

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
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16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
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17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
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17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

END OF REQUIRED COMMENT PERIOD

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

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

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

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

**EXECUTIVE ORDER NO. 22
BUDGET MANAGEMENT FOR FISCAL YEAR 2002-03**

WHEREAS, the 2001 General Assembly enacted Senate Bill 1005 (codified as Session Law 2001-424) in September 2001; and,

WHEREAS, it is apparent that the budget adjustment legislation currently under consideration by the House and Senate will not be ratified by the General Assembly and signed into law by the Governor by the end of the fiscal period ending June 30, 2002; and,

WHEREAS, the authorizations included in Senate Bill 1005 continue in effect until amended by the General Assembly and signed into law by the Governor; and,

WHEREAS, the revenue projections on which Senate Bill 1005 was formulated have not been realized; and,

WHEREAS, the Governor, based on information provided to him from the Office of State Budget and Management (OSBM) has determined that the total expenditures for the State for the 2002-03 fiscal period as set forth in Senate Bill 1005 will exceed total receipts unless action is taken; and,

WHEREAS, Article III, Section 5(3) of the North Carolina Constitution requires the Governor to effect the necessary economies in State expenditures to insure that the fiscal period budget be balanced.

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

OSBM, as directed by the Governor, may take any step necessary to insure that a deficit is not incurred for the 2002-03 fiscal period including, but not limited to, continuing to rely on any measure authorized by Executive Order No. 19.

This Executive Order is effective July 1, 2002, and shall remain in effect, as written, until terminated or amended at the Governor's direction.

Done in the Capital City of Raleigh, North Carolina, this 27th day of June 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

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

U.S. Department of Justice

Civil Rights Division

JDR:MJP:SMC:cp
DJ 166-012-3
2002-1189

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

April 10, 2002

Mr. Richard J. Rose, Esq.
Poyner and Spruill
PO Box 353
Rocky Mount, NC 27802-0353

Dear Mr. Rose:

This refers to four annexations (Ordinance Nos. 0-2001-31, 0-2001-38, 0-2001-50, and 0-2001-65) and their designation to districts of the City of Rocky Mount in Edgecombe and Nash Counties, NC, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 1, 2002.

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

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and)
 Use Tax for the period of November 1, 1993)
 through October 31, 1999 by the Secretary)
 of Revenue)
)
)
 vs.)
)
 Thomas L. Stanley and Patty V. Stanley,)
 Taxpayers)

ADMINISTRATIVE DECISION
Number: 382

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on November 29, 2001, upon a petition filed by Thomas L. Stanley and Patty V. Stanley (hereinafter "Taxpayers") for administrative review of the Final Decision of the Secretary of Revenue entered on November 27, 2000 sustaining the proposed assessment of additional sales and use tax for the period of November 1, 1993 through October 31, 1999.

Chairman Richard H. Moore, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, attorney at law participating.

Matthew E. Bates, attorney at law, represented the Taxpayers at the hearing. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

After the hearing, the Board took the matter under advisement and directed the parties to submit post hearing briefs which (1) specify the taxes in dispute in this matter; and (2) clarify the issues that are before the Board for determination. On March 18, 2002, the Taxpayers, through counsel, filed with the Board their post-hearing brief. On March 19, 2002, the Secretary of Revenue, through counsel filed the post-hearing brief. On March 20, 2002, the Board considered the post hearing briefs filed in this matter by the parties.

The Taxpayers appeal from an adverse Final Decision of the Secretary of Revenue entered on November 27, 2000, sustaining a proposed assessment of sales and use tax for the period at issue. The decision also sustained the 25% negligence penalty, but waived the 25% failure to file penalty and the 10% failure to pay penalty. The assessment was based upon Taxpayers' failure to remit sales tax on the gross receipts they received as leased payments from their wholly owned corporation, which was engaged in the construction business. Taxpayers leased heavy equipment to the corporation pursuant to written lease agreements and received monthly lease payments of \$10,000. The Taxpayers included the lease payments as rental income on their federal individual income tax returns and deducted the depreciation expenses associated with the equipment.

At the administrative hearing before the Assistant Secretary, the Taxpayers contended that no tax was due on the gross receipts from the lease of the equipment because they were not engaged in the business of leasing the equipment. The Taxpayers also disputed the calculation of the tax assessment. On November 27, 2000, the Assistant Secretary of Revenue entered the Final Decision sustaining the proposed assessment of sales and use tax for the period at issue. Thereafter the Taxpayers filed a timely Notice of Intent and Petition for Administrative Review of the Final Decision with the Board.

ISSUE

The issues considered by the Board on review of this matter are stated as follows:

1. Are the Taxpayers engaged in the business of leasing or renting tangible personal property and therefore liable for tax on the gross receipts derived from the lease or rental of such property?
2. Were Taxpayers' leases or rentals of tangible personal property "occasional and isolated" sales and not subject to sales tax?

EVIDENCE

IN ADDITION

The evidence presented at the hearing before the Assistant Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated August 20, 1999 from the Secretary of Revenue to the Assistant Secretary of Revenue (Assistant Secretary), designated Exhibit E-1
2. Face sheet of audit report and auditor's comments dated December 29, 1999, designated Exhibit E-2.
3. Notice of Sales and Use Tax - Audit Assessment dated January 17, 2000, designated Exhibit E-3.
4. Letter dated April 12, 2000 and attached affidavits from the Taxpayers' attorney to the Sales and Use Tax Division (Division), designated Exhibit E-4.
5. Letter dated April 12, 2000 and attached Application for Hearing and Objection to Assessment from the Taxpayers' attorney to the Division, designated Exhibit E-5.
6. Letter dated May 3, 2000 from the Division to the Taxpayers' attorney, designated Exhibit E-6.
7. Letter dated May 19, 2000 from the Division to the Taxpayers' attorney, designated Exhibit E-7.
8. Letter dated May 24, 2000 from the Taxpayers' attorney to the Division, designated Exhibit E-8.
9. Letter dated June 5, 2000 from the Division to the Taxpayers' attorney, designated Exhibit E-9.
10. Equipment Lease entitled "Equipment Lease Number One of 1992," designated Exhibit E-10.
11. "Amendment to Equipment Lease" dated June 3, 1994, designated Exhibit E-11.
12. Contract dated March 20, 1995, designated Exhibit E-12.
13. "Amendment to Equipment Lease" dated February 22, 1996, designated Exhibit E-13.
14. Copy of 1995, 1996 and 1997 Federal Income Tax returns for the Taxpayers, designated Exhibit E-14.
15. Copy of 1996 and 1997 schedules showing money paid out to the Taxpayers by the corporation, designated Exhibit E-15.
16. Copies of the Corporation's 1996 and 1997 Federal income tax returns, designated Exhibit E-16.
17. Schedule of various checks of the corporation showing equipment lease payments in 1998 and 1999, designated Exhibit E-17.
18. Sales & Use Tax Administrative Rule 07B .4401, designated Exhibit E-18.
19. Letter dated July 6, 2000 from the Assistant Secretary of Revenue to the Taxpayers' attorney, designated Exhibit E-19.
20. Petitioners' Brief for Tax Hearing submitted on August 30, 2000, designated Exhibit T-1.
21. Letter from the Assistant Secretary to the Taxpayers' attorney dated August 31, 2000, designated Exhibit E-20.
22. Memorandum dated September 14, 2000 from the Division to the Assistant Secretary, designated Exhibit E-21.
23. Letter from the Assistant Secretary to the Taxpayers' attorney dated September 14, 2000, designated Exhibit E-22.
24. Response to Memorandum dated October 12, 2000 from the Taxpayers' attorney to the Assistant Secretary, designated Exhibit T-

