the EPA, or for which technology was not readily available at the time of the last amendment. The fee structure proposed for amendment will ensure the viability of the certification program and its purpose.*

Comment Procedures: *Submit all written comments to Mr. Steve Tedder, DENR-DWQ Chemistry Laboratory, 1623 Mail Service Center, Raleigh, NC 27699-1623, or email to Steve.Tedder@ncmail.net. Comments will be received through November 14, 2001.*

Fiscal Impact
 State
 Local
 Substantive (\geq \$5,000,000)

None

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H – PROCEDURES FOR PERMITS APPROVAL

SECTION .0800 – LABORATORY CERTIFICATIONS

15A NCAC 02H .0801 PURPOSE

The purpose of these Rules is to set out certification criteria for laboratory facilities performing any tests, analyses, measurements, or monitoring required under Article 21 of G.S. 143 or any ~~rules~~ Rules adopted thereunder, and to establish fees for ~~certification~~ certification program support.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0802 SCOPE

These Rules apply to ~~commercial laboratories and municipal or industrial wastewater treatment plant laboratories~~ laboratory facilities which perform and report analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500; ~~and~~ Groundwater ~~rules~~ Rules found in 15A NCAC 02H .0100, .0200, and ~~.0300~~ .0300; Waste Not Discharged to Surface Waters Rules found in 15A NCAC 02H .0200; Point Source Discharges to the Surface Waters Rules found in 15A NCAC 02H .0100. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as regulated in 15A NCAC 02H .0900. ~~Municipal and industrial laboratories that perform analyses for three or less of the parameters listed in Rule .0804 of this Section may be exempted from the requirements of these Rules. Written requests for the exemption will be considered by the State Laboratory on a case by case basis. Laboratory facilities performing and reporting analyses for field parameters only, will be considered for certification as specified in Rule .0805(g) of this Section.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0803 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

- (1) ~~"Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples for others for a fee.~~

- (2) ~~"State" means the North Carolina Division of Environmental Management of the Department of Environment, Health, and Natural Resources, or its successor.~~
- (3) ~~"State Laboratory" means the Laboratory Section of the North Carolina Division of Environmental Management, or its successor.~~
- (4) ~~"Unacceptable results" means those results on performance evaluation samples or split samples that vary by more than the 99 percent confidence interval or three standard deviations as determined by the United States Environmental Protection Agency (EPA) or the State Laboratory; all other results are acceptable.~~
- (5) ~~"Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable.~~
- (6) ~~"Decertification" means loss of certification.~~
- (7) ~~"Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples from its wastewater treatment plant(s).~~
- (8) ~~"Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples from its wastewater treatment plant(s).~~
- (9) ~~"Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 2H .0900 and approved by the Division of Environmental Management.~~
- (10) ~~"Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.~~
- (11) ~~"Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.~~
- (12) ~~"Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.~~
- (1) "Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.
- (2) "Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable.
- (3) "Certified Data" shall be defined as any analytical result, including the supporting

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- documentation, obtained through the use of a method or procedure which has been deemed acceptable by the State of North Carolina for Laboratory Certification purposes.
(4) "Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples, including Field Parameters, for others for a fee.
(5) "Decertification" means loss of certification.
(6) "Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization.
(7) "Field Parameters", for the purpose of these Rules shall include Total Residual Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, and Temperature.
(8) "Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.
(9) "Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples, including Field Parameters, from its wastewater or water treatment plant(s).
(10) "Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples, including Field Parameters, from its wastewater or water treatment plant(s).
(11) "Other" laboratory means a facility that does not require laboratory certification as part of its routine operation and does not analyze samples for a fee, or is doing business as a non-profit facility.
(12) "Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900 and approved by the Division of Water Quality.
(13) "State" means the North Carolina Department of Environment and Natural Resources, or its successor.
(14) "State Laboratory" means the Laboratory Section of the North Carolina Division of Water Quality, or its successor.
(15) "Unacceptable results" means those results on performance evaluation samples that exceed the specified acceptable range as indicated by an accredited vendor.
(16) "Uncertified data" shall be defined as any analytical result, including the supporting documentation, obtained using a method or procedure which is not acceptable to the State Laboratory.

Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED

(a) Commercial laboratories are required to obtain certification for parameters which will be reported by the client to comply with State surface water monitoring, groundwater, and pretreatment rules. Rules. Municipal and Industrial Laboratories are required to obtain certification for parameters which will be reported to the State to comply with State surface water monitoring, groundwater, and pretreatment rules. Rules. Commercial, Municipal, Industrial and Other facilities are required to obtain certification for field parameters which will be reported by the client to comply with State surface water, groundwater, and pretreatment Rules.

(b) A listing of certifiable inorganic parameters follows:

- (1) BOD
(2) COD
(3) Chloride
(4) Chlorine, total residual
(5) Coliform, fecal MF
(6) Coliform, total MF
(7) Coliform, fecal tube
(8) Coliform, total tube
(9) Color, Platinum Cobalt
(10) Color, ADMI
(11) Conductivity
(12) Cyanide
(13) Fluoride
(14) Hardness, total
(15) MBAS
(16) Metals, Group I regular level Atomic Absorption Flame (AAF), Inductively Coupled Plasma (ICP), or colorimetric, if applicable
(A) aluminum
(B) arsenic ICP or colorimetric only
(C) beryllium
(D) cadmium
(E) chromium, total
(F) cobalt
(G) copper
(H) iron
(I) lead
(J) manganese
(K) nickel
(L) selenium ICP only
(M) vanadium
(N) zinc
(17) Metals, Group II regular level Atomic Absorption Flame (AAF), Inductively Coupled Plasma (ICP), or colorimetric, if applicable
(A) antimony
(B) silver
(C) thallium
(18) Metals, Group I low level Atomic Absorption Graphite Furnace (GF) or hydride
(A) aluminum
(B) arsenic GF or hydride

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);

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- (C) ~~beryllium~~
- (D) ~~cadmium~~
- (E) ~~chromium, total~~
- (F) ~~cobalt~~
- (G) ~~copper~~
- (H) ~~iron~~
- (I) ~~lead~~
- (J) ~~manganese~~
- (K) ~~nickel~~
- (L) ~~selenium - GF or hydride~~
- (M) ~~vanadium~~
- (N) ~~zinc~~
- (19) ~~Metals, Group II - low level - Atomic Absorption Graphite Furnace (GF)~~
- (A) ~~antimony~~
- (B) ~~silver~~
- (C) ~~thallium~~
- (20) ~~Barium~~
- (21) ~~Mercury~~
- (22) ~~Ammonia nitrogen~~
- (23) ~~Total Kjeldahl nitrogen (TKN)~~
- (24) ~~Nitrate plus nitrite nitrogen~~
- (25) ~~Nitrate nitrogen~~
- (26) ~~Nitrite nitrogen~~
- (27) ~~Total phosphorus~~
- (28) ~~Orthophosphate~~
- (29) ~~Oil and Grease - Water~~
- (30) ~~Oil and Grease - EPA Method 9071~~
- (31) ~~pH~~
- (32) ~~Phenols~~
- (33) ~~Residue, settleable~~
- (34) ~~Residue, total~~
- (35) ~~Residue, total dissolved 180° C~~
- (36) ~~Residue, total suspended~~
- (37) ~~Sulfate~~
- (38) ~~Sulfide~~
- (39) ~~Sulfite~~
- (40) ~~Total Organic Carbon (TOC)~~
- (41) ~~Turbidity~~
- (42) ~~TCLP Extraction EPA Method 1311 - Metals and Organics. - Must be accompanied by the appropriate metals and organics certifications.~~
- (1) ~~Alkalinity~~
- (2) ~~BOD~~
- (3) ~~COD~~
- (4) ~~Chloride~~
- (5) ~~Chlorine, Total Residual~~
- (6) ~~Chlorophyll~~
- (7) ~~Coliform, Fecal MF~~
- (8) ~~Coliform, Total MF~~
- (9) ~~Coliform, Fecal tube~~
- (10) ~~Coliform, Total tube~~
- (11) ~~Color, Platinum Cobalt~~
- (12) ~~Color, ADMI~~
- (13) ~~Conductivity~~
- (14) ~~Cyanide~~
- (15) ~~Dissolved Organic Carbon (DOC)~~
- (16) ~~Dissolved Oxygen~~
- (17) ~~Fluoride~~
- (18) ~~Hardness, Total~~
- (19) ~~MBAS~~

- (20) ~~Ammonia Nitrogen~~
- (21) ~~Total Kjeldahl Nitrogen (TKN)~~
- (22) ~~Nitrate plus Nitrite Nitrogen~~
- (23) ~~Nitrate Nitrogen~~
- (24) ~~Nitrite Nitrogen~~
- (25) ~~Total Phosphorus~~
- (26) ~~Orthophosphate~~
- (27) ~~Oil and Grease~~
- (28) ~~pH~~
- (29) ~~Phenols~~
- (30) ~~Residue, Settleable~~
- (31) ~~Residue, Total~~
- (32) ~~Residue, Total Dissolved 180°C~~
- (33) ~~Residue, Total Suspended~~
- (34) ~~Salmonella~~
- (35) ~~Sulfate~~
- (36) ~~Sulfide~~
- (37) ~~Sulfite~~
- (38) ~~Temperature~~
- (39) ~~Total Organic Carbon (TOC)~~
- (40) ~~Turbidity~~
- (41) ~~TCLP Extraction~~
- (42) ~~Vector Attraction Reduction - All Options~~

(c) Metals: Each of the following will be considered a certifiable Metals analyte:

- (1) ~~Aluminum~~
- (2) ~~Antimony~~
- (3) ~~Arsenic~~
- (4) ~~Barium~~
- (5) ~~Beryllium~~
- (6) ~~Cadmium~~
- (7) ~~Calcium~~
- (8) ~~Chromium, Total~~
- (9) ~~Chromium, Hexavalent~~
- (10) ~~Cobalt~~
- (11) ~~Copper~~
- (12) ~~Iron~~
- (13) ~~Lead~~
- (14) ~~Magnesium~~
- (15) ~~Manganese~~
- (16) ~~Mercury~~
- (17) ~~Molybdenum~~
- (18) ~~Nickel~~
- (19) ~~Selenium~~
- (20) ~~Silver~~
- (21) ~~Thallium~~
- (22) ~~Tin~~
- (23) ~~Vanadium~~
- (24) ~~Zinc~~

(e)(d) Each of the ~~twenty~~ analytical categories listed in this Paragraph will be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. A listing of certifiable organic parameters follows:

- (1) ~~Purgeable Halocarbons - EPA Method 601 - Standard Methods 6230B, 6230D - EPA method 5030 plus 8010 - EPA method 5030 plus 8021~~
- (2) ~~Purgeable Aromatics - EPA method 602 - Standard Methods 6220B, 6230D - EPA method 5030 plus 8020~~

- ~~(3) Acrolein, Acrylonitrile, Acetonitrile — EPA method 603~~
~~—EPA method 5030 plus 8021~~
- ~~(4) Phenols — EPA Method 604~~
~~—Standard Methods 6420B~~
~~—EPA Method 8040 with 3500 series extractions~~
- ~~(5) Benzidines — EPA Method 605~~
- ~~(6) Phthalate Esters — EPA Method 606~~
~~—EPA Method 8060 or 8061 with 3500 series extractions~~
- ~~(7) Nitrosamines — EPA Method 607~~
~~—EPA Method 8070 with 3500 series extractions~~
- ~~(8) Organochlorine Pesticides and PCBs — EPA method 608~~
~~—Standard Methods 6630B, 6630C~~
~~—EPA method 8080, 8081 with 3500 series extractions~~
- ~~(9) Nitroaromatics and Isophorone — EPA method 609~~
~~—EPA method 8090 with 3500 series extraction~~
- ~~(10) Polynuclear Aromatic Hydrocarbons — EPA method 610~~
~~—Standard Methods 6440B~~
~~—EPA method 8100 with 3500 series extractions~~
- ~~(11) Haloethers — EPA method 611~~
~~—EPA method 8110 with 3500 series extractions~~
- ~~(12) Chlorinated Hydrocarbons — EPA method 612~~
~~—EPA methods 8120, 8121 with 3500 series extractions~~
- ~~(13) Purgeable organics — EPA methods 624, 1624,~~
~~—Standard Methods 6210B, 6210D~~
~~—EPA method 5030 plus 8240~~
~~—EPA method 5030 plus 8260~~
- ~~(14) Base/Neutral and Acid Organics — EPA methods 625, 1625~~
~~—Standard Methods 6410B~~
~~—EPA methods 8250, 8270 with 3500 series extractions~~
- ~~(15) Chlorinated Acid Herbicides — Standard methods 509B, 6640B~~
~~—EPA methods 8150, 8151 with 3500 series extractions~~
- ~~(16) Organophosphorus Pesticides — EPA methods 8140, 8141 with 3500 series extractions~~
- ~~(17) Total Petroleum Hydrocarbons — (TPH) California GC Method with EPA method 5030 and 3550 extractions~~
- ~~(18) Nonhalogenated Volatile Organics — EPA Method 8015A~~
- ~~(19) N-Methylcarbamates — EPA method 8318~~
~~—EPA Method 632~~
- ~~(20) 1,2, Dibromoethane (EDB) — EPA Method 504~~
- ~~(1) Purgeable Halocarbons~~
- ~~(2) Purgeable Aromatics~~
- ~~(3) Acrolein, Acrylonitrile, Acetonitrile~~
- ~~(4) Phenols~~
- ~~(5) Benzidines~~
- ~~(6) Phthalate Esters~~
- ~~(7) Nitrosamines~~

- ~~(8) Organochlorine Pesticides~~
- ~~(9) Polychlorinated Biphenyls~~
- ~~(10) Nitroaromatics and Isophorone~~
- ~~(11) Polynuclear Aromatic Hydrocarbons~~
- ~~(12) Haloethers~~
- ~~(13) Chlorinated Hydrocarbons~~
- ~~(14) Purgeable Organics~~
- ~~(15) Base/Neutral and Acid Organics~~
- ~~(16) Chlorinated Acid Herbicides~~
- ~~(17) Organophosphorus Pesticides~~
- ~~(18) Total Petroleum Hydrocarbons - (TPH) California GC Method - Diesel Range Organics~~
- ~~(19) Total Petroleum Hydrocarbons - (TPH) California GC Method - Gasoline Range Organics~~
- ~~(20) Nonhalogenated Volatile Organics~~
- ~~(21) N-Methylcarbamates~~
- ~~(22) 1,2, Dibromoethane (EDB)~~
- ~~(23) Extractable Petroleum Halocarbons~~
- ~~(24) Volatile Petroleum Halocarbons~~
- ~~(25) Chlorinated Phenolics~~
- ~~(26) Adsorbable Organic Halides~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0805 CERTIFICATION AND RENEWAL OF CERTIFICATION

(a) Prerequisites and requirements for Certification. The following requirements must be met prior to certification. Once certified, failure to comply with any of the following items will be a violation of certification requirements.

- ~~(1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR 136.3, Federal Register, Vol. 49, p. 43234 (October 26, 1984); or Federal Register, Vol. 50, p. 690 (January 4, 1985); or Federal Register, Vol. 51, p. 23692 (January 30, 1986); or Federal Register, Vol. 56 p. 50758 (October 8, 1991) for wastewater and surface water analyses; and 15A NCAC 2L .0112 of the State Groundwater rules for groundwater, soils, sediments, and sludge analyses. All samples must meet the preservatives and holding time requirements in the October 26, 1984, Federal Register. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina 27607. Copies of the Federal Register may be obtained by requesting a copy of the Code of Federal Regulations, 40 CFR 136.3, parts 100-149 from the Superintendent of Documents, U.S. Government Printing Office, Washington,~~

D.C. 20402 at a cost of thirty dollars (\$30.00). Copies of 15A NCAC 2L may be obtained from EHNR, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, N.C. 27626-0535 at no charge. The method for total petroleum hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for addressing fuel leaks: California Regional Quality Control Board San Francisco Bay Region, 43 pp. or EHNR Guidelines for Remediation of Soil Contaminated by Petroleum. The method for NMethylcarbamates shall be EPA Method 8318 or EPA Method 632. The method for low level 1, 2-Dibromoethane (EDB) shall be EPA method 504. The methods for total Petroleum hydrocarbons, N-Methylcarbamates and 1,2-Dibromoethane are incorporated by reference and copies are available from the State Laboratory at no cost. Other laboratory procedures approved by the Director of the Division of Environmental Management may be used.

- (1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR-136.3; Standard Methods for the Examination of Water and Wastewater, 18th Edition; or Test Methods for Evaluating Solid Waste, SW 846, Third Edition. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained for a cost of forty-two dollars (\$42.00), from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, DC, 20402. The publication number is 869-042-00148-6. Standard Methods for the Examination of Water and Waste, is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235. The costs are as follows: 18th Edition -one hundred sixty dollars (\$160.00), 19th Edition - one hundred eighty dollars (\$180.00), 20th Edition - two hundred dollars (\$200.00). Copies of Test Methods for Evaluating Solid Waste, SW 846, Third Edition may be purchased for a cost of three hundred sixty seven dollars (\$367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013, Chapter 8. The

document is available from US EPA; Office of Research and Development, Washington, NC 20460 at no cost. The method for Total Petroleum Hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for Addressing Fuel Leaks: California Regional Quality Control Board San Francisco Bay Region. The method for Total Petroleum Hydrocarbons is available from the State Laboratory at no cost. The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); January, 1998. The Director may approve other analytical procedures that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.

- (2) Performance Evaluations. Each Annually each certified laboratory must demonstrate acceptable-performance on evaluation samples submitted by the State Laboratory or EPA as required by Paragraph (a) of this Rule.
- (A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA/DMR/QA) Study by analyzing the performance evaluation samples obtained from an accredited vendor as unknowns, samples supplied by EPA and reporting data Produced-produced. The State Laboratory will submit samples to any laboratory not eligible to receive the EPA samples. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate.
- (B) Commercial laboratories must participate annually in the EPA Water Pollution (WP) water pollution studies by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, the samples supplied by EPA and reporting data produced. The State Laboratory will submit samples to any laboratory not eligible to receive the EPA samples. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both

samples will be considered the first unacceptable result for certification purposes and a rerun sample ~~will~~ must be submitted.

- (C) Laboratories requesting initial certification must submit an acceptable performance sample result for each parameter for which performance samples are available. Laboratories that submit two unacceptable results for a particular parameter must then submit two consecutive acceptable results for that parameter prior to initial certification.
- (D) If performance samples are not available for a parameter, certification for that parameter will be based on the proper use of the approved procedure, the on-site inspection, and adherence to the other requirements in this Section. Analysis of split samples may also be required.

~~(E) In the Gas Chromatography, Liquid Chromatography, or Gas Chromatograph Mass Spectrometer Categories, a laboratory's performance on a specific analytical method may be determined by the laboratory's ability to acceptably analyze selected indicator chemicals as specified by the State Laboratory during a performance evaluation.~~

- (3) Supervisory Requirements.
 - (A) The supervisor of a commercial laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of two years laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of four years experience in analytical chemistry.
 - (B) The supervisor of a municipal or industrial waste water treatment plant laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of six months laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely

related science curriculum plus a minimum of two years experience in analytical chemistry. Non-degree supervisors must have at least six years laboratory experience in analytical chemistry.

- (C) All laboratory supervisors are subject to review by the State Laboratory. One person may serve as supervisor of no more than two laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper ~~performance~~, performance and reporting of all ~~analysis~~ analyses made for these Rules. The supervisor must work in the laboratory or visit the laboratory once each day of normal operations. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor cannot be in charge for more than six consecutive weeks. Existing laboratory supervisors that do not meet the requirements of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements. Previous laboratory-related performance will be considered when reviewing the qualifications of a potential laboratory supervisor.

- (4) Laboratory Manager. Each laboratory must designate a laboratory manager and include his name and title on the application for certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with an acceptable replacement. At commercial laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.

- (5) Application. Each laboratory requesting initial state certification ~~or certification renewal~~ shall submit an application in duplicate, duplicate, accompanied by the application fee and the laboratory's Quality Assurance Manual to the State Laboratory. Separate application and certification shall be required for all laboratories maintained on separate premises even though operated under the same management; however, separate certification is

- not required for separate buildings on the same or adjoining grounds. After receiving a completed application and prior to issuing certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (6) Facilities and equipment. Each laboratory requesting certification must contain or be equipped with the ~~following, except Class I and II wastewater treatment plants may be exempted from (A), (B), or (E) of this Subparagraph if they are performing three or less of the certifiable parameters: following:~~
- (A) A minimum of 150 sq. ft. of laboratory space;
 - (B) A minimum of 12 linear feet of laboratory bench space;
 - (C) A sink with hot and cold water;
 - (D) An analytical balance capable of weighing 0.1 mg, mounted on a shock proof table;
 - (E) A refrigerator of adequate size to store all samples and maintain temperature of four degrees Celsius;
 - (F) A copy of each approved analytical procedure being used in the laboratory;
 - (G) A source of distilled or deionized water that will meet the minimum criteria of the approved methodologies;
 - (H) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.
- (7) Analytical Quality Control Program. Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control document shall be available for inspection by the State Laboratory. The following are requirements for certification and must be included in each certified laboratory's quality control program:
- (A) All analytical data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.
 - (B) ~~Excluding Oil and Grease, all residue parameters, TCLP extractions, residual chlorine, and coliform, analyze one known standard in addition to calibration standards each day samples are analyzed to document accuracy. Analyze one suspended residue, one dissolved residue, one residual chlorine and one~~ oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.
 - (C) ~~Excluding Oil and Grease, analyze Except for Oil and Grease, EPA Method 413.1, settleable solids or where otherwise specified in an analytical method, analyze 10–five~~ percent of all samples in duplicate to document ~~Precision.~~ precision. Laboratories analyzing less than ~~ten~~ 20 samples ~~Per–per~~ month must analyze at least one duplicate each month samples are analyzed.
 - (D) Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.
 - (E) All quality control requirements in these Rules as set forth by the State Laboratory.
 - (F) Any time quality control results indicate an analytical problem, the problem must be resolved and any samples involved must be rerun if the holding time has not expired.
 - (G) All analytical records must be available for a period of ~~three–five~~ years. Records, which are stored only on electronic media, must be maintained and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review.
 - (H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.
 - (I) For analytical Procedures requiring analysis of a series of standards, the concentrations of these standards must bracket the concentration of the samples analyzed. ~~one–One~~ of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along

with each group of samples. For colorimetric analyses, a series of five standards for a curve prepared annually or three standards for curves established each day or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid-range, each time a new stock standard is prepared, or at least every twelve months. Each analyst performing the analytical procedure must produce a standard curve.

- (J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.
- (K) The analytical balance must be checked with one class ~~S-S~~ or equivalent standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.
- (L) Chemicals must be dated when received and when opened. Reagents must be dated and initialed when prepared.
- (M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained. Each sample must clearly indicate the State of North Carolina collection site on all record transcriptions.
- (N) At any time a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating corrective actions taken to prevent the problem for future samples.
- (O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or

be checked against a NIST traceable thermometer and proper corrections made.

- (8) Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807(e) of this Section.

(b) Issuance of Certification.

- (1) In the absence of substantial deficiencies, certification will be issued by the Director, Division of Water Quality, Environmental Management, Department of Environment, Health, Environment and Natural Resources and Community Development, or his delegate, for each of the applicable parameters requested.
- (2) Initial certifications will be issued for prorated time periods to schedule all certification renewals on the first day of January and shall be valid for two one year years from December 31st following the date of issuance.

(c) Maintenance of Certification.

- (1) To maintain certification for each parameter, a certified laboratory must analyze up to four performance evaluation samples per parameter per year submitted by the an accredited vendor State Laboratory or EPA as an unknown. Laboratories submitting unacceptable results on a performance evaluation sample may be required to analyze more than four samples per year.
- (2) In addition, the State Laboratory may request that samples be split into two equal representative portions, one part going to the state State and the other to the certified laboratory for analysis.
- (3) The State laboratory may submit or require clients to submit blind performance samples or split samples under direction of State Laboratory personnel.
- (4) A certified laboratory will be subject to periodic announced or unannounced inspections during the certification period and shall make time and records available for inspections and must supply copies of records for any investigation upon written request by the State Laboratory.
- (5) A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.
- (6) A certified laboratory must submit written notice of any changes of location, ownership, address, name or telephone number within 30 days of such changes.
- ~~(7)~~ A certified laboratory must submit a written amendment to the certification application each time that changes occur in methodology, reporting limits, and major equipment. The

amendment must be received within 30 days of such changes.

(d) Certification Renewals - Certification renewals of laboratories shall be issued for up to three years one year.

~~(1) Applications for certification renewal will shall be submitted in duplicate to the State Laboratory 30 days in advance of expiration of certification.~~

(e) Data reporting.

(1) Certified commercial laboratories must make data reports to their clients that are signed by the laboratory supervisor. This duty may be delegated in writing; however, the responsibility shall remain with the supervisor.