FINDINGS OF FACTS

The Board reviewed the following findings of fact made by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayers are sole shareholders in a Subchapter-S corporation that is engaged in the construction business.
2. The Taxpayers, as individuals, acquired certain heavy equipment and motor vehicles by both purchase and lease from different vendors and then entered into various written lease agreements with their corporation.
3. The corporation agreed to lease the equipment from the Taxpayers in exchange for the payment of monthly rent. The Taxpayers did not collect or pay sales tax on the amount of the monthly lease payments that they received from the corporation.
4. The Department proposed an assessment of additional tax, penalty and interest as a result of the Taxpayers' failure to collect and pay sales tax due on the gross receipts from the lease transactions involving the heavy equipment. No tax was assessed by the auditor on the lease or rental of motor vehicles because the Highway Use Tax was paid to the North Carolina Division of Motor Vehicles at the time the motor vehicles were titled.
5. The Taxpayers own or lease the heavy equipment individually and improperly issued a Farmer's Certificate to John Deere Credit Corporation which enabled them to secure the 1% State preferential rate of tax on the cost of the equipment.
6. Some of the equipment obtained from John Deere Credit Corporation was used by the Taxpayers in clearing land and some was sub-leased to their corporation.
7. The Department has assessed the 6% combined State and local tax on the land clearing equipment and on the gross receipts from the equipment leased to the corporation.
8. Some lease payments for some of the equipment leased to the corporation by the Taxpayers were paid directly to John Deere Credit Corporation by the corporation rather than by the Taxpayers.
9. The original equipment lease between the Taxpayers and the corporation titled "Equipment Lease Number One of 1992" required the Taxpayers to provide off road heavy equipment, communication equipment, and motor vehicles to the corporation for its use on a net lease basis.
10. The Taxpayers received a monthly lump sum rental payment of \$10,000.00 and retained full ownership of the equipment during the term of the lease.

IN ADDITION

11. The Taxpayers acknowledged that they received the rental income paid by the corporation and deducted the depreciation expenses associated with the equipment on their individual income tax returns. The corporation also reported the rental payments as expenses and deducted them from gross income on its federal corporate income tax return.
12. The Notice of Proposed Assessment was mailed to Taxpayers on March 17, 2000.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. The Taxpayers operated a business to lease equipment to the corporation as defined in N.C.G.S. 105-164.3(1). " 'Business' shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect."
2. Pursuant to N.C.G.S. 105-164.3(5) the Taxpayers were "engaged in business" since they maintained in this State tangible personal property for the purpose of lease or rental.
3. N.C.G.S. 105-164.4(a)(2) requires that "The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting of tangible personal property, . . ."
4. The statutory definitions are clear and unambiguous and are supported by Sales and Use Tax Administrative Rule 07B .4401, which provides, in part, that ". . . The tax shall be computed and paid on such gross receipts, gross proceeds, or rental payable without deduction whatsoever for any expense incident to the conduct of business. The tax is due and payable at the time the lessor bills the lessee for the rent whether such billing is for the lump sum rental or on a monthly or other periodic basis."
5. The limited liability, asset protection and improved corporate financial statement advantages obtained by the Taxpayers from entering into the lease agreements with their corporation constitute activities engaged in by them for benefit or personal advantage. The advantages and benefits of the lease agreement, both direct and indirect, constitute conducting business under N.C.G.S. 105-164.3(1).
6. An entity is engaged in business and required to collect sales tax whether or not it holds itself open to the general public, or instead limits its transactions to selective customers or to related retailers.
7. The frequency of the transactions, not the number of customers, determines whether an entity's sales qualify as occasional and isolated transactions.
8. The frequency and recurring nature of the Taxpayers' leasing transactions precludes their being properly described as "occasional" or "isolated" sales pursuant to N.C.G.S. 105-164.3(1).
9. The assessment was based upon the best information available pursuant to N.C.G.S. 105-242.1 and the Taxpayers have not presented any evidence to indicate that it is incorrect.
10. The same issues involving the application of the phrase "engaged in business" to the lease or rental of tangible personal property by a sole shareholder to a wholly owned corporation only and not to the general public were addressed at a hearing before the Secretary of Revenue in Final Decision 90-68. In that final decision, the Department's determination that a taxable rental occurred when an individual leased equipment to his wholly owned corporation was upheld by the Deputy Secretary of Revenue. That final decision has not been overruled nor its effect modified by a change to the applicable statute or administrative rule.
11. Notice of assessment for the period November 1, 1993 through October 31, 1999, was properly issued pursuant to N.C.G.S. 105-241.1.
12. Taxpayers timely protested his Notice of Proposed Amended Assessment dated March 17, 2000.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Taxpayers, husband and wife, are the sole shareholders in a Subchapter-S corporation that is engaged in the construction business. The Taxpayers, as individuals, acquired certain heavy equipment and motor vehicles by both purchase and lease from different vendors and then entered into various written lease agreements with their corporation that provided for the corporation to lease the equipment from the Taxpayers in exchange for the payment of monthly rent. The Taxpayers did not collect or pay sales tax on the amount of the monthly lease payments that they received from the corporation.

The Department proposed an assessment of additional tax, penalty and interest as a result of the Taxpayers' failure to collect and pay sales tax due on the gross receipts from the lease transactions involving the heavy equipment. No tax was assessed on the lease or rental of the motor vehicles because the Highway Use Tax was paid by the Taxpayers to the North Carolina Department of Motor Vehicles at the time the motor vehicles were titled. The Department of Revenue takes the position that the Taxpayers are engaged in the business of leasing construction and grading equipment and motor vehicles as a result of the rental transactions with their corporation and are therefore responsible for collecting and remitting sales tax on the gross rental receipts. The Taxpayers respond that their activities do not constitute being "engaged in business" as that phrase is defined in the applicable statute.

IN ADDITION

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. In this matter, the Taxpayers failed to provide evidence to overcome the presumption. Thus, the proposed tax assessment is correct. The Board having conducted a hearing in this matter and having considered the petition, the briefs, the record, the Final Decision of the Assistant Secretary, and the authorities cited, concludes that there is sufficient evidence in the record to confirm the Assistant Secretary's decision regarding the assessment of the sales tax for the period of November 1, 1993 through October 31, 1999; however the Board reverses the Assistant Secretary's decision regarding the 25% negligence penalty imposed against the Taxpayers.

IT IS THEREFORE ORDERED that the Assistant Secretary's decision sustaining the assessment of the sales tax for the period of November 1, 1993 through October 31, 1999 be and is hereby **confirmed**. The Board further Orders that the Assistant Secretary's decision regarding the 25% negligence penalty imposed against the Taxpayers be **reversed** and Orders that the Final Decision be modified accordingly.

Made and entered into the 4th day of June 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Refund Claim for Corporate Income)
Taxes for the year ending December 31,)
1991 by **CENTRAL TELEPHONE**)
COMPANY)
)
vs.)
)
)
N.C. DEPARTMENT OF REVENUE)

ADMINISTRATIVE DECISION

Number: 383
Docket No. 2000-5 (Issues I & II)
Docket No. 2000-5 (Issue III)

The Regular Tax Review Board (hereinafter "Regular Board") convened a hearing in the office of the State Treasurer in the City of Raleigh, Wake County, North Carolina, on Thursday, November 29, 2001, to consider the Petition of **Central Telephone Company** (hereinafter "Taxpayer"), for administrative review of the Assistant Secretary of Revenue's Final Decision, entered on December 29, 2000, that denied Taxpayer's refund claim for corporate income taxes for the year ended December 31, 1991.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Paul H. Frankel, and Craig B. Fields of Morrison & Foerster, LLP, and Leigh Levine, of Alston & Bird, LLP represented the Taxpayer at the hearing. Kay Miller Hobart, Assistant Attorney General, represented the Secretary of Revenue at the hearing.