(2) Whenever a certified commercial laboratory refers or subcontracts samples to another certified laboratory for analyses, the referring laboratory must supply the date and time samples were collected to insure holding times are met. Subcontracted samples must clearly indicate the State of North Carolina as the collection site on all record transcriptions. Laboratories may subcontract sample fractions, extracts, leachates and other sample preparation products provided that all Rules and requirements of 15A NCAC 02H .0800 are documented. The initial client requesting the analyses must receive the original or a copy of the report made by the laboratory that performs the analyses.

(3) All uncertified data must be clearly documented as such on the benchsheet and on the final report.

(f) Discontinuation of Certification.

(1) A laboratory may discontinue certification for any or all parameters by making a written request to the State Laboratory.

(2) After discontinuation of certification, a laboratory may be recertified by meeting the requirements for initial certification; however, laboratories that discontinue certification during any investigation shall be subject to Rule .0808 of this Section.

(g) Prerequisites and requirements for Field Parameter Certification. The following requirements must be met prior to certification for laboratories analyzing only Field Parameters. Once certified, failure to comply with any of the following items will be a violation of certification requirements.

(1) Data pertinent to each analysis must be maintained for five years. Certified Data must consist of date collected, time collected, sample site, sample collector, and sample analysis time. The field benchsheets must provide a space for the signature or initials of the analyst, and proper units of measure for all analyses.

(2) A record of instrument calibration where applicable, must be filed in an orderly manner so as to be readily available for inspection upon request.

(3) A copy of each approved analytical procedure must be available to each analyst.

(4) Each facility must have glassware, chemicals, supplies, equipment, and a source of distilled or deionized water that will meet the minimum criteria of the approved methodologies.

(5) Supervisors certified for Field Parameters only shall meet the requirements of Subparagraph (a)(3)(A) or (a)(3)(B) of this Section, or, at a minimum, supervisors must hold any Operator's Certification equivalent to the type or grade of the regulated facility(ies).

(6) Application: Each Field Parameter Laboratory shall submit an application in duplicate.

(7) Performance Evaluations. Each Field Parameter Laboratory must participate in an annual quality assurance study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns. If performance evaluations are not available for a parameter, certification for that parameter may be based on the proper use of the approved procedure as determined by an announced or unannounced on-site inspection.

(8) Decertification and Civil Penalties. A laboratory facility can be decertified for infractions as outlined in Rule .0807 of this Section.

(9) Recertification. A laboratory facility can be recertified in accordance with Rule .0808 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. July 1, 1988; July 1, 1985; December 1, 1984; November 1, 1978; RRC Objection Eff. October 15, 1992 due to lack of statutory authority; Amended Eff. December 21, 1992; RRC Objection Removed Eff. December 16, 1993; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0806 FEES ASSOCIATED WITH CERTIFICATION PROGRAM

(a) An applicant for certification, excluding those laboratories seeking Field Parameter Certification only, must submit to the Department of Environment and Natural Resources, Laboratory Section, a non-refundable fee of three hundred dollars (\$300.00) for the evaluation and processing of each application.

(a)(b) Municipal and industrial Municipal, Industrial and Other laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter; parameter and metals analyte; however, the minimum fee will be ~~one thousand dollars (\$1,000.00)~~ one thousand three hundred fifty dollars (\$1,350.00) per year.

(b)(c) Commercial laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic ~~parameter; parameter and metals analyte;~~ however, the minimum fee will be ~~two thousand~~

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dollars ~~(\$2,000.00)~~ two thousand seven hundred dollars (\$2,700.00) per year.

~~(d)~~ Prior to receiving initial certification a laboratory must pay the appropriate required fee as specified in Paragraph ~~(a) or (b) or (c) of~~ this Rule. Initial certification fee will be prorated on a semi-annual basis to make all certification renewals due on the first day of January.

~~(4)(e)~~ Once certified, a laboratory must pay the full annual parameter fee for each parameter added to their certificate.

~~(e)(f)~~ A laboratory decertified for all parameters must pay initial certification fees prior to recertification.

~~(4)(g)~~ A laboratory decertified for one or more parameters must pay a fee of ~~one two~~ hundred dollars ~~(\$100.00)~~ (\$200.00) for each parameter for which it was decertified prior to recertification.

~~(g)(h)~~ Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification and maintenance of certification.

~~(h)(i)~~ Annual certification fees are due ~~by December 31 of each year, 60 days after receipt of invoice.~~

~~(i)(j)~~ A ~~fifty dollar (\$50.00)~~ two hundred fifty dollar (\$250.00) late payment fee must be paid when annual certification fees are not paid by the date due.

~~(j)~~ For laboratories seeking initial certification or recertification, the State Laboratory will provide two performance samples for each parameter at no charge; however, a fee of one hundred dollars (\$100.00) per sample will be charged for all samples after the first two have been supplied.

~~(k)~~ Metals group I and metals group II will be considered as single parameters when calculating fees.

~~(k)~~ Commercial facilities analyzing samples for field parameters only must pay an annual fee of two hundred dollars (\$200.00) per year.

~~(l)~~ Municipal and Industrial facilities analyzing samples for field parameters only must pay an annual fee of one hundred dollars (\$100.00) per year.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0807 DECERTIFICATION AND CIVIL PENALTIES

(a) Laboratory Decertification. A laboratory may be decertified for any or all parameters for up to one year for any of the following infractions:

- (1) Failing to maintain the facilities, or records, or personnel, or equipment, or quality control program as set forth in the application, and these Rules; or
- (2) Submitting inaccurate data or other information; or
- (3) Failing to pay required fees by the date due; or
- (4) Failing to discontinue supplying data for clients or programs described in Rule .0802 of this Section during periods when a decertification is in effect; or
- (5) Failing to submit a split sample to the State Laboratory as requested; or

- (6) Failing to use approved methods of analysis; or
- (7) Failing to report laboratory supervisor or equipment changes within 30 days of such changes; or
- (8) Failing to report analysis ~~of-of required annual~~ performance evaluation samples submitted by ~~EPA or the State Laboratory~~ an approved vendor within the specified time limit; or
- (9) Failing to allow an inspection by an authorized representative of the State Laboratory; or
- (10) Failing to supply analytical data requested by the State Laboratory; or
- (11) Failing to submit ~~a renewal a written amendment to the certification application within 30 days of applicable changes; prior to the expiration date of the certificate;~~ or
- (12) Failing to meet required sample holding times; or
- (13) Failing to respond to requests for information by the date due; or
- (14) Failing to comply with any other terms, conditions, or requirements of this Section or of a laboratory certification.

(b) Parameter Decertification. A laboratory may receive a parameter decertification for failing to:

- (1) Obtain acceptable results on two consecutive blind or announced performance evaluation samples submitted by an accredited vendor ~~EPA~~ or the State Laboratory; or
- (2) Obtain acceptable results on two consecutive blind or announced split samples that have also been analyzed by the State Laboratory.

(c) Falsified Data. A laboratory that submits falsified data or other information may be decertified for all parameters for up to two years.

(d) Decertification Factors. In determining a period of decertification, the Director shall recognize that any harm to the natural resources of the State arising from violations of ~~rules~~ these Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Decertification for periods up to the maximum may be based on any and or a combination of the following factors to be considered:

- (1) The degree and extent of harm, or potential harm, to the natural resources of the State or to the public health, or to private property resulting from the violation;
- (2) The duration, and gravity of the violation;
- (3) The effect, or potential effect, on ground or surface water quantity or quality or on air quality;
- (4) Cost of rectifying any damage;
- (5) The amount of money saved by noncompliance;
- (6) As to violations other than submission of falsified data or other information, whether the violation was committed willfully or intentionally;
- (7) The prior record of the laboratory in complying or failing to comply with any State

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- and ~~federal~~ Federal laboratory ~~rules~~ Rules and regulations;
- (8) The cost to the State of investigation and enforcement procedures;
 - (9) Cooperation of the laboratory in discovering, identifying, or reporting the violation;
 - (10) Measures the laboratory implemented to correct the violation or abate the effect of the violation, including notifying any affected clients;
 - (11) Measures the laboratory implemented to correct the cause of the violation;
 - (12) Any other relevant facts.
- (e) Decertification Requirements.

- (1) A decertified laboratory is not to analyze samples for the decertified parameters for programs described in Rule .0802 of this Section or clients reporting to these programs.
 - (2) A decertified commercial laboratory must supply written notification of the decertification to clients with Division of Environmental Management Water Quality reporting requirements. Within 30 days, the decertified laboratory must supply the State Laboratory with a list of clients involved and copies of the notices sent to each.
 - (3) A commercial laboratory that has received a parameter decertification may make arrangements to supply analysis through another certified laboratory during any decertification periods. The decertified laboratory must supply the State ~~Laboratory~~ Laboratory, by written notice, with the name of the laboratory to be used.
 - (4) A commercial laboratory decertified for all parameters cannot subcontract samples for analyses to other certified laboratories during the decertification period.
 - (5) A decertified municipal or industrial laboratory must have its samples analyzed by another certified laboratory during any decertification period and supply the State ~~Laboratory with~~ Laboratory, by written notice, the name of the certified laboratory to be used.
- (f) Civil Penalties. Civil penalties may be assessed against a laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the ~~rules~~ Rules in this Section or of a laboratory certification. A laboratory is subject to both civil penalties and decertification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0808 RECERTIFICATION

- (a) A laboratory decertified in accordance with Paragraph (a) of Rule .0807 of this Section may be recertified at the end of the decertification period by showing to the satisfaction of the State Laboratory that it has corrected the deficiency(ies).

- (b) A laboratory decertified for a parameter due to unacceptable results on two consecutive performance evaluation samples submitted by an accredited vendor, EPA or the State Laboratory, or on two consecutive split samples may be recertified after 60 days by reporting acceptable results on two consecutive performance evaluation samples submitted by ~~the State Laboratory,~~ an accredited vendor. Recertification samples may be requested from an accredited vendor at any time, however, recertification must be requested in writing at the end of the 60 day period immediately following the date of decertification.
- (c) A laboratory decertified for submitting falsified data or other information may be recertified at the end of the decertification period by demonstrating compliance with all requirements of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; Temporary Amendment Eff. October 1, 2001.

15A NCAC 02H .0810 ADMINISTRATION

- (a) The Director of the Division of Environmental Management, Water Quality, Department of Environment, Health, Environment and Natural Resources, or his delegate, is authorized to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.
- (b) Appeals. In any case where the Director of the Division of Environmental Management, Water Quality, Department of Environment, Health, Environment and Natural Resources or his delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with Chapter 150B of the General Statutes.
- (c) The State Laboratory will maintain a current list of certified commercial laboratories. ~~The list will be reprinted every six months.~~
- (d) Implementation of the November, 1992–October 1, 2001 changes to this Section.

- (1) All requirements of the ~~rules~~ Rules in this Section are effective on the effective date of the amendments.
- (2) Requests for the new parameters may be made by submitting a properly completed application form, amendment form.
- (3) Excluding Class I and II wastewater treatment plant laboratories not currently certified, laboratories Laboratories subject to the amended requirements of these Rules must submit a completed application, or amendment form, ~~—~~ within three months of the effective date of the amendments. Laboratories submitting an acceptable application or amendment form for any of the newly certifiable parameters may analyze samples for these new parameters until the State Laboratory has issued or denied certification. Fees for parameter additions requested during the initial three month period will be calculated as initial certification fees.

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(4) Class I and II wastewater Laboratory facilities, not currently certified, that are performing analyses for Field Parameters only -treatment plant laboratories not currently certified must submit an application by July 1, 1995, within three months of the effective date of the amendments, -or within 90 days of a request by the State Laboratory. After submitting an acceptable application, these laboratories may continue to analyze samples until the State Laboratory has issued or denied certification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 150B-23; Eff. February 1, 1976; Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984; November 1, 1978; Temporary Amendment Eff. October 1, 2001.

Rule-making Agency: NC Marine Fisheries Commission

Rule Citation: 15A NCAC 03I .0120; 03K .0101, .0103-.0104, .0107, .0205, .0207, .0302; 03O .0201, .0208, .0501

Effective Date: October 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 113-134; 113-169.1; 113-182; 113-182.1; 143B-289.52

Reason for Proposed Action: The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the Marine Fisheries Commission to adopt temporary rules until all rules necessary to implement the provisions of this act have become effective. Final approval of the Oyster Fishery Management Plan and the Clam Fishery Management Plan adopted under the authority of the Fisheries Reform Act of 1997 was made at the August 16-17, 2001 Marine Fisheries Commission meeting. These rule changes are requirements of those plans.

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

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – DEFINITIONS

15A NCAC 03I.0120 POSSESSION OR TRANSPORTATION LIMITS

(a) It is unlawful to possess any species of fish which is subject to size or harvest restrictions, while actively engaged in a fishing operation, unless all fish are in compliance with the restrictions for the waterbody and area being fished.

(b) It is unlawful to import into the state species of fish native to North Carolina for sale in North Carolina that do not meet established size limits, except as provided in 15A NCAC 03K ~~.0202 (e)~~ .0202(c), 03K .0207; and 03K .0305.

History Note: Authority G.S. 113-134; 113-170; 113-170.4; 113-170.5; 113-182; 143B-289.52; Temporary Adoption Eff. July 1, 1999; Eff. August 1, 2000; Temporary Amendment Eff. October 1, 2001.

SUBCHAPTER 03K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

(a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 03K .0103, .0104, .0107, ~~.0104~~, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; (252) 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.

(c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.

(d) It is unlawful to possess or sell oysters, clams, or mussels taken from the waters of North Carolina except as provided in G. S. 113-169.2 (i) without a harvest tag affixed to each container of oysters, clams or mussels. Harvest tags shall be affixed by the harvester and shall meet the following criteria:

(1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.

(2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. Bulk shipments in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealers tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.

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- (3) Tags shall contain legible information arranged in the specific order as follows:
 - (A) The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.
 - (B) The date of harvest.
 - (C) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
 - (D) Type and quantity of shellfish.
 - (E) The following statement will appear in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. October 1, 2001.

15A NCAC 03K .0103 SHELLFISH OR SEED MANAGEMENT AREAS

- (a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet any of the following criteria. The area has:
- (1) Conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
 - (2) Shellfish populations or shellfish enhancement projects which may produce commercial quantities of shellfish at ten bushels or more per acre;
 - (3) Shellfish populations or shellfish enhancement projects which may produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) polluted areas.
- (b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Shellfish/Seed Management area, area which has been designated by proclamation. These areas will be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.
- (c) It is unlawful to take oysters or clams from any Shellfish Shellfish/Seed Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of oysters orand clams and may designate time, place, character, or dimensions of any method or equipment that may be employed.

- (d) It is unlawful to take oysters ~~or clams~~ from Seed Management Areas for planting on shellfish leases or franchises private bottoms without first obtaining a Permit to Transplant Oysters from Seed Management Areas permit from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Temporary Amendment Eff. October 1, 2001.

15A NCAC 03K .0104 PERMITS FOR PLANTING SHELLFISH FROM PROHIBITED/POLLUTED AREAS

- (a) It is unlawful to take oysters or clams from prohibited (polluted) polluted public waters for planting on leases and franchises except as private bottoms except; ~~(4) As~~ authorized by G.S. 113-203, provided such person shall first obtain a permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 3O .0500.
- ~~(b)(2)~~ The season for relaying clams shall be between Between April 1 and through May 15 for clams and the season for relaying oysters shall be for a specified six week period between the date of beginning at the statewide closure of oyster season and June 30, as determined by the Fisheries Director season.
- (c) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule may not apply.
- ~~(d)(b)~~ The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds for which the owner has obtained a permit to relay oysters and clams from prohibited (polluted) polluted public waters.

History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1996; September 1, 1991; Temporary Amendment Eff. October 1, 2001.

15A NCAC 03K .0107 DEPURATION OF SHELLFISH

- (a) It is unlawful to take clams or clams, oysters ~~or mussels~~ from the public or private prohibited (polluted) waters of the state for the purpose of depuration in an approved depuration operation except when the harvest will utilize shellfish that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the direct supervision of the Division of Marine Fisheries or and/or the Division of Environmental Health.
- (b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters shellfish for depuration:
- (1) Specific species;

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- (2) Specify areas except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) Specify harvest days;
- (4) Specify time period;
- (5) Specify quantity and/or size;
- (6) Specify harvest methods;
- (7) Specify record keeping requirements.

(c) Depuration Harvest permits:

- (1) It is unlawful for individuals to harvest All persons harvesting clams, clams or oysters or mussels from prohibited (polluted) waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on shall first obtain a Depuration Permit permit from the Division of Marine Fisheries and Division of Environmental Health setting forth the method of harvest to be employed. Permits will be issued to licensed North Carolina Clam or Oyster Dealers only. Permittees and designees harvesting under Depuration Permits must have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License.
- (2) In addition to information required in 15A NCAC 03M .0501, the permit application shall provide the name, address, location and telephone number of the depuration operation where the shellfish will be depurated.
- (3) Clam or Oyster Dealers Persons desiring to obtain prohibited (polluted) clams or oysters harvest polluted shellfish for depuration shall apply for a depuration harvest permit at least 15 days prior to initiation of operation, harvest.

(d) Transport of clams or clams, oysters or mussels for depuration:

- (1) Clams or Clams, oysters or mussels harvested from prohibited (polluted) waters for depuration in an approved depuration operation located within the State of North Carolina shall be transported under the direct supervision of the Division of Marine Fisheries and/or the Division of Environmental Health.
- (2) Clams or Clams, oysters or mussels harvested from prohibited (polluted) waters for depuration in an approved depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.

(e) It is unlawful to ship clams or oysters, shellfish harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.

(f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52; Eff. January 1, 1991; Temporary Amendment Eff. October 1, 2001.

SECTION .0200 – OYSTERS

15A NCAC 03K .0205 MARKETING OYSTERS TAKEN FROM PRIVATE SHELLFISH BOTTOMS

(a) It is unlawful to take, possess, buy, or sell oysters from shellfish leases or franchises private beds during the open season unless such oysters have been culled in accordance with Rule 15A NCAC 03K .0202.

(b) ~~It is unlawful to take, possess, or sell oysters from private beds without first securing from the Fisheries Director a permit showing the name of the person or persons taking the oysters, the location of the private bed, the daily quantity to be taken, and the method of harvest.~~ It is unlawful to sell, purchase or possess oysters during the regular closed season without the lease or franchise holder permittee delivering to the purchaser or other recipient a certification, on a form provided by the Division, certification that the oysters were taken from a valid shellfish lease or franchise, pursuant to a valid permit. Certification forms shall be furnished by the Division to lease and franchise holders upon request. Department to each permittee upon issuance of a permit.

(c) It is unlawful for lease or franchise holders or their designees to take or possess oysters from public bottom while possessing aboard a vessel oysters taken from shellfish leases or franchises.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52; Eff. January 1, 1991; Amended Eff. September 1, 1991; Temporary Amendment Eff October 1, 2001.

15A NCAC 03K .0207 OYSTER SIZE AND HARVEST LIMIT EXEMPTION

Possession and sale of oysters by a hatchery or oyster aquaculture operation and purchase and possession of oysters from a hatchery or oyster aquaculture operation shall be exempt from bag and size limit restrictions set under authority of 15A NCAC 03K .0201 and .0202. It is unlawful to possess, sell, purchase, or transport such oysters unless they are in compliance with all conditions of the Aquaculture Operations Permit.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52; Temporary Adoption Eff. October 1, 2001.

SECTION .0300 - HARD CLAMS (MERCENARIA)

15A NCAC 03K .0302 MECHANICAL HARVEST SEASON

(a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom except that the Fisheries Director may, by proclamation, open and close the

season at any time in the Atlantic Ocean and only between December 1 through March 31 in internal waters for the use of mechanical clam harvesting gear. The Fisheries Director is further empowered to impose any or all of the following restrictions:

- (1) specify number of days;
- (2) specify areas;
- (3) specify time period,
- (4) specify quantity or and/or size; and
- (5) specify means/methods. Any proclamation specifying means or and/or methods must be approved by the Marine Fisheries Commission prior to issuance.

(b) The Fisheries Director may, by proclamation, open only areas in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC" Marker at Topsail Beach which have been opened at any time from January, ~~1979, 1977,~~ through September, ~~1988, to the harvest of clams by mechanical methods.~~ ~~1988, and The Fisheries Director may, by proclamation, open~~ the Atlantic Ocean and the area or any portion of the area in Pamlico Sound bounded by a line beginning at a point 35° 01.5000' N - 76° 10.5000' W; running to a point at 35° 01.5000' N - 76° 06.0000' W; thence to a point at 35° 06.0000' N - 76° 06.0000' W; thence to a point at 35° 06.0000' N - 76° 10.0000' W; thence back to the point of beginning to the harvest of clams by mechanical methods. Other areas opened for purposes as set out in 15A NCAC 03K .0301(b) will open only for those purposes.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
 Eff. January 1, 1991;
Temporary Amendment Eff. October 1, 2001.

SUBCHAPTER 030 - LICENSES, LEASES, AND FRANCHISES

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

(a) All areas of the public bottoms underlying coastal fishing waters shall meet shall:

~~(1) Meet~~ the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish purposes:

- ~~(1)(A)~~ The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.
- ~~(2)(B)~~ The lease area must not be closer than 100 feet to a developed shoreline. In an area bordered by undeveloped shoreline, no minimum setback is required. When the area to be leased borders the applicant's property or borders the property of riparian owners who have consented in a notarized statement, the Secretary

may reduce the distance from shore required by this Rule.

~~(3)(C)~~ Unless the applicant can affirmatively establish a necessity for greater acreage through the management plan that is attached to the application and other evidence submitted to the Secretary, the lease area shall not be less than one-half acre and shall not exceed:

- ~~(A)(i)~~ 10 acres for oyster culture;
- ~~(B)(ii)~~ 5 acres for clam culture; or
- ~~(C)(iii)~~ 5 acres for any other species.

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination of the leasehold, shellfish bottom leases shall:

- ~~(2)(1)~~ Produce and market 10 25 bushels of shellfish per acre per year; ~~and year to meet the minimum commercial production requirement or plant 25 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. Planting effort shall be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after March 1, 1994.~~
- ~~(2)~~ Plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.
- ~~(3)~~ The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of this Rule.
 - (A) Only shellfish planted, produced or marketed according to the definitions in 15A NCAC 03I .0101 (26), (27) and (28) shall be submitted on production/utilization forms for shellfish leases and franchises.
 - (B) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
 - (C) Production and marketing information and planting effort information are compiled and averaged separately to assess

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compliance with the standards. The lease or franchise must meet either the production requirement and or the planting effort requirement within the dates set forth to be judged in compliance with these standards.

(D) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

- (i) 300 oysters, 400 clams, or 400 scallops equal one bushel;
(ii) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell and 90 pounds of fossil stone equal one bushel.

(E) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.

(F) These production and marketing rates shall be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates shall be averaged over the first five year period for initial leases and over the most recent three year period thereafter. Three year averages for production and marketing rates shall be computed irrespective of transfer of the shellfish lease or franchise.

(G)(F) All bushel measurements shall be in U.S. Standard Bushels.

(c)(b) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

(d)(e) Water columns superjacent to duly recognized perpetual franchises shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

(e)(d) Water column leases must produce and market 40 100 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year as determined by Division biologists to meet commercial production by planting effort. Planting effort shall be considered in lieu of commercial production for five consecutive years beginning March 1, 1994, or for the first five consecutive years for any lease granted after

March 1, 1994. The standards rules for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (b) (a) of this Rule except that either the produce and market requirement or the planting requirement must be met. Rule.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52; Eff. January 1, 1991; Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991; Temporary Amendment Eff. October 1, 2001.

15A NCAC 030 .0208 CANCELLATION

(a) In addition to the grounds established by G.S. 113-202, the Secretary shall begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish in accordance with the 15A NCAC 03K .0201. at the following rates:

- (1) For shellfish bottom leases and franchises, 25 bushels per acre per year.
(2) For water column leases, 100 bushels per acre year.

These production and marketing rates shall be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and recognized franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates shall be averaged over the first five year period for initial leases and over the most recent three year period thereafter. Three year averages for production and marketing rates shall be computed irrespective of transfer changes of ownership of the shellfish lease or franchise.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.

(c) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.

(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 03P .0102.

(e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 03P .0102.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52; Eff. January 1, 1991;

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Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994;
October 1, 1992; September 1, 1991;
Temporary Amendment Eff. October 1, 2001.

SECTION .0500 – PERMITS

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application must be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles, state identification card, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and their designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
- (6) Additional information may also be required by the Division for specific permits.

(b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.

(c) A permittee and their designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
- (2) Permit to Transplant Oysters from Seed Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; Areas;
- (5) Depuration Permit.