This Matter is before the Regular Board on Taxpayer's Petition for Administrative Review of the Final Decisions entered on December 29, 2000 and November 19, 2001. The Taxpayer is a corporation headquartered in Chicago, Illinois that owns and operates four local telephone service franchises through its four separate company divisions located in Iowa, Minnesota, Nevada and North Carolina. In 1991, the Taxpayer sold the two operating divisions located in Iowa and Minnesota and included the gain from the sale as business income subject to apportionment on its North Carolina Corporate Income and Franchise Tax Return, filed on September 16, 1992, for the year ended December 31, 1991.

On March 23, 2001, the Taxpayer filed a Petition with the Regular Board requesting administrative review of the Final Decision entered by Michael A. Hannah, then Assistant Secretary with the Department of Revenue, on December 29, 2000. (Docket No. 2000-5 Issues I & II). In this decision, the Assistant Secretary ruled on Issues one and two, but held the record open, and ordered the Taxpayer to produce certain documents, and ruled that the third issue would be taken under advisement pending further proceedings in the matter.

On October 30, 2001, the Regular Board notified the parties of the hearing scheduled for November 29, 2001 at 9:00 a.m. to consider Taxpayer's Petition. On November 19, 2001, Eugene J. Cella, Assistant Secretary of Revenue, rendered the Final Decision concerning Issue three of Taxpayer's refund claim. Assistant Secretary Cella issued this decision even though the Taxpayer had failed to produce the documents as ordered by Assistant Secretary Hannah in the Final Decision rendered on December 29, 2000.

On November 19, 2001, the Attorney General, on behalf of the Secretary of Revenue, filed with the Regular Board a Motion to Dismiss Taxpayer's Petition and a Motion to Consolidate and Continue the Hearing.

At the hearing, the Taxpayer, through counsel, filed a brief opposing the Secretary of Revenue's Motion to Dismiss and the Secretary of Revenue's Motion to Consolidate and Continue the Hearing. The Taxpayer also filed an Amended Petition with the Regular Board in response to the Final Decision issued by Assistant Secretary Cella on November 19, 2001. After considering arguments of counsel, the Regular Board denied the Secretary of Revenue's motion to continue the hearing.

After the hearing, the Board took the matter under advisement and instructed the parties to file post-hearing briefs regarding this matter. The record remained open pending submission of the post-hearing briefs. On January 14, 2002, the Secretary of Revenue, through counsel, filed the post-hearing brief with the Regular Board. On February 12, 2002, the Taxpayer, through counsel, filed a reply brief with the Regular Board. On March 20, 2002, the Regular Board reviewed the Petition and the Amendment to the Petition, the Final Decisions, the Briefs, the Motion to Dismiss filed by the Secretary of Revenue and the record of the proceeding before Assistant Secretary Hannah on August 16, 2000.

IN ADDITION

After reviewing the documents filed with the Regular Board in this matter, and considering the record of the proceeding before the Assistant Secretary and the arguments presented by counsel, the Regular Board finds as follows:

1. The Taxpayer, on April 13, 1993, petitioned the Augmented Tax Review Board (hereinafter "Augmented Board") for permission to employ an alternative allocation method to determine its net income for corporate income tax purposes for the year ended December 31, 1991.
2. As set forth in the Petition to the Augmented Board, the Taxpayer determined that the gain from the sale of the two divisions was business income to be apportioned under the rules and regulations promulgated under G.S. 105-130.4.
3. The Taxpayer filed a Supplement to the above-referenced Petition with the Augmented Board on May 8, 1995.
4. The Augmented Board conducted a hearing on Taxpayer's Petition and Supplement to the Petition requesting permission to employ an alternative method of allocation to determine its corporate income tax liability to North Carolina. At this hearing, the Augmented Board considered evidentiary exhibits submitted by the Taxpayer which included the Petition, the Supplement to the Petition, the 1991 Corporate Income Tax Return, and a chart demonstrating the alternatives of separate accounting and the bifurcated apportionment to the applicable statutory allocation formula.
5. The Augmented Board issued Administrative Decision No. 444 on June 16, 1995 denying Taxpayer's request to employ an alternative apportionment method (i.e. separate accounting method and/or bifurcated apportionment formula) to determine its corporate income tax liability to North Carolina for year ended December 31, 1991. (See Affidavit of Harlan E. Boyles, then State Treasurer and Chairman to the Board, dated September 7, 2000).
6. The Augmented Board ordered the Taxpayer to employ the method of allocation prescribed by the North Carolina General Statutes to determine its corporate income tax liability to North Carolina for year ended December 31, 1991.
7. On July 17, 1995, the Taxpayer filed a petition in Wake County Superior Court for judicial review of the Augmented Board's Administrative Decision No. 444 and filed an amended North Carolina Corporate Income Tax Return for 1991, with Department of Revenue, requesting a refund of \$4,148,822. The Taxpayer calculated the refund amount by using the bifurcated apportionment formula.
8. Assistant Secretary Hannah conducted a hearing on August 16, 2000, to consider Taxpayer's claim of refund in the amount of \$4,148,822, for tax year ended December 31, 1991. Assistant Secretary Hannah issued his Final Decision on December 29, 2000 that denied Taxpayer's refund claim based upon its request to use a bifurcated apportionment formula, separate accounting or any other modified apportionment formula.
9. In denying Taxpayer's refund claim, Assistant Secretary Hannah ruled upon the same issues presented by the Taxpayer to the Augmented Board.
10. Assistant Secretary Cella entered his Final Decision on November 19, 2001 with regard to the third issue for resolution of Taxpayer's refund claim. This issue addressed Taxpayer's constitutional argument. A final decision was rendered even though the Taxpayer failed to comply with Assistant Secretary Hannah's order that certain documents be produced that pertain to Issue three of Taxpayer's claim for refund.
11. The Augmented Board already ruled on the issues raised by the Taxpayer in its claim for a refund before Assistant Secretary Hannah.

Based upon the foregoing findings of fact, the Regular Board makes the following conclusions of law:

1. G.S. 105-130.4(t) permits the Augmented Board to adjust the allocation or apportionment method provided for in the statute in situations where "the method of allocation or apportionment as administered by the Secretary has operated or will so operate as to subject the [Taxpayer] to taxation on a greater portion of its income than is reasonably attributable to business or earnings within this State."
2. Pursuant to G.S. 105-130.4, the relief requested by the Taxpayer in its claim for a refund is strictly within the authority of the Augmented Board and is not within the scope of administrative review of the Regular Board.
3. The Augmented Board is the proper forum to address the issue of whether an alternative formula or other method accurately reflects the income attributable to Taxpayer's business in this State.
4. The Augmented Board has rendered a decision on Taxpayer's Petition and Supplement to the Petition that was filed pursuant to G.S. 105-130.4(t). The issues ruled upon by the Augmented Board are identical to the issues presented by the Taxpayer at the hearing before the Assistant Secretary.
5. In denying the Taxpayer's claim for a refund in the amount of \$4,148,822, the Assistant Secretary properly ruled that the Secretary of Revenue does not have authority to permit the Taxpayer to use any apportionment formula other than the one required by G.S. 105-130.4(n). The Assistant Secretary also ruled that the Secretary of Revenue does not have authority to modify the apportionment factor as requested by Taxpayer or permit the Taxpayer to use separate accounting.
6. The gain from the sale of the two divisions was business income to be apportioned under the rules and regulations promulgated under G.S. 105-130.4 and the Taxpayer made such a determination when it petitioned the Augmented Board for statutory relief.
7. The Regular Board lacks jurisdiction to consider the arguments presented by the Taxpayer in this matter. Original jurisdiction is within the exclusive province of the Augmented Board.