(d) A permittee must hold a valid:

- (1) ~~valid~~ Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and category.
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(g) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107; 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

(h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;

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- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- (j) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.
- (k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
- (l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 03.
- (m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (o) Permit applications shall be available at all Division Offices.
- (p) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. October 1, 2001;

Rule-making Agency: DENR – Soil and Water Conservation Commission

Rule Citation: 15A NCAC 06H .0101-.0105

Effective Date: October 22, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 139-4; 143B-294; S.L. 2001-284

Reason for Proposed Action: In August 1998, the DENR – Environmental Management Commission (EMC) adopted rules specifying that the Soil and Water Conservation Commission designate technical specialists to assist agricultural operations to comply with requirements of 15A NCAC 02B .0238 Neuse River Basin – Sensitive Waters Management Strategy;

Agricultural Nitrogen Reduction Strategy. These temporary rules also comply with EMC's rules adopted for the Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy (15A NCAC 02B .0256). Session Law 2001-284 directs the Soil and Water Conservation Commission to develop and implement a program for the approval of water quality and animal waste management systems technical specialists and to develop and approve best management practices for use in water quality protection programs and to adopt rules that establish criteria governing approval of these best management practices.

Comment Procedures: Comments, statements, data and other information may be submitted in writing within 60 days after the date of publication of this issue of the North Carolina Register. Copies of the rules and information packet may be obtained by contacting the Division of Soil and Water Conservation at (919) 715-6109. Written comments may be submitted to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614. Comments may also be submitted by electronic mail to Vernon.Cox@ncmail.net.

CHAPTER 06 – SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 06H – APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY PROTECTION

15A NCAC 06H .0101 PURPOSE

This Subchapter describes criteria and procedures for the Commission to approve water quality technical specialists and to approve Best Management Practices (BMPs) for use in water quality protection programs of the Department. These criteria and procedures are intended for use by the Commission where technical specialists or BMPs are needed in conjunction with actions by the Environmental Management Commission or other commissions in Department water quality protection programs.

History Note: Authority G.S. 139-4; 143B-294; S.L. 2001-284; Temporary Adoption Eff. October 22, 2001.

15A NCAC 06H .0102 DEFINITIONS

- (a) "Department" means the Department of Environment and Natural Resources.
- (b) "EMC" means the Environmental Management Commission.
- (c) "NRCS" means the USDA Natural Resources Conservation Service.
- (d) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of BMPs are to the standards and specifications of the Commission or NRCS.
- (e) "Water management" means a BMP for control of water levels in the soil profile, including but not limited to, the use of flashboard risers or other similar structures placed in drainage ditches to benefit crop water needs and reduce nutrient loss.
- (f) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing of nutrients to

ensure adequate fertility for plant production and to minimize the potential for water quality impairment.

(g) "Technical specialist designation category" means a designation specific to any of several individual or groups of BMPs.

(h) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.

History Note: Authority G.S. 139-4; 143B-294; S.L. 2001-284; Temporary Adoption Eff. October 22, 2001.

15A NCAC 06H .0103 APPROVAL OF BEST MANAGEMENT PRACTICES (BMPS)

The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection programs for agriculture and other nonpoint sources. Approved BMPs shall meet the minimum standards of the USDA Natural Resources Conservation Service Technical Guide, or minimum standards and specifications as otherwise determined by the Commission as appropriate to provide water quality protection. In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or experienced in nonpoint source management.

History Note: Authority G.S. 139-4; 143B-294; S.L. 2001-284; Temporary Adoption Eff. October 22, 2001.

15A NCAC 06H .0104 APPROVAL OF WATER QUALITY TECHNICAL SPECIALISTS

(a) Technical specialist designation categories are established for:

- (1) nutrient management;
(2) water management; and
(3) other groups of BMPs as necessary for nonpoint source water quality protection as identified by the Commission.

(b) The Commission designates the following as technical specialists:

- (1) Individuals who have been assigned approval authority for a designation category by the USDA NRCS, the North Carolina Department of Agriculture and Consumer Services, the Division of Soil and Water Conservation, or the North Carolina Cooperative Extension Service;
(2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the water management designation category; and
(3) Individuals with the demonstrated skill and experience in a designation category.

(c) Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must:

- (1) Meet the minimum qualifications established by the Commission for each designation category;
(2) Provide to the Division an "Application for Designation for Technical Specialist" and

evidence of demonstrated skill and experience required for each designation category;

(3) Receive approval of their application by the Commission to become designated; and

(4) Attend training in new areas to maintain their designation as determined by the Commission.

(d) Upon the finding by the Commission that the work of a technical specialist designated under Subparagraph (b)(3) of this Rule or under 15A NCAC 06F .0105(a)(3) fails to comply with NRCS technical standards, technical standards contained in EMC rules, or guidance published by the interagency group created under Section 18 of Chapter 626 of the 1995 Session Laws, the Commission may withdraw its designation of the technical specialist in any or all categories. For technical specialists designated under Subparagraph (b)(1) of this Rule or under 15A NCAC 06F .0105(a)(1), the Commission will forward findings of improper work performed by an agency technical specialist to the respective agency with the recommendation that the agency provide documentation that their technical specialist has received training to correct deficiencies in the area of work to retain designation. If the agency fails to provide such documentation, the Commission may withdraw its designation of the technical specialist for any or all categories.

History Note: Authority G.S. 139-4; 143B-294; S.L. 2001-284; Temporary Adoption Eff. October 22, 2001.

15A NCAC 06H .0105 APPLICATION OF BMP APPROVAL AND TECHNICAL SPECIALIST DESIGNATION TO WATER QUALITY PROTECTION PROGRAMS

Approved BMPs or systems of BMPs and technical specialist designation by the Commission under this chapter may be used to satisfy the requirements of:

- (1) The Neuse Basin Rule in 15A NCAC 02B .0238(8)(b)(x) and (c)(i) and 15A NCAC 02B .0239(2)(a) and (b).
(2) The Tar-Pamlico Rule in 15A NCAC 02B .0256 and 15A NCAC 02B .0257(f)(2).
(3) Other applicable water quality protection rules adopted by the EMC or other commissions that include BMP development or implementation or technical specialist designation by the Commission.

History Note: Authority G.S. 139-4; 143B-294; S.L. 2001-284; Temporary Adoption Eff. October 22, 2001.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 61 – THE NORTH CAROLINA RESPIRATORY CARE BOARD

Rule-making Agency: NC Respiratory Care Board

Rule Citation: 21 NCAC 61 .0101-.0103, .0201-.0204, .0301-.0308, .0401, .0501-.0502, .0601-.0604, .0701-.0714

Effective Date: *October 15, 2001*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 90-652*

Reason for Proposed Action: *This temporary rulemaking results from the enactment of the North Carolina Respiratory Care Act by the North Carolina General Assembly during its 2000 Session. As enacted on July 13, 2000, the Act empowers certain officers of the Executive and Legislative Branches and other organizations to appoint or designate members of the North Carolina Respiratory Care Board. Appointments of a quorum of the Board were not completed until June 2001. The appointed members of the Board then met in early July, were sworn in and designated a Rules Committee to develop temporary rules. These Rules were completed and adopted by the Board on August 31, 2001, leading to the present filing as a temporary rule.*

Comment Procedures: *Written comments should be directed to Sandra B. Lyons, Rule-making Coordinator, PO Box 10096, Raleigh, NC 27605-0096, telephone 919-783-2825, email slyons@poynerspruill.com.*

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 61 .0101 PURPOSE

It is the responsibility of the Board to license respiratory care practitioners and to see that the qualifications and activities of those engaged in respiratory care are in accord with law and in the best interest of the public. The Board shall issue and enforce standards for the licensure of respiratory care practitioners but the Board is not a Board of arbitration and has no jurisdiction to settle disputes between private parties.

History Note: Authority G.S. 90-652(2); Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0102 BOARD OFFICE

The administrative offices of The North Carolina Respiratory Care Board (NCRCB) are located at 1100 Navaho Drive, Suite 242, Raleigh, NC 27609. Office hours are 9:00 a.m. until 5:00 p.m., Monday through Friday, except North Carolina State Holidays.

History Note: Authority G.S. 90-652(2); Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter.

History Note: Authority G.S. 90-652(1; 90-652(13); Temporary Adoption Eff. October 15, 2001.

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 61 .0201 APPLICATION PROCESS

Each applicant, including those trained outside the United States or its territories, for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one recent head and shoulders photograph (passport type) of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the proper fees, as required by G.S. 90-653;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs;
- (4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification by the American Heart Association for Basic Cardiac Life Support;
- (5) a form provided by the Board containing signed statements from two respiratory care practitioners credentialed by The National Board for Respiratory Care, Inc. (NBRC) attesting to the applicant's good moral character; and
- (6) satisfactory evidence from the NBRC of successful completion of the certification examination administered by it.

History Note: Authority G.S. 90-652(1)(2); 90-653(a); Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons from the requirement of obtaining a license:

- (1) A respiratory care practitioner who is on active duty in the Armed Forces of the United States or serving in the United States Public Health Service, or employed by the Veterans Administration; but this exemption shall only apply to activities and services provided in the course of such service or employment.
- (2) A student or trainee who is working under the direct supervision of a respiratory care practitioner to fulfill an experience requirement or to pursue a course of study to meet licensure requirements. For purposes of this subpart, direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time that the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner must be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.

- (3) A person who only provides support activities as defined in G. S. 90-648(13), and who has received adequate training and has demonstrated competence in the delivery, calibration, and demonstration of equipment. Unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment may give instructions on the use, fitting and application of apparatus, including demonstrating its mechanical operation for the patient, or caregiver; but may not engage in the teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment, and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to assess the clinical effectiveness of an apparatus, or to evaluate the effectiveness of the treatment, must be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.

History Note: Authority G.S. 90-648(13); 90-652(2); 90-664; *Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0203 INTERVIEWS

If the Board has questions about the qualifications of an applicant, it may conduct interviews of the applicant, or of others with knowledge of an applicant's qualifications.

History Note: Authority G.S. 90-652(2); *Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of twenty-five dollars (\$25.00);
- (2) For examination or reexamination, a fee of one hundred fifty dollars (\$150.00);
- (3) For issuance of any license, a fee of one hundred dollars (\$100.00);
- (4) For the renewal of any license, a fee of fifty dollars (\$50.00);
- (5) For the late renewal of any license, an additional late fee of fifty dollars (\$50.00);
- (6) For a license with a provisional or temporary endorsement, a fee of thirty-five dollars (\$35.00); and
- (7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Respiratory Care Board. However, personal checks may be accepted for payment of renewal fees.

History Note: Authority G.S. 90-652(2)(9); 90-660; *Temporary Adoption Eff. October 15, 2001.*

SECTION .0300 - LICENSING

21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE

(a) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will not be reissued. A license must be filed at the licensee's principal place of business so as to be visible for inspection. Each licensee also shall keep a copy of the license available for inspection to anyone on request in the course of delivering services.

(b) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee shall wear a badge or nameplate which displays in easily visible type the licensee's name followed by a comma and the designation "R.C.P." which is an abbreviation for respiratory care practitioner.

History Note: Authority G.S. 90-640; 90-652(2)(4); 90-658(b); *Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the required fee.

(b) Any person whose license is lapsed or expired and who engages in the practice of respiratory care as defined in G.S. 90-648(10) will be subject to the penalties prescribed in G.S. 90-659.

(c) Licenses lapsed in excess of 24 months are expired and shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

History Note: Authority G.S. 90-652(1),(2),(4); 90-658(g); *Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0303 LICENSE WITH PROVISIONAL ENDORSEMENT

An applicant for a provisional license must have completed the educational requirements set out in 21 NCAC 61 .0201 and must have made application to take the certification exam administered by the NBRC and must have filed his application with the Board in accordance with G.S. 90-656 and these Rules. The provisional license shall be valid for a period not to exceed 12 months from date of issuance or until revoked by the Board, whichever occurs first.

History Note: Authority G.S. 90-652(2)(4); 90-656; *Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0304 LICENSE WITH TEMPORARY ENDORSEMENT

The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until

October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this Section shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

*History Note: Authority G.S 90-652(1),(2),(4); 90-654(b);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0305 INACTIVE STATUS

(a) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the annual renewal and payment of a fee of twenty dollars (\$20.00). An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(b) An individual licensed on inactive status may convert his or her license to active status by submission of an application and payment of the renewal fee and late fee. The application must contain evidence of the following:

- (1) Regular practice of respiratory care;
- (2) Completion of a minimum of 10 hours of approved continuing education during the prior 12 months of the application for reinstatement, or passage of an NBRC examination during the prior 12 months as required in 21 NCAC 61.0401; and
- (3) In no case may an individual remain on inactive status for more than 24 months.

*History Note: Authority G.S 90-652(1),(2),(4); 90-658(g);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0306 LICENSE BY RECIPROCITY

When the Board determines that a license, certificate or registration issued by another state, political territory, or jurisdiction to a respiratory care practitioner was issued upon satisfaction of substantially the same requirements for licensure required by the North Carolina Respiratory Care Practice Act, the Board may issue a license to that respiratory care practitioner upon receipt of the initial application fee and license issuing fee.

*History Note: Authority G.S. 90-652(1),(2),(4); 90-655;
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

(a) In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) Procuring, attempting to procure, or renewing a license as provided by this Section by bribery, by fraudulent misrepresentation, or through an error of the Board.
- (2) Having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care by the

licensing authority of another state, territory, or country.

- (3) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to a licensee's competence or ability to provide respiratory care.
- (4) Willfully making or filing a false report or record, or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner or a respiratory therapist licensed pursuant to this part.
- (5) Circulating false, misleading, or deceptive advertising.
- (6) Unprofessional conduct, which includes, but is not limited to, any departure from, or failure to conform to, acceptable standards related to the delivery of respiratory care, as set forth by the Board in rules adopted pursuant to this Section.
- (7) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a lawful purpose.
- (8) Willfully failing to report any violation of these Rules.
- (9) Violation of any rule adopted by the Board or of a lawful order of the Board.
- (10) Engaging in the delivery of respiratory care with a revoked, suspended, or inactive license.
- (11) Permitting, aiding, assisting, procuring, or advising any person to violate any rule of the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of respiratory care without a license.
- (12) Failing to perform any statutory or legal obligation placed upon a respiratory care practitioner licensed pursuant to this Section.
- (13) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, he is not competent to perform.
- (14) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform.
- (15) Paying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The

- provisions of this Subparagraph shall not be construed to prevent the licensee from receiving a fee for professional consultation services.
- (16) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.
 - (17) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory care.
 - (18) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements, or through the exercise of intimidation or undue influence.
 - (19) Failing to create and maintain respiratory care records documenting the assessment and treatment provided to each patient.
 - (20) Exercising influence on the patient in such a manner as to exploit the patient for the financial gain of the licensee or a third party, which includes, but is not limited to, the promoting or selling of services, goods, appliances, or drugs.
 - (21) Performing professional services which have not been duly ordered by a physician licensed pursuant to G.S 90, Article 1 and which are not in accordance with protocols established by the hospital, other health care provider, or the Board.
 - (22) Being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material as a result of any mental or physical condition. In enforcing this Rule, the Board shall, upon probable cause, have authority to compel a respiratory care practitioner to submit to a mental or physical examination by physicians designated by the Board. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner to submit to such an examination when so directed constitutes an admission of the allegations against him, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control. A respiratory care practitioner affected under this Rule shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory care with reasonable skill and safety to his patients. In any proceeding under this Rule, neither the record of proceedings nor the orders entered by the

- Board shall be used against a respiratory care practitioner in any other proceeding.
- (23) Failing to properly make the disclosures required by 21 NCAC .0308.
- (24) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services.
- (25) Failing to comply with a court order for child support or failing to comply with a subpoena issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1. In revoking or reinstating a license under this provision, the Board shall follow the procedures outlined in G.S. 93B-13.

History Note: Authority G.S. 90-652(2)(4); 90-659; Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0308 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) All licensed respiratory care practitioners and provisional licensees are under a continuing duty to report to the Board any and all:

- (1) convictions of, or pleas of guilty or nolo contendere to, a felony or any crime, such as fraud, that involves moral turpitude; and
- (2) involvements in a civil suit arising out of or related to the licensee's practice of respiratory care.

(b) A licensee or a provisional licensee must report a conviction, plea, or involvement in a civil suit within 30 days after it occurs.

History Note: Authority G.S. 90-652(2); Temporary Adoption Eff. October 15, 2001.

SECTION .0400 – CONTINUING EDUCATION REQUIREMENTS FOR LICENSE HOLDERS

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Each year on or before the expiration date of the respiratory care practitioner's license, each respiratory care practitioner who is in active practice in the State of North Carolina shall complete continuing education as outlined in either Subparagraph (1) or Subparagraph (2).

- (1) Provide proof of completion of a minimum of 10 hours each year of Category I Continuing Education (CE) acceptable to the Board. "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:
 - (A) Lecture – a discourse given for instruction before an audience or through teleconference.
 - (B) Panel – a presentation of a number of views by several professionals on a

given subject with none of the views considered a final solution.

(C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest.

(D) Seminar – a directed advanced study or discussion in a specific field of interest.

(E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.

(F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.

(2) Retake the certified respiratory therapist (CRT) examination with a passing score, or take and pass the Registry Examination for Advanced Respiratory Therapists (RRT), the Perinatal/Pediatric Respiratory Care Specialty Examination, the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), or the Registry Examination for Advanced Pulmonary Function Technologist (RPFT). Licensees may take the examination anytime during the year prior to the expiration of their respiratory care practitioner license.

(b) Licensees will be required to list on a form provided by the Board, the Category I CE courses completed that meet the 10 hour requirement, as well as specified subject matter of the courses completed. Space will be provided on the form for listing the number of hours, course names, dates and providers, as well as the general subject matter of the courses. If the practitioner takes an examination in lieu of the CE requirements a notation of the examination taken with the date taken is to be placed on the form.

(c) CE course work must be completed through one or more of the approved providers of CE as identified on a list of approved providers to be maintained by the Board.

(d) Verification of Compliance with Continuing Education Requirements. The Board may randomly audit the continuing education documentation forms submitted and confirm the validity of all information on the form with the appropriate parties.

(e) The Board may consider requests for extensions of the continuing education requirements due to personal emergencies and other extenuating circumstances on a case by case basis.

(f) The Board may charge a fee to each firm or organization which wishes to provide continuing education to meet the requirements of this Rule, in order to defray expenses that the Board incurs in reviewing the content of the continuing education materials, to determine their overall suitability, and to assess the number of credit hours which should be assigned for the completion of each such continuing education offering.

History Note: Authority G.S. 90-652(2)(13);

Temporary Adoption Eff. October 15, 2001.

SECTION .0500 - GENERAL

21 NCAC 61 .0501 CHANGE OF ADDRESS OR BUSINESS NAME

All licensees shall notify the Board in writing of each change of name, including any change in the name under which the licensee is providing respiratory care, or any change in the licensee's residence or business address, including mailing address, within 30 days of such change.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0502 ADVERTISING

A licensee may not advertise under a name that is different from the licensee's surname unless written notice has been filed with the Board. For all advertisements relating to respiratory care, the company or respiratory care practitioner sponsoring any advertisement must be able to furnish on request the name and license number of each respiratory care practitioner who will be providing services. Failure by a sponsoring respiratory care practitioner to provide this information shall constitute unprofessional conduct under 21 NCAC 61 .0307. The Board shall report any failure of a company to provide this information to any agency or board that issues a license for its operation as a health care provider.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001.

SECTION .0600 - RULES

21 NCAC 61 .0601 PETITIONS FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

(a) General. The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. 150B-16.

(b) Submission. Rule-making petitions shall be sent to the Board. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of any proposed rule or amendment to a rule;
- (2) the reason for the proposal;
- (3) the effect of the proposal on existing rules or decisions;
- (4) data supporting the proposed rule change;
- (5) practices likely to be affected by the proposed rule change; and
- (6) persons likely to be affected by the proposed rule change.

(c) Disposition. The Board shall render its decision to either deny the petition or initiate rulemaking, and shall notify the petitioner of its decision in writing, within the 120-day period set by G.S. 150B-16.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001.

TEMPORARY RULES

21 NCAC 61 .0602 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of a rule is governed by G.S. 150B-12.

(b) Notice of Rule-Making. In addition to the mandatory publication of notice in the North Carolina Register, the Board, in its discretion, may also publish notice to licensees through its newsletter or by separate mailing. Any person who wishes to receive individual notice shall file a written request with the Board and shall be responsible for the cost of mailing said notice.

(c) Public Hearing. Any public rule-making hearing required by G.S. 150B-12 shall be conducted by the Chairman of the Board or by any person he may designate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments.

(1) Oral presentations shall not exceed 15 minutes unless the presiding officer, in his discretion, prescribes a greater time limit.

(2) Written presentations shall be acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0603 TEMPORARY RULES

The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-13.

History Note: Authority G.S. 90-652(2);
Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0604 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board is governed by G.S. 150B-4.

(b) Contents of Request. A request for a declaratory ruling shall be in writing and addressed to the Board. The request shall contain the following information:

(1) The name and address of the person making the request;

(2) The statute or rule to which the request relates;

(3) A concise statement of the manner in which the person has been aggrieved by the statute or rule; and

(4) A statement as to whether a hearing is desired, and if desired, the reason therefore.

(c) Refusal to Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

(1) When the Board has already made a controlling decision on substantially similar facts in a contested case or when the matter at issue is properly the subject of a contested case;

(2) When the facts underlying the request for a ruling on a rule were specifically considered at the time of the adoption of the rule in question; and

(3) When the subject matter of the request is involved in pending litigation in North Carolina.

History Note: Authority G.S. 90-652(1)(2);
Temporary Adoption Eff. October 15, 2001.

SECTION .0700 - ADMINISTRATIVE HEARING PROCEDURES

21 NCAC 61 .0701 APPLICABLE HEARING RULES

When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0702 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give all such affected persons notice of their right to a hearing by mailing to them, by certified mail, at their last known address a notice of the proposed action and a notice of a right to a hearing.

History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0703 REQUEST FOR HEARING

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

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board. Upon the request of an individual, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally with the individual, and attempt to reach an informal resolution of all matters at issue. Each Board member who is designated to serve in this capacity with regard to an individual's matter, whether the Board member actually meets with the individual or not, shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.

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

(1) name and address of the petitioner;

(2) a concise statement of the action taken by the Board which is challenged;

(3) a concise statement of the way in which the petitioner has been aggrieved; and

(4) clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 61 .0704, a hearing will be scheduled.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0704 GRANTING OR DENYING HEARING REQUEST

(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.

(b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0705 of this Section.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0705 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address, and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) the date, time and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of respiratory care in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

*History Note: Authority G.S. 90-652(2),(4),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0706 CONTESTED CASES

(a) All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board then serving, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

(b) The hearing of a contested case shall commence no later than 90 days from the date the Board grants a request for a hearing, unless the licensee and the Board together shall jointly agree to extend this deadline.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0707 PREHEARING PROCEDURES

The Board and the other party or parties may agree in advance to simplify the hearing by decreasing the number of issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case with relevance to the case at hand, or agreeing to such other matters as may expedite the hearing.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0708 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: "PETITION TO INTERVENE IN THE CASE OF (name of case)".

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0709 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:

(1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and

(2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0710 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)".

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed 10 days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than 10 days before a hearing or during the course of a hearing, the Board may continue the hearing with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification when a timely Affidavit of Disqualification is filed:

(1) The Board will appoint a Board member to investigate the allegations of the affidavit.

(2) The investigator will report to the Board the findings of the investigation.

(3) The Board shall decide whether to disqualify the challenged individual.

(4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.

(5) When a Board member is disqualified prior to the commencement of the hearing or after the

hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.

(6) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0711 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing and delivered to the Board at least 10 days before the date of a contested case hearing and at least 20 days before a date given to provide discovery, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(e) Any objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(f) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, the majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0712 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses other than the Licensee from the hearing room until the time they are called to testify, so that they cannot hear the testimony of other witnesses before testifying themselves.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

21 NCAC 61 .0713 FINAL DECISION

In all cases heard by the Board, the Board will issue its decision within 120 days after its next regularly scheduled meeting following the close of the hearing. The decision will be the prerequisite "final agency decision" for the right to judicial review. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

History Note: Authority G.S. 90-652(2),(5),(8);

Temporary Adoption Eff. October 15, 2001.

21 NCAC 61 .0714 PROPOSALS FOR DECISION

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 03 .0126. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions should bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)".