IN ADDITION

8. The Regular Board, which is an administrative body, does not have authority or jurisdiction to rule upon the constitutionality of a statute. *Great American Insurance Company v. Gold*, 254 N.C. 168 (1961). Thus, Taxpayer's constitutional claim is not an issue that the Regular Board is empowered to determine.
9. The Secretary of Revenue's motion to dismiss Taxpayer's Petition should be granted because this matter is not properly before the Regular Board.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that this matter be and is hereby **Dismissed**.

Made and entered into the 4th day of June 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Denial of Refund of Sales and Use)
Tax for the period of June 1, 1997 through)
March 31, 2000 by Secretary of Revenue)
)
)
)
)
vs.)
)
Coreslab Structures, Inc.)

ADMINISTRATIVE DECISION
Number: 384

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on March 20, 2002, upon a petition filed by Coreslab Structures, Inc. (hereinafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on August 28, 2001, denying Taxpayer's claim for refund of sales and use tax for the period of June 1, 1997 through March 31, 2000.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, attorney at law participating.

Eric D. Levine, attorney at law, represented the Taxpayer at the hearing. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

The Taxpayer petitions the Board for administrative review of the adverse decision of the Assistant Secretary sustaining the Department of Revenue's denial of Taxpayer's refund claim of sales and use tax for the period of June 1, 1997 through March 31, 2000. Taxpayer submitted a refund claim in the amount of \$79,100.88 for sales tax billed and collected on tangible personal property used in its performance contracts. Pursuant to N.C.G.S. 105-266.1, the Department denied the Taxpayer's refund claim. The Taxpayer filed a protest to the denied refund claim and timely requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision on August 28, 2001. Pursuant to G.S. 105-241.2, the Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUES

The issues considered by the Assistant Secretary of Revenue in rendering the final decision in this matter are stated as follows:

- 1. Is the Taxpayer entitled to retain tax collected from customers, which is an amount in excess of the amount of tax paid on the cost of the tangible personal property used in the performance of a contract?
- 2. Was the tax erroneously collected by the Taxpayer?

EVIDENCE

The evidence presented at the hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

- 1. Copy of the Taxpayer's AS/RP-1, Registration Application, dated January 14, 1994, designated Exhibit E-1.
- 2. Taxpayer's claim for refund, Form E-588, Claim for Refund of State and County Sales and Use Taxes, and related backup documentation, dated May 5, 2000, designated Exhibit E-2.
- 3. Letter dated July 13, 2000 from the Taxpayer's representative to the Department, designated Exhibit E-3.
- 4. Letter dated August 10, 2000 from the Interstate Examination Division to the Taxpayer's representative, designated Exhibit E-4.
- 5. Power of Attorney dated September 5, 2000 from the Taxpayer's representative on behalf of the Taxpayer designated Exhibit E-5.

IN ADDITION

6. Letter and monthly sales and use tax report documentation dated November 2, 2000 from the Taxpayer's representative to the Interstate Examination Division, designated Exhibit E-6.
7. Letter dated November 15, 2000 from the Taxpayer's representative to the Interstate Examination Division, designated Exhibit E-7.
8. Copy of the Taxpayer's procedures on lump sum contracts dated December 13, 2000, designated Exhibit E-8.
9. Letter dated December 20, 2000 from the Interstate Examination Division to the Taxpayer's representative, designated Exhibit E-9.
10. Letter dated January 2, 2001 from the Taxpayer's representative to the Secretary of Revenue, designated Exhibit E-10.
11. Facsimile transmittal sheet dated January 18, 2001 and refund summary sheet from the Taxpayer's representative to the Interstate Examination Division, designated Exhibit E-11.
12. Letter dated February 5, 2001 from the Sales and Use Tax Division to the Taxpayer's representative, designated Exhibit E-12.
13. Sales and Use Tax Bulletin No. 33 dated April 15, 1991, designated Exhibit E-13.
14. Sales and Use Tax Administrative Rule 07B .2608 dated June 28, 1996, designated Exhibit E-14.
15. Sales and Use Tax Technical Bulletin 31-1 dated October 15, 1998, designated Exhibit E-15.
16. Sales and Use Tax Technical Bulletin 31-2 dated October 15, 1998, designated Exhibit E-16.
17. Sales and Use Tax Technical Bulletin 31-3 dated October 15, 1998, designated Exhibit E-17.
18. Redacted Final Decision, Docket No. 94-10 dated October 17, 1994, designated Exhibit E-18.
19. Memorandum dated March 13, 2001 from the Secretary of Revenue to the Acting Assistant Secretary of Tax Administration, designated Exhibit E-19.
20. Letter dated March 26, 2001 from the Acting Assistant Secretary of Revenue to the Taxpayer's representative, designated Exhibit E-20.
21. Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated Exhibit E-21.
22. Letter and documentation dated May 26, 2001 from the Taxpayer's Vice President and General Manager to the Acting Assistant Secretary of Revenue, designated Exhibit E-22.
23. Memorandum dated June 8, 2001 and attached copies of various Taxpayer's invoices from the Sales and Use Tax Division to the Acting Assistant Secretary of Revenue, designated Exhibit E-23.
24. Letter dated June 26, 2001 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-24.
25. Letter dated July 3, 2001 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-25.
26. Construction contract between the Taxpayer and a sub-contractor dated December 21, 1998, designated Exhibit TP-1.
27. Subcontract agreement between the Taxpayer and a sub-contractor dated October 7, 1999, designated Exhibit TP-2.
28. Subcontract agreement between the Taxpayer and a sub-contractor dated February 12, 2001, designated Exhibit TP-3.

FINDINGS OF FACT

The Board reviewed the following findings of fact made by the Assistant Secretary of Revenue in the final decision issued in this matter:

1. The Taxpayer is a contractor and subcontractor, which constructs and erects customized concrete structural buildings such as those used in buildings, stadiums and parking garages.
2. The Taxpayer's concrete products are produced at the Taxpayer's manufacturing facility in Atlanta, Georgia and erected or installed at the customers' job sites in North Carolina pursuant to performance contracts.
3. The Taxpayer calculated "sales tax" on manufacturing labor and marked-up the cost of the tangible personal property used in their performance contracts. The sales tax was separately stated on the Taxpayer's invoices provided to its customers. Charges for erection labor were excluded from sales tax on the Taxpayer's invoices.
4. The charge labeled "sales tax" on the Taxpayer's invoices to its customers was equal to the amount of applicable State and local sales tax.
5. The Taxpayer collected no more money from their customers than the total fixed contract amount agreed upon by its customers.
6. The Taxpayer refused to refund its customers the amount of the sales tax charged on invoices and collected in excess of the actual use tax due on their cost of materials used in their performance contracts.
7. No written advice regarding the correct application of tax to the Taxpayer's business, in particular its billing practices, was sought by the Taxpayer or received from the Department.
8. Portions of the refund amount claimed by the Taxpayer have already been refunded to a church or local governmental organizations based upon the invoices the Taxpayer furnished to its customers. This refund was obtained by the church and governmental organizations based on the information furnished by the Taxpayer's customers.

9. The Taxpayer's refund claim was timely filed pursuant to N.C.G.S. 105-266.1.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in the final decision:

1. The Taxpayer did not request or receive written advice on his business and billing practices from the Department to protect him pursuant to N.C.G.S. 105-264.
2. The amount of sales tax collected by the Taxpayer from its customers in excess of the amount of use tax due on its purchases of materials used in its performance contracts represents an erroneous collection pursuant to N.C.G.S. 105-164.11.
3. Portions of the refund amount claimed by the Taxpayer have already been refunded to a church or governmental organization pursuant to N.C.G.S. 105-164.14.
4. The refund claim was timely filed pursuant to N.C.G.S. 105-266.1.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Taxpayer is primarily a manufacturer and subcontractor who provides its services and products to general contractors. Taxpayer submits a bid to the general contractor, which lists only the total contract price for the project and furnished materials. The bid amount includes the following costs incurred by the Taxpayer: raw materials, labor, overhead, freight profit, erection services and taxes. The bid is a fixed sum, which does not itemize the various components and services, which comprise the contract price.

The issue for determination by the Board on administrative review of this matter is whether the Taxpayer is entitled to a refund of the amount of tax paid to the Department of Revenue which presents the excess of the amount of tax paid on the cost of tangible personal property used in the performance of a contract.

From a review of the record, it is not disputed that Taxpayer is as a contractor and subcontractor that produces and erects customized concrete structural buildings and components such as those used in buildings, stadiums and parking garages. The product is produced at the Taxpayer's manufacturing facility near Atlanta, Georgia and erected or installed at various job sites in North Carolina and other states pursuant to performance contracts.

There are invoices by the Taxpayer to its subcontractor customers, that reflect that the Taxpayer calculated "sales tax" on manufacturing labor and marked up the cost of the tangible personal property used in their performance contracts and set this amount out separately on the invoices provided to its customers. Charges for erection labor were excluded from sales tax on the Taxpayer's invoices. As a contractor, the Taxpayer was only liable for remitting use tax on the cost basis of the raw materials used in its performance contracts in North Carolina. For the period at issue, an amount was paid to the Department of Revenue in excess of use tax that was actually due on the cost of the raw materials.

In the petition to this Board, the Taxpayer contends that the payment of the excise tax has no relationship to the payment by the general contractor because all contracts were for a lump sum amount. The Taxpayer also contends that it is entitled to a refund because it paid an amount in excess of use tax that was actually due on the cost of the raw materials. At the hearing, the Taxpayer argued that the Assistant Secretary placed too much emphasis upon specific invoices that listed specific amounts for excise tax and ignored the other documents in record. In light of Taxpayer's argument, the Board deems it necessary to remand this matter to the Assistant Secretary for further proceeding and specific findings regarding Taxpayer's billing procedures for the period at issue. In particular, the Assistant Secretary should determine if the Taxpayer issued the specific invoices simultaneously with the applications for payment when it billed its customers under the performance contracts. The Assistant Secretary should also determine the specific amount that the Department of Revenue has already refunded to the nonprofits in this matter and the income tax consequences of the amount of refund claimed by the Taxpayer for the period at issue.

THEREFORE, it is the decision of the Board to **Remand** this matter back to the Assistant Secretary for a further proceeding.

Made and entered into the 17th day of June 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____

IN ADDITION

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and)
Use Tax for the period of November 1, 1993)
through September 30, 1996 by the Secretary)
of Revenue)

ADMINISTRATIVE DECISION

Number: _____ 385 _____

vs.)

Rickie Edward Wilkinson d/b/a Rickie's)
One Stop)

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on March 20, 2002, upon a petition filed by Rickie Edward Wilkinson d/b/a Rickie's One Stop (hereinafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on August 29, 2001, sustaining the proposed assessment of additional sales and use tax for the period of November 1, 1993 through September 30, 1996.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, attorney at law participating.

Harold J. Bender, attorney at law, represented the Taxpayer at the hearing. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

Pursuant to G.S. 105-241.1, the Department of Revenue mailed the Taxpayer a Notice of Sales and Use Tax Assessment dated December 9, 1996, assessing tax, penalty and interest totaling \$122,828.28 for the period at issue. The Taxpayer objected to the assessment and filed a timely request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision on August 29, 2001, sustaining the proposed assessment of sales and use tax for the period of November 1, 1993 through September 30, 1996. Pursuant to G.S. 105-241.2, the Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

FACTS

The Taxpayer is engaged in the business of operating retail convenience stores and also operates as a wholesale distributor of cigarettes. Following an audit, the Department of Revenue issued a notice of proposed assessment of sales and use tax. The additional tax resulted primarily from Taxpayer's under reporting of taxable sales. The Department of Revenue discovered that a significant discrepancy existed between the total monies deposited into Taxpayer's bank accounts, and the taxable and non-taxable sales reported on Taxpayer's monthly sales and use tax reports. In view of the discrepancy between the deposits made to Taxpayer's bank accounts and the gross receipts reported on Taxpayer's monthly sales and use tax reports, the auditor used an indirect method to establish Taxpayer's taxable and non-taxable sales and resulting tax liability.

ISSUE

The issue considered by the Assistant Secretary of Revenue and reviewed by the Board is stated as follows:

Is the assessment correct and properly proposed to be assessed against the Taxpayer based on the best information available?

EVIDENCE

The evidence presented at the hearing before the Assistant Secretary of Revenue and included in the record for the Board's review is stated as follows:

1. Memorandum dated August 20, 1999, from the Secretary of Revenue to the Assistant Secretary of Revenue, designated Exhibit E-1.

2. Copy of the Taxpayer's Application for Sales and Use Tax Registration and Annual Wholesale License, Form E 504, dated July 3, 1991, designated Exhibit E-2.
3. Face sheet of audit report dated November 15, 1996 and explanation of changes dated November 15, 1996, designated Exhibit E-3.
4. Notice of Sales and Use - Audit Tax Assessment dated December 9, 1996, designated Exhibit E-4.
5. Letter dated December 18, 1996, from the Taxpayer's attorney to the Sales and Use Tax Division (Division), designated Exhibit E-5.
6. Letter dated December 23, 1996, from the Taxpayer's attorney to the Division, designated Exhibit E-6.
7. Letter dated January 8, 1997, from the Division to the Taxpayer's attorney, designated Exhibit E-7.
8. Letter dated February 14, 1997, from the Personal Taxes Division to the Taxpayer's attorney, designated Exhibit E-8.
9. Letter dated July 17, 1997, from the Revenue Field Audit Supervisor to the Taxpayer's attorney, designated Exhibit E-9.
10. Letter dated July 18, 1997, from the Taxpayer's attorney to the Revenue Field Audit Supervisor, designated Exhibit E-10.
11. Copy of Subpoena to Testify Before Grand Jury dated August 22, 1997, to the Revenue Field Audit Supervisor, designated Exhibit E-11.
12. Letter dated November 26, 1997, from the Taxpayer to the Division, designated Exhibit E-12.
13. Transcript of discussion dated November 28, 1997, between the Taxpayer, Taxpayer's accountant, accountant's associate, Taxpayer's attorney, Revenue Field Audit Supervisor and examining auditor, designated Exhibit E-13.
14. Letter dated December 9, 1997, from the Division to the Taxpayer, designated Exhibit E-14.
15. Letter dated December 12, 1997, from the Taxpayer's attorney to the Revenue Field Audit Supervisor, designated Exhibit E-15.
16. Letter dated December 15, 1997, from the Taxpayer to the Division, designated Exhibit E-16.
17. Letter dated January 5, 1998, from the Division to the Taxpayer, designated Exhibit E-17.
18. Letter dated January 12, 1998, from the Taxpayer to the Secretary of Revenue and the Division, designated Exhibit E-18.
19. Letter dated February 4, 1998, from the Division to the Taxpayer, designated Exhibit E-19.
20. Letter dated February 5, 1998, from the Taxpayer to the Secretary of Revenue and the Division, designated Exhibit E-20.
21. Letter dated February 13, 1998, from the Taxpayer to the Secretary of Revenue and the Division, designated Exhibit E-21.
22. Letter dated February 26, 1998, from examining auditor to the Taxpayer's attorney, designated Exhibit E-22.
23. Letter dated March 2, 1998, from the examining auditor to the Taxpayer's attorney, designated Exhibit E-23.
24. Letter dated March 30, 1998, from the Taxpayer's attorney to the Division, designated Exhibit E-24.
25. Letter dated March 30, 1998, from the Taxpayer to the Secretary of Revenue and the Division, designated Exhibit E-25.
26. Letter dated May 1, 1998, from the Division to the Taxpayer's attorney, designated Exhibit E-26.
27. Letter dated December 13, 1999, from the Division to the Taxpayer's attorney, designated Exhibit E-27.
28. Letter dated March 24, 2000, from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-28.
29. Letter dated May 24, 2000, from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit E-29.
30. Letter dated May 25, 2000, from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-30.
31. Letter dated July 25, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-31.
32. Letter dated August 3, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-32.
33. Statements and daily sales summaries presented at the hearing for various periods from January 11, 1999 through April 28, 2000, designated Exhibit T-1.
34. Information and tobacco sales summaries explaining the buy down program by cigarette manufacturers for February, April and May, 2000 presented at the hearing, designated Exhibit T-2.
35. Letter dated November 1, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-1
36. Memorandum dated November 3, 2000 from the Division to the Revenue Field Auditor Supervisor, designated Exhibit E-33.
37. Letter and attached affidavits dated November 13, 2000 from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit T-3.
38. Letter dated November 16, 2000 and the attached affidavit by the Revenue Field Auditor Supervisor dated November 13, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-2.

IN ADDITION

39. Letter dated November 28, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-3.
40. Letter dated December 5, 2000 from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit T-4.
41. Letter dated December 6, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-4.
42. Letter dated December 12, 2000 and the attached supplemental affidavit by the Revenue Field Auditor Supervisor dated December 11, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-5.
43. Letter dated December 18, 2000 from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit T-5.
44. Letter dated December 27, 2000 from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit T-6.
45. Letter dated December 29, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-6.
46. Letter dated April 18, 2001 from the Acting Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-7.
47. Letter dated July 26, 2001 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-8

FINDINGS OF FACT

The Board reviewed the following findings of fact made by the Assistant Secretary of Revenue in the final decision issued in this matter:

1. The Taxpayer operates convenience stores making both retail and wholesale sales.
2. Cash deposits into the Taxpayer's bank accounts greatly exceed and do not reconcile with the amounts reported on the Taxpayer's sales and use tax returns and individual income tax returns for the audit period.
3. The Department's auditors used indirect means to establish the Taxpayer's taxable sales for the audit period.
4. The Department has allowed beneficial adjustments in the audit report for all properly documented cigarette manufacturer "buy down funds", gasoline sales, and wholesale sales.
5. The Taxpayer's sales records, which include daily sales summaries for the audit period, were in the custody of the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms until provided to the Assistant Secretary on May 22, 2001. These partial records are not necessarily exculpatory since they do not explain cash deposits, which greatly exceed the amount, reported on sales and income tax returns.
6. The daily sales summaries and letters from tobacco manufacturers and gasoline wholesalers presented at the hearing are for periods outside the audit period.
7. The Taxpayer did not provide any information at the hearing to overcome the presumption of correctness of the proposed assessment.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in the final decision:

1. The Taxpayer was at all material times, a retailer and wholesaler engaged in the business of making sales of taxable and non-taxable tangible personal property.
2. A retailer is required to keep suitable records of the gross receipts of sales of a business and any other books or accounts which may be necessary to determine the amount of tax for which the retailer is liable pursuant to N.C.G.S. 105-164.22.
3. All gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records pursuant to N.C.G.S. 105-164.26.
4. An assessment of tax is presumed to be correct and the burden is upon a taxpayer who takes exception to an assessment to overcome that presumption pursuant to G.S. 105-241.1(a).
5. The Taxpayer provided no evidence, written or otherwise, to contradict the assessment or overcome the presumption of correctness.
6. A Notice of proposed assessment for the period was properly issued to the Taxpayer pursuant to G.S. 105-241.1.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Taxpayer is engaged in the business of operating retail convenience stores and also operates as a wholesale distributor of cigarettes. The Department of Revenue examined the Taxpayer's records and discovered that there was a significant discrepancy between the total money deposited into the Taxpayer's bank accounts and the taxable and non taxable sales reported on the Taxpayer's monthly sales and use tax returns and individual income tax returns. In view of this discrepancy, the auditors used an indirect method to establish Taxpayer's taxable and non-taxable sales and resulting tax liability.

N.C.G.S. 105-164.22 provides that a retailer is required to keep suitable records of the gross receipts of sales of a business and any other books or accounts which may be necessary to determine the amount of tax for which the retailer is liable. N.C.G.S. 105-241.1(a) directs that the Secretary of Revenue must base an assessment on the best information available if the Secretary is unable to obtain from the Taxpayer reliable information on which to base the assessment. This statute also provides that a proposed assessment is presumed correct and the burden is upon the taxpayer that takes exception to an assessment to overcome that presumption. The Board, after conducting a hearing in this matter and after considering the petition, the briefs, the record and the final decision of the Assistant Secretary, concludes that the Taxpayer did not provide evidence to contradict the assessment or overcome the presumption. Thus, the Board determines that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision of the Assistant Secretary was fully supported by the conclusions of law. Based upon the findings of fact and conclusions of law, the Board concludes that there is sufficient evidence in the record to confirm the Assistant Secretary's decision regarding the assessment of the sales tax and use tax for the period of November 1, 1993 through September 30, 1996.

IT IS THEREFORE ORDERED that the Assistant Secretary's decision sustaining the assessment of the sales tax and use tax for the period of November 1, 1993 through September 30, 1996 be and is hereby **confirmed**.

Made and entered into the 17th day of June 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN THE MATTER OF
THE 2002 PRIMARIES, ELECTIONS, AND REFERENDA

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS on July 17, 2002, in an emergency meeting to establish procedures for the September 10 statewide primary and from the November 5, 2002, general elections pursuant to S.L. 2002-21 (Extra Sessions) adopted by the General Assembly on July 16, 2002, and signed by the Governor that same date. The State Board of Elections is authorized by this Section 1.(b) of this legislation "to issue temporary orders that may change, modify, delete, amend or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections in order to accommodate the scheduling of the 2002 primary on September 10, 2002,...to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and ...to comply with any objections interposed under Section 5." In addition, the State Board was authorized to set times for publishing notices for local bond referenda pursuant to Section 1.(i). The State Board has considered issues pertaining to the 2002 primaries and elections and issues the following order pursuant to this authority:

1. The schedule for the 2002 statewide primary and elections shall be as follows and as explained in succeeding paragraphs:

2002 Election Schedule

Filing Period opens, 8 a.m.	Friday, July 19, 2002
Filing period closes, 5 p.m. obtained by	Friday, July 26 (to be extended as explained in P. 2 if preclearance is not 5 p.m. on July 26)
Ballot Prep, printing etc. begins	Saturday, July 27 (assuming preclearance has been obtained by July 26)
Voter registration closes	Friday, August 16
Absentee voting	Friday, August 16 (may begin sooner in those counties that have printed ballots sooner)
One-stop absentee voting begins	Thursday, August 22
48 Hour Reports for primary	August 25 – September 10
Interim Disclosure Report For July 1 – August 24 period	Tuesday, September 3
One-stop absentee voting ends	Saturday, September 7, 1 p.m. (County Board may extend to 5 p.m.)
Primary Election	Tuesday, September 10
Unaffiliated Petitions to be Filed	Tuesday, September 10
Primary Canvass – CBE	Thursday, September 12
Primary Protests, recount request	Friday, September 13, 5 p.m.
Conduct of Primary Recounts	Monday, September 16
Primary Canvass – SBE	Tuesday, September 17
Absentee voting starts For general election	Tuesday, October 1
Voter registration closes	Friday, October 11
One-stop absentee voting begins	Thursday, October 17

IN ADDITION

48 Hour Reports	October 20 – November 5
3 rd Quarter Plus Reports	Monday, October 28
One-stop absentee voting ends	Saturday, November 2, 1 p.m. (County Board may extend until 5 p.m.)
General Election	Tuesday, November 5
General Election Canvass, CBE	Friday, November 8
Canvass, State Board of Elections	Tuesday, November 26

2. The period for filing notices of candidacy for the interim legislative districts for the 2002 elections shall begin on Friday, July 19, 2002, at 8:00 a.m. and end on Friday July 26, 2002, at 5:00 p.m. unless preclearance of the filing period had not been obtained by that time. If preclearance has not been obtained by 5:00 p.m. on July 26, then filing will be extended through the first business day after preclearance has been obtained. Filing, in addition to in person at a board of elections office, may be accomplished by mail or by hand delivery of the necessary documents but such documents must be received by the close of the filing period. A notice of candidacy filed by a candidate or nominee for a legislative race under the previous legislative districts is now considered void by virtue of the decision of the North Carolina Supreme Court in Stephenson v. Bartlett, 562 S.E. 2d 377 (N.C. 2002). A candidate or nominee who filed for legislative office on or before March 1, 2002 who does not file a new notice of candidacy in the new legislative filing period shall be entitled to a refund of the filing fee, without the need for a formal request, following the close of filing for the new legislative districts. A candidate who makes a new legislative filing shall be entitled to be credited the amount of the previous filing fee toward the new filing fee.

3. Pursuant to Section 1.1 of S.L. 2002-21 (Extra Session), any candidate who filed for any office in the filing period that closed on March 1, 2002, may withdraw that notice of candidacy if he or she files for a General Assembly seat in the new filing period. A candidate who withdraws his or her initial notice of candidacy shall be entitled to a refund of the filing fee for the office.

4. Any board of elections which had a candidate withdraw a notice of candidacy in order to file for the General Assembly shall reopen a filing period for the office(s) for which there was a withdrawal. The new filing period shall open on Monday, July 29 at 8:00 a.m. (or *:00 a.m. on the first business day after the legislative filing period closes) and close at 5:00 p.m. on Wednesday, July 31 at 5:00 p.m. (or 5:00 p.m. on the third business day after the legislative filing period closes).

5. The schedule for campaign finance reports shall be as shown on the schedule set forth in paragraph 1 above and as follows:

There shall be an interim campaign finance report filed by all candidates on September 3, 2002, covering the period from July 1, 2002 until August 24, 2002. Candidates shall be provided with information by State Board staff as to the format and forms to be used for this filing. The 48-Hour Report provisions of G.S. 163-278.9(4) shall apply as to contributions received from August 25, 2002 until September 10, 2002 for the 2002 primary and shall apply as to contributions between October 20 and November 5 for the 2002 general election. Third Quarter Plus reports shall be due October 28, 2002.

6. Date and notice requirements for special elections, ABC elections, or bond referenda set out in G.S. 163-287, G.S. 18B-601 (f), G.S. 159-61(b)(c), or any other statute or rule, shall not apply to the 2002 elections. Entities wishing to hold such elections shall submit proposed dates of elections and proposed election notice timetables to the Executive Director of the State Board who shall have the authority to approve the same so long as they provide adequate notice of the election.

7. Unaffiliated candidates who wish to qualify for a legislative seat under the provisions of G.S. 163-122, shall have until noon of September 10, 2002 to file their petitions for nomination with the appropriate board of elections as set out in G.S. 163-122 (a) (2) or (3).

8. The State Board shall conduct its canvass of all primary elections and other elections conducted on September 10 in which no contest is pending on September 17 at 1:30 p.m.

9. With respect to election protests, those relating to the tabulation or counting of votes, must be made and heard before the county canvass. For all other protests, the requirement that the county boards conduct a preliminary hearing is not in effect for those primaries and elections conducted on September 10. Any protest must be filed before September 17 and the county board must conduct a full, fair, and impartial hearing on any protests presented to it. It is expected that any such hearing will be transcribed and the transcript transmitted to the State Board if an appeal is taken from the county board's decision. The State Board of Elections will meet on Thursday, September 19, at 9:00 a.m. to hear any and all election appeals from the hearings and decisions of the county boards of elections. The State Board will not adjourn until all appeals have been heard.

10. The State Board cancels the statutorily required second training session for elections officials now scheduled for September 12-13.

11. County boards shall be permitted to conduct only on training session for precinct officials, provided that such training session shall be conducted before the September 10 primary.

12. In accordance with the May 6, 2002, request of the Director of the Federal Voting Assistance Program, absentee ballots cast by those citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act shall be counted which are received on the day of the primaries and elections held on September 10 and on the day of the November 5 general election. Counties shall facilitate facsimile transmission of absentee ballots for uniformed and overseas citizens by publicizing and using the toll-free number available through the Defense Switched Network and an 800 number. Counties will not use the Federal Write-In Absentee Ballot.

13. This order shall be published in the North Carolina Register.

IN ADDITION

This the 17th day of July 2002.

Larry Leake, Chairman
North Carolina State Board of Elections

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 22 - AGING

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

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 22G .0408, .0500 - Other rules may be proposed in the course of the rule-making process.

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

Statement of the Subject Matter:

10 NCAC 22G .0408 – establishes definitions of services
10 NCAC 22G .0500 – governs the provision of nutrition services for the Division of Aging

Reason for Proposed Action: The North Carolina Division of Aging is reviewing and updating the rules pertinent to nutrition services to make them consistent with current needs and practices.

Comment Procedures: Anyone wishing to comment should contact Lynne Berry, NC Division of Aging, 2101 Mail Service Center, 693 Palmer Dr., Taylor Hall, Raleigh, NC 27699-2101.

Reason for Proposed Action: These Rules are being updated and reflect changes made in current legislation.

Comment Procedures: Written comments may be sent to Shirley Jones, NC Department of Insurance, Agent Services Division, PO Box 26837, Raleigh, NC 27611.

CHAPTER 12 - LIFE AND HEALTH DIVISION

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

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 12 .0328, .0424-.0432, .0610-.0612, .1900 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 58-2-40; 58-3-115; 58-3-150; 58-33-10; 58-58-40; 58-63-15; 58-68-60

Statement of the Subject Matter: Advertisement Life and Annuity, Annuity Disclosure, Individual Health Fair Market, and Life Replacement Rules

Reason for Proposed Action: These Rules are being amended/adopted in order to be in compliance with NAIC Model Laws and with statutes.

Comment Procedures: Written comments may be sent to Louis Belo, NC Department of Insurance, Life & Health Division, PO Box 26387, Raleigh, NC 27611.

TITLE 11 – DEPARTMENT OF INSURANCE

CHAPTER 06 - AGENT SERVICES DIVISION

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

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 06A .0200, .0300, .0400, .0500, .0600 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 58-2-40; 58-33-10; 58-33-30; 58-33-32; 58-33-66

Statement of the Subject Matter: Licensing application forms, use of electronic medium for fees, license examinations

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 07 - OSHA

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

Citation to Existing Rule Affected by this Rule-making: 13 NCAC 07F .0101, .0201, .0301, .0501-.0502. Other rules may be proposed in the course of the rule-making process.

RULE-MAKING PROCEEDINGS

Authority for the Rule-making: *G.S. 95-131; 150B-21.6*

Statement of the Subject Matter: *Deletion of Hazard Communication Clarification from North Carolina Department of Labor Administrative Code.*

Reason for Proposed Action: *The North Carolina Department of Labor proposes to delete the hazard communication clarification language found in these Rules. The US Department of Labor's Hazard Communication Correction issued December 1994 and subsequently adopted verbatim by NCDOL, eliminates the need for clarifying language.*

Comment Procedures: *All interested and potentially affected persons are encouraged to make their views known by submission of written comments to Barbara A. Jackson, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601.*

CHAPTER 07 - OSHA

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

Citation to Existing Rule Affected by this Rule-making: *13 NCAC 07F .0201 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 95-126; 95-131*

Statement of the Subject Matter: *The North Carolina Department of Labor Occupational Safety and Health proposes to amend this Rule so that references to the Federal Standard are more clearly distinguished from references to the state specific standard.*

Reason for Proposed Action: *The North Carolina Department of Labor Occupational Safety and Health proposes to amend this Rule so that references to the Federal Standard are more clearly distinguished from references to the state specific standard.*

Comment Procedures: *Written comments may be submitted to Barbara A. Jackson, General Counsel, North Carolina Department of Labor, 4 West Edenton St., Raleigh, NC 27601.*

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Labor Elevator and Amusement Device Bureau in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt

as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: *13 NCAC 15 .0430. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 95-110.5*

Statement of the Subject Matter: *Air Supported Structures/Inflatables*

Reason for Proposed Action: *The NC Department of Labor Elevator and Amusement Device Bureau proposes to promulgate rules governing the safe installation, operation and inspection of air supported structures commonly known as "inflatables", and bungee devices. The Department proposes to mandate compliance with, and enforcement of, North Carolina General Statutes, ASTM-F-1159, and manufacturer requirements concerning these devices.*

Comment Procedures: *All interested and potentially affected persons are encouraged to make their views known by submission of written comments to Barbara A. Jackson, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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 .0304, .0308 - 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 .0304 - The Environmental Management Commission (EMC) is proposing to reclassify a section of Richland Creek (Haywood County) in the French Broad River Basin from Class B to Class B Tr (Trout).*

15A NCAC 02B .0308 – The Environmental Management Commission (EMC) is proposing to reclassify a section of three surface waters, namely He Creek, Jerry Branch, and Henry Fork (Burke County) in the Catawba River Basin from Class Water Supply-I (WS-1) Outstanding Resource Waters (ORW) to Class WS-V ORW.

Reason for Proposed Action:

RULE-MAKING PROCEEDINGS

15A NCAC 02B .0304 - North Carolina Wildlife Resources Commission staff requested the reclassification of a segment of Richland Creek (Haywood County, French Broad River Basin) from Class B to Class B Tr (Trout). This proposed reclassification consists of the main stem of Richland Creek from the source to a point approximately 11 miles from the source (where Boyd Avenue crosses the creek). This proposal also consists of several tributaries to the above-mentioned main stem portion of Richland Creek that are proposed to receive the supplemental Tr classification. The purpose of this rule change is to protect the existing waters' trout populations. Tr waters are those freshwaters that have conditions which shall sustain as well as allow and protect for natural trout propagation and survival of stocked trout on a year-round basis. A water quality study conducted in July 2001 indicated that the proposed waters are eligible for reclassification to Tr. There are three active NPDES wastewater discharge facilities located along the proposed waters. There are no proposed discharges to the proposed waters, and there are no existing or planned landfills adjacent to the proposed waters. There is no new development proposed for land adjacent to the proposed waters with two exceptions: (1) redevelopment of one area is projected but cannot occur within 25 feet of the creek due to local regulations, and (2) a sewer line is proposed to be extended, but it is not certain if the development will occur or where it will be located. If reclassified, all NPDES wastewater discharges to these waters will be assigned management strategies and/or effluent limits that result in compliance with regulatory ambient, action, and discharger water quality standards and levels necessary to protect trout. In addition, a 25 foot undisturbed buffer area is required between a designated Tr waterbody and the disturbed area of a development by the Division of Land Resources. Forestry, animal, and agricultural practices will not be affected.

15A NCAC 02B .0308 - City of Morganton staff requested the reclassification of a segment of three surface waters, namely He Creek, Jerry Branch, and Henry Fork (Burke County, Catawba River Basin) from Class Water Supply-I (WS-I) Outstanding Resource Waters (ORW) to Class WS-V ORW. Burke County staff submitted an additional request for the reclassification of Jerry Branch. This proposed reclassification consists of the main stem of each of the above-mentioned surface waters from source to a formerly used City of Morganton (City) Water Intake. These WS-I watersheds are located solely within the jurisdiction of Burke County, and Burke County staff support the proposed reclassification of Jerry Branch but are neither for or against the proposed reclassification of He Creek and Henry Fork. The NC Public Water Supply Section staff stated that they have no concerns associated with changing the current classifications of the proposed waters. The purpose of this rule change is to recognize that the City has discontinued using these waters as sources of drinking water, and there are no current or future plans for the waters to be used as drinking water sources. In addition, privately owned land, some of which is developed, has existed for decades in a portion of the Jerry Branch WS-I watershed; however, WS-I waters are supposed to be located within natural and undeveloped watersheds held in public

ownership. WS-V waters are waters protected as water supplies which are generally upstream and draining to Class WS-IV waters, waters previously used for drinking water supply purposes, or waters used by industry to supply their employees with raw drinking water supply sources. No water quality study was required for this proposed reclassification as the waters were formerly used as water supplies. If reclassified, ORW regulations that affect but allow new development and new non-discharging landfills activities would still apply in the watersheds; for the above-mentioned activities, these regulations are less restrictive than WS-I regulations but more restrictive than WS-V regulations. In addition, wastewater dischargers will still not be allowed and water supply water quality standards will still apply according to ORW and water supply regulations, respectively. Furthermore, DOT activities will still be affected by ORW regulations as well as WS-V regulations. There are no proposed discharges or development in the three watersheds.

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, elizabeth.kountis.ncmail.net, 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: The amendment to this Rule proposes that the Groundwater Quality Standards for these substances in Class GA and Class GSA groundwaters be established. These substances are shown with the proposed Groundwater Quality Standard and unless otherwise noted, numeric standards for these substances are shown in milligrams per liter as follows:

<u>SUBSTANCE</u>	<u>PROPOSED CONCENTRATION</u>
Benzoic Acid	28.0
Bis(chloroethyl)ether (BCEE)	3.1 x 10 ⁵
Dibenzofuran	0.028

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Table with 2 columns: Substance Name and Concentration. Includes Dibromochloromethane (4.1 x 10^-4), Ethyl Acetate (2.60), Hexachlorobutadiene (4.4 x 10^-4), 2-Hexanone (0.28), 1,1,2,2-Tetrachloroethane (1.7 x 10^-4), and 1,2,4-Trichlorobenzene (0.07).

Reason for Proposed Action: The amendment to this Rule, Groundwater Quality