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

*History Note: Authority G.S. 90-652(2),(5),(8);
Temporary Adoption Eff. October 15, 2001.*

RULES REVIEW COMMISSION

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, October 18, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, October 12, 2001 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Paul Powell - Chairman
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

John Arrowood - 1st Vice Chairman
Jennie J. Hayman 2nd Vice Chairman
Walter Futch
Jeffrey P. Gray
George Robinson

RULES REVIEW COMMISSION MEETING DATES

October 18, 2001
November 15, 2001

December 20, 2001
January 17, 2002

RULES REVIEW COMMISSION

September 20, 2001

MINUTES

The Rules Review Commission met on Thursday morning, September 20, 2001, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Vice-Chair Jennie Hayman, Jeffrey Gray, David Twiddy, Laura Devan, George Robinson, Jim Funderburk, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Thomas Allen	DENR-DAQ
Lynne Berry	Division of Aging
Heather Burkhardt	Division of Aging
Charles Case	Hunton & Williams
Delores A. Joyner	State Personnel Commission
Nellie Riley	State Personnel Commission
Amy Yonowitz	Dept. of Justice
Scott Perry	Dept. of Justice
Sandy Sands	Womble Carlyle
Joy Mayo	Womble Carlyle
Grady McCallie	NC Conservation Network
Emily Lee	NC Dept. of Transportation
Denise Stanford	Pharmacy Board
Marion Deerlake	Environmental Management Commission
Marc Bernstein	Attorney General's Office
Lori Hinnant	Womble Carlyle

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Ms. Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 16, 2001, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

7 NCAC 4S .0104: NC Department of Cultural Resources – No action was taken.

RULES REVIEW COMMISSION

10 NCAC 45H .0203; .0204: Commission for Mental Health - No action was taken.

15A NCAC 2D .1401; .1402; .1403; .1404; .1406; .1407; .1408; .1409; .1410; .1411; .1413; .1414; .1418; .1419 .1422; .1423: DENR/ Environmental Management Commission - The Commission approved these rules conditioned upon technical changes being made.

15A NCAC 2D.1412: DENR/ Environmental Management Commission - The Commission objected to this rule due to ambiguity. It is unstated at the end of (a) and therefore unclear, what the standard for approving or denying a petition for an alternative limitation is. There are no standards for acting on the petition in (b) or (c) either. The standard in (a) is a standard for being eligible to petition for an alternative limitation. It does not give any other standards for approving or denying the petition.

15A NCAC 2D .1415: DENR/ Environmental Management Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b) this rule seems to indicate that the Director of the division may require a source owner or operator to demonstrate compliance with this section of the rules whenever the Director requests. If the actual timing or basis for making such requests are set out elsewhere in the rule, that is not clear and the rule would seem more open-ended than it actually is. If they are not spelled out elsewhere, then there is no authority to allow the Director to make such request without some guidelines provided within the rules.

15A NCAC 2D .1416: DENR/Environmental Management Commission – The Commission objected to this rule due to ambiguity. It may be that the requirements under (a)(1)(D) are obvious from the context and necessary and this rule only requires a technical change. However, the Commission does not understand how assigning individual boiler and turbine source allocations and specifying that those sources cannot be exceeded (paragraph before the table) requires or meshes with what appears to be the rule in (D). That portion of the rule states that the sum for the individual allocations cannot be exceeded. But what is the necessity? In order to exceed the sum, at least one of the parts needs to be exceeded. If that is exceeded, the rule is broken. There does not seem to be any additional penalty for exceeding the sum. If that is the case, then it needs to be made clearer that it is a separate violation to exceed the sum as well as any individual limit. This also applies to (a)(2)(D) and (b)(1) and (2)(D). Likewise in (g) the rule states that the source is in violation “for each day that the aggregate emissions exceeded the emissions allocations...(lines 2 and 3)”. There are no daily emissions allocations, so it is unclear how this violation is measured or determined. Also it is not clear what “aggregate” emissions are or if that is different from the “emission” or “emission allocations” or “total emissions” of this rule. This one reference to “aggregate emissions” appears to be the only reference in this entire set of rules other than in the same violation paragraph of the next rule.

15A NCAC 2D .1417: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. There is one of the same problems with this rule as with .1416. In (g) the rule states that the source is in violation “for each day that the aggregate emissions exceeded the emissions allocations....” There are no daily emissions allocations, so it is unclear how this violation is measured or determined. Also it is not clear what “aggregate” emissions are or if that is different from the “emissions” or “emission allocations” or “total emissions” of this rule.

15A NCAC 2D .1420: DENR/Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the rule in (d) where the EMC may revise emission allocations without going through rulemaking.

15A NCAC 2D .1421: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. The initial new source allocation pools in (h)(1)(E) and (h)(2)(E) are unclear in setting the amount of credits available. It is also unknown if the inspection maintenance program will be available or providing any credits.

Commissioners Devan and Saunders voted against Commissioner’s Gray motion to object to these rules. The other five Commissioners, along with Commissioner Gray voted to object.

15A NCAC 18A .3334: Commission for Health Services – The Commission approved the rewritten rule submitted by the agency.

19A NCAC 3J .0201; .0202; .0501; .0502; .0801; .0901; .0902; .0903; .0904; .0906: NC Department of Transportation – No action was taken.

25 NCAC 1C .0214: State Personnel Commission – The Commission approved the rule.

25 NCAC 1J .0603: State Personnel Commission – The Commission approved the rule.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved with the following exceptions:

RULES REVIEW COMMISSION

10 NCAC 22L .0101: DHHS – The Commission approved this rule. However the agency requested that this rule not be filed with OAH so as to allow it to make changes in this rule to satisfy the Commission’s objection to the following rule.

10 NCAC 22L .0102: DHHS - The Commission objected to the rule due to ambiguity. In the first sentence the rule refers to “any agency.” It is undefined and unclear what agencies are covered by this rule. It is not stated whether the “agencies” are governmental bodies only or also include private entities.

12 NCAC 9A.0103: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (21), it is not clear that the curriculum development policy has been adopted as a rule and if not, it doesn’t exist. It is therefore not clear what a pilot course is. This objection applies to existing language in this rule.

12 NCAC 9G .0102: Criminal Justice Education & Training Standards Commission - The Commission objected the rule due to ambiguity. In (10) (ssss), there is no such statute as “147C-3”, so it is not clear what statute this refers to. In (11), it is not clear that the curriculum development policy has been adopted as rule and if not, it doesn’t legally exist. It is therefore not clear what a pilot course is. In (14), it is not clear that "Qualified Assistant" is the same as "Qualified Staff Person" in Rule .0401. In (16), a "School Director" is defined as the person designated by the sponsoring institution or agency. Rule .0401 says the Secretary of Correction does the Designating. These are contradictory.

12 NCAC 9G .0204: Criminal Justice Education & Training Standards Commission – The Commission objected the rule due to lack of statutory authority and ambiguity. Paragraph (d) requires documentary evidence of educational requirements. The rule then tells what is meant by documentary evidence for a high school graduate and GED recipient. It is not clear what would constitute documentary evidence for a college or university graduate since that is an educational requirement for a probation/parole officer. In (d)(1), it is not clear what is meant by "recognized public school" and "approved private school." It is also not clear what is meant by "approval guidelines of the North Carolina Department of Public Instruction" since there do not appear to be any statutes or rules setting such guidelines. It is not clear what high school graduates from schools that don't meet this criteria, whatever it is, are to furnish as documentary evidence. Perhaps that is what the next sentence is meant to address, but as written, it is a waiver provision without specific guidelines. It is not clear what standards the Director will use in permitting other types of documentation.

12 NCAC 9G .0304: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. Subparagraph (b)(2) is not consistent with paragraphs (a) and (b) of Rule 9G .0305. This rule says General Certification is continuous if a separated employee is re-employed within two years. Paragraphs (a) and (b) of Rule .0305 give standards for reinstatement of certification for employees re-employed within two years. If certification is continuous, it shouldn’t need reinstating.

12 NCAC 9G .0305: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. Paragraphs (a) and (b) of this Rule are not consistent with subparagraph (b)(2) of Rule 9G .0304. Rule 9G .0304 says General Certification is continuous if a separated employee is re-employed within two years. Paragraphs (a) and (b) of this rule give standards for reinstatement of certification for employees re-employed within 2 years. If certification is continuous it shouldn’t need re-instating.

12 NCAC 9G .0306: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (b), it is not clear what standards the Commission will use in agreeing to records maintenance.

12 NCAC 9G .0307: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (f)(7), it is not clear what constitutes "good moral character as required to effectively discharge the duties of a corrections instructor."

12 NCAC 9G .0309: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority, ambiguity and unnecessary. Subparagraph (b)(2), requires a favorable evaluation by a Commission or staff member, but there are no standards for the Commission or staff member to use in determining whether to issue the favorable evaluation. It is also questionable whether a single Commission member, acting alone, can have authority to take action, in essence, approving a person for full instructor status. There is the same problem in (c)(3). In (d), it is not clear what is meant by "remain active" If it means the same thing as the second sentence, then the first sentence is not necessary.

12 NCAC 9G .0311: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority, ambiguity and unnecessary. Subparagraph (c)(3), requires a favorable evaluation by a Commission or staff member, but there are no standards for the Commission or staff member to use in determining whether to issue the favorable recommendation. It is also questionable whether a single Commission member, acting alone, can have authority to take action, in essence, renewing a person’s special instructor certification. In (d), it is not clear what is meant by "remain active." If it means the same thing as the second sentence, then the first sentence is unnecessary.

RULES REVIEW COMMISSION

12 NCAC 9G .0316: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (b)(1), it is not clear whether "accredited" means accredited by a regional accrediting agency or professional association such as the ABA or AMA, or some entirely different group. It is also not clear what is meant by "formally recognized professions" nor how the Commission will determine which are "acceptable."

12 NCAC 9G .0401: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b), there is no authority cited for setting occupational requirements for school directors. There is such authority for instructors but not directors. It is also not clear why the Secretary does the designating, particularly since the definition of School Director in Rule .0102 is a person designated by the sponsoring agency or institution. It is not clear if "Qualified Staff Person" in this rule is synonymous with "Qualified Assistant" in .0102.

12 NCAC 9G .0402: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (e), it is not clear what is meant by "major changes."

12 NCAC 9G .0403: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (b)(1) and (2), it is not clear how the Commission will distinguish between "infrequent" and regular or continuous "basis".

12 NCAC 9G .0404: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. This rule is unclear. In (a), it is not clear what is meant by "curriculum development policy of the Commission." If it is not in the Rules, it legally does not exist. It is not clear what standards the Commission will use in designating the developer of course curricula. In (a) and (b), it is not clear what is meant by "pilot courses." While the term is defined in Rule .0102, the definition is courses developed consistent with the curriculum development policy developed in 1986.

12 NCAC 9G .0405: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority and unnecessary. There is no authority cited for the Commission to certify or set certification standards for school directors. The last sentence in (b)(1)(C) is a recommendation and not a requirement and is thus unnecessary. It is not clear what (b)(3) means.

12 NCAC 9G .0406: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. Because the Commission has cited no authority to certify school directors, there is also none cited to renew the certification. In (b), it is not clear what constitutes "adequate" performance of the duties and responsibilities of a school director.

12 NCAC 9G .0407: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority. Because there is not authority cited to certify school directors, there is none cited to deny, suspend or revoke certification.

12 NCAC 9G .0408: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity. In (c), it is not clear what is meant by "qualified" instructors.

12 NCAC 9G .0409: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to ambiguity and unnecessary. In (a), it is not clear if there are any standards for the School Director to use in determining the appropriate member of trainees to enroll in an offering. If not, it is not clear why the paragraph is necessary.

12 NCAC 9G .0415: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a), it is not clear what standards the Standards Division will use in approving the time period for completing a course. As written, this is a waiver provision without specific guidelines.

12 NCAC 9G .0416: Criminal Justice Education & Training Standards Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a), it is not clear what standards the Standards Division will use in approving the time period for completing a course. As written, this is a waiver provision without specific guidelines.

All motions were adopted unanimously with the following exceptions: Commissioner Funderburk moved to accept all staff recommendations for the rules from the Criminal Justice Education and Training Standards Commission. This was seconded by Commissioner Futch. Commissioner Saunders moved to amend the motion to change the action on rules 12 NCAC 9C .0205, .0207 .0208 and 9G .0701, from objection to approval. That motion was seconded by Commissioner Gray. The Commission voted to adopt the amendment with Commissioner Funderburk voting against the amendment. Commissioner Gray then moved to amend the motion to change the action on rules 12 NCAC 9G .0401, .0405 and .0406 from objection to approval. The motion died for lack of a second. The Commission then voted to adopt the amended motion with Commissioner Gray and Funderburk voting against the motion. Commissioner Hayman did not vote on the Criminal Justice Education & Training Standards Commission rules.

15A NCAC 7H .0209; .0309: Coastal Resources Commission – The rules were withdrawn by the agency.

15A NCAC 7K .0209; .0213: Coastal Resources Commission – The rules were withdrawn by the agency.

21 NCAC 1 .0301: NC Acupuncture Licensing Board - The Commission voted to return the rule to the agency for failure to comply with the notice and hearing provisions of the Administrative Procedure Act. This is allowed under N.C.G.S. 150B-21.9(a). It appears from the submission form and subsequent investigation that the agency did not give adequate notice of its intentions or the proposed rule.

21 NCAC 16V .0101, .0102: Board of Dental Examiners – The Commission approved these rules. Commissioner Futch did not vote on these rules.1

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe DeLuca, Staff Director, updated the Commission on the status of the Pharmacy Board Case. He also reported that the Dental Board case had been dismissed.

The next meeting will be on Thursday, October 18, 2001.

The meeting adjourned at 3:06 p.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #180)
August 20, 2001 through September 20, 2001

DEPARTMENT OF ADMINISTRATION

Responsibility	01 NCAC 17 .0701	Adopt
Organization	01 NCAC 17 .0702	Adopt
Abuser Treatment Program Oversight Committee	01 NCAC 17 .0703	Adopt
Abuser Treatment Program Approval	01 NCAC 17 .0704	Adopt
Program Rules: Abuser Assessment	01 NCAC 17 .0705	Adopt
Program Rules: Safety for Victims and Their Child	01 NCAC 17 .0706	Adopt
Program Structure	01 NCAC 17 .0707	Adopt
Program Structure: Termination of Program Particip	01 NCAC 17 .0708	Adopt
Abuser Treatment Program Complaints and Investigat	01 NCAC 17 .0709	Adopt
Right to Access	01 NCAC 17 .0710	Adopt
Reports	01 NCAC 17 .0711	Adopt
Equal Opportunity	01 NCAC 17 .0712	Adopt
Transition	01 NCAC 17 .0713	Adopt

DHHS/DIVISION OF MEDICAL ASSISTANCE

Mandatory	10 NCAC 50B .0101	Amend
Reserve	10 NCAC 50B .0311	Amend
Reserve	10 NCAC 50B .0403	Amend
Classification	10 NCAC 50B .0408	Amend

DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

Cape Fear River Basin	15 NCAC 02B .0311	Amend
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DENR/COMMISSION FOR HEALTH SERVICES

Definitions	15 NCAC 18A .1301	Amend
Approval of Plans	15 NCAC 18A .1302	Amend
Inspection Forms	15 NCAC 18A .1304	Amend
Grading Residential Care Facilities In Institution	15 NCAC 18A .1305	Amend
Public Display of Grade Card	15 NCAC 18A .1306	Amend
Re-inspections	15 NCAC 18A .1307	Amend
Approved Institutions	15 NCAC 18A .1308	Amend
Floors	15 NCAC 18A .1309	Amend
Walls and Ceilings	15 NCAC 18A .1310	Amend

RULES REVIEW COMMISSION

Lighting and Ventilation	15 NCAC 18A .1311	Amend
Toilet: Handwashing: Laundry: and Bathing Facilities	15 NCAC 18A .1312	Amend
Water Supply	15 NCAC 18A .1313	Amend
Drinking Water Facilities: Ice Handling	15 NCAC 18A .1314	Amend
Liquid Wastes	15 NCAC 18A .1315	Amend
Solid Wastes	15 NCAC 18A .1316	Amend
Vermin Control: Premises	15 NCAC 18A .1317	Amend
Miscellaneous	15 NCAC 18A .1318	Amend
Bedroom and Lobby Furnishings	15 NCAC 18A .1319	Amend
Food Service Utensils and Equipment	15 NCAC 18A .1320	Amend
Food Supplies	15 NCAC 18A .1321	Amend
Milk and Milk Products	15 NCAC 18A .1322	Amend
Food Protection	15 NCAC 18A .1323	Amend
Food Service Employees	15 NCAC 18A .1324	Amend
Incorporated Rules	15 NCAC 18A .1327	Adopt
STATE BOARDS/N C BOARD OF MORTUARY SCIENCE		
Agency Name: Address:	21 NCAC 34A .0101	Amend

AGENDA
RULES REVIEW COMMISSION
October 18, 2001

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Cultural Resources – 7 NCAC 4S .0104 Objection on 12/21/00 (DeLuca)
 - B. DHHS - 10 NCAC 22L .0101, .0102 Objection on 9/20/01 DeLuca
 - C. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
 - D. Criminal Justice Education & Training Standards Commission - 12 NCAC 9A .0103 Objection on 9/20/01 (Bryan)
 - E. Criminal Justice Education & Training Standards Commission – 12 NCAC 9G .0102; .0204; .0304; .0305; .0306; .0307; .0309; .0311; .0316; .0401; .0402; .0403; .0404; .0405; .0406; .0407; .0408; .0409; .0415; .0416 Objection on 9/20/01 (Bryan)
 - F. DENR/Environmental Management Commission – 15A 2D .1412; .1415; .1416; .1417; .1420; .1421 Objection on 9/20/01 (DeLuca)
 - G. NC Department of Transportation – 19A NCAC 3J.0201; .0202; .0501; .0502; .0801; .0901; .0902; .0903; .0904; .0906 Objection on 8/16/01 (Bryan)
- IV. Review of rules (Log Report #180)
- V. Commission Business
- VI. Next meeting: Thursday, November 15, 2001

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A.B. (Butch) Elkins*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
<u>HEALTH AND HUMAN SERVICES</u>				
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 ²	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smalling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
<i>Child Support Enforcement Section</i>				
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01	
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01	
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01	
Leverette Lillington Knighten II v. Department of Health & Human Services	00 CSE 0612	Gray	08/24/01	
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01	
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01	
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01	
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01	
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01	
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01	
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01	
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01	
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01	

CONTESTED CASE DECISIONS

John T McDonald v. Department of Health & Human Services	00 CSE 1687	Wade	06/08/01
Darren S Boyd v. Department of Health & Human Services	00 CSE 1697	Wade	08/29/01
Ilian Tourloukis v. Department of Health & Human Services	00 CSE 1701	Gray	09/14/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
Richard Kevin Day v. Department of Health & Human Services	00 CSE 1735	Conner	08/20/01
Willie E Harris v. Department of Health & Human Services	00 CSE 1742	Morrison	07/26/01
Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
Albert Hooks Jr. v. Department of Health & Human Services	00 CSE 1798	Lassiter	07/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 ¹	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 ¹	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
Carlton Griffin Jr. v. Department of Health & Human Services	01 CSE 0211	Lassiter	08/20/01
Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01
Carey Austin Spencer v. Department of Health & Human Services	01 CSE 0277	Conner	07/09/01
Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
Craig Darrell McLeod v. Department of Health & Human Services	01 CSE 0301	Gray	07/31/01
Nathaniel Gunter v. Department of Health & Human Services	01 CSE 0333	Morrison	06/25/01
Cantabile Jones v. Department of Health & Human Services	01 CSE 0357	Chess	07/06/01
Arlene Locklear v. Department of Health & Human Services	01 CSE 0358	Conner	07/20/01
Nolan D Schrader v. Department of Health & Human Services	01 CSE 0362	Elkins	08/07/01
Harvey L Hughes Sr. v. Department of Health & Human Services	01 CSE 0366	Gray	06/29/01
Denise Renee Nunn v. Department of Health & Human Services	01 CSE 0368	Morrison	06/05/01
Myhammad Ali Sabakada v. Department of Health & Human Services	01 CSE 0378	Elkins	09/13/01
Eric L Woody v. Department of Health & Human Services	01 CSE 0387	Wade	08/10/01
Gilbert Monk v. Department of Health & Human Services	01 CSE 0390	Lassiter	07/02/01
David L Trammel Jr. v. Department of Health & Human Services	01 CSE 0391	Chess	06/26/01
Ralph A Terry v. Department of Health & Human Services	01 CSE 0405	Gray	06/29/01
Johnny Caldwell v. Department of Health & Human Services	01 CSE 0415	Conner	07/09/01
Timothy Ray Ledford v. Department of Health & Human Services	01 CSE 0416	Elkins	06/29/01
Leon B Featherson v. Department of Health & Human Services	01 CSE 0423	Wade	08/10/01
Robert Griffin v. Department of Health & Human Services	01 CSE 0430	Morrison	07/02/01
Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
Luther W Covington v. Department of Health & Human Services	01 CSE 0438	Conner	07/20/01
Carl Franklin Slempp v. Department of Health & Human Services	01 CSE 0449	Morrison	07/12/01
Tennis Lee Perry v. Department of Health & Human Services	01 CSE 0450	Chess	07/06/01
Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
Gregory Morgan v. Department of Health & Human Services	01 CSE 0498	Elkins	05/24/01
Malik J Flamer v. Department of Health & Human Services	01 CSE 0501	Wade	07/12/01
Armenous Dobson III v. Department of Health & Human Services	01 CSE 0519	Morrison	09/06/01
George Foster Still v. Department of Health & Human Services	01 CSE 0526	Elkins	09/13/01
John Winstead v. Department of Health & Human Services	01 CSE 0562	Conner	06/08/01
Raymond A McDonald v. Department of Health & Human Services	01 CSE 0592	Gray	07/18/01
Carson C Clark Jr. v. Department of Health & Human Services	01 CSE 0600	Morrison	07/19/01
Paul Williams v. Department of Health & Human Services	01 CSE 0606	Lassiter	07/19/01
Thomas J Lippa v. Department of Health & Human Services	01 CSE 0609	Elkins	06/27/01
Boyd H Tucker v. NC Child Support Centralized Collection	01 CSE 0618	Wade	05/31/01
Joseph E Rudd Jr. v. Department of Health & Human Services	01 CSE 0621	Gray	05/29/01
Shirley W Pendergrass v. Department of Health & Human Services	01 CSE 0622	Mann	09/11/01
Manuel Lee Thomas v. Department of Health & Human Services	01 CSE 0623	Morrison	07/19/01
Kirk M White v. Department of Health & Human Services	01 CSE 0625	Lassiter	06/05/01

CONTESTED CASE DECISIONS

Walter L Sloan Jr. v. Department of Health & Human Services	01 CSE 0626	Wade	08/03/01
Kevin R Ross v. Department of Health & Human Services	01 CSE 0631	Elkins	06/05/01
Kelvin R Leonard v. Department of Health & Human Services	01 CSE 0633	Elkins	06/05/01
Steven Rodger Malysz v. Department of Health & Human Services	01 CSE 0649	Gray	06/05/01
Forrest W Crutchfield v. Department of Health & Human Services	01 CSE 0651	Morrison	08/02/01
Raul Villanueva v. Department of Health & Human Services	01 CSE 0652	Morrison	08/02/01
Allen Getzinger v. Department of Health & Human Services	01 CSE 0654	Lassiter	08/08/01
Robert Lee Scott Jr. v. Department of Health & Human Services	01 CSE 0656	Conner	07/20/01
Christopher R Miller v. Department of Health & Human Services	01 CSE 0678	Lassiter	07/19/01
Larry O Anthony v. Department of Health & Human Services	01 CSE 0681	Lassiter	07/30/01
Dennis Green v. Department of Health & Human Services	01 CSE 0682	Gray	08/02/01
Tony Eugene Johnson v. Department of Health & Human Services	01 CSE 0684	Mann	09/11/01
Lynn S Jowers v. Department of Health & Human Services	01 CSE 0688	Elkins	06/25/01
Charles John DaBella v. Department of Health & Human Services	01 CSE 0690	Conner	07/20/01
Kou Yang v. Department of Health & Human Services	01 CSE 0692	Gray	08/02/01
George D Moore v. Department of Health & Human Services	01 CSE 0693	Wade	08/03/01
Anthony C Lambert v. Department of Health & Human Services	01 CSE 0696	Morrison	07/11/01
Benjamin R Norris v. Department of Health & Human Services	01 CSE 0698	Lassiter	07/30/01
Jerlean Artis v. Department of Health & Human Services	01 CSE 0704	Mann	09/11/01
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Nehemiah Patrick Holliday, Jr. v. Department of Health & Human Services	01 CSE 0764	Morrison	08/16/01
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Willie Lee Midgette Jr. v. Department of Health & Human Services	01 CSE 0822	Lassiter	08/20/01
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Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
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Deona Renna Hooper v. Co. Police Program, Co. Police Administrator 00 DOJ 2177 Wade 06/22/01

Alarm Systems Licensing Board

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 Benjamin Sabbath Krizon v. Alarm Systems Licensing Board 01 DOJ 1303 Conner 09/14/01

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 Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System 00 DST 0776 Gray 07/06/01 16:04 NCR 384

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 Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gulley Jr., (Agent) v. NC DENR (Brunswick County Health Department) 00 EHR 1214¹ Gray 08/07/01 16:05 NCR 463
 Albert Galluzzo, James T. Gulley, Jr. (Agent) v. NC DENR 00 EHR 1245¹ Gray 08/07/01 16:05 NCR 463
 David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department) 00 EHR 1249¹ Gray 08/07/01 16:05 NCR 463
 David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department) 00 EHR 1250¹ Gray 08/07/01 16:05 NCR 463
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NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01		
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NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01		
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Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01		
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MISCELLANEOUS

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Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01		
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Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01

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Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01
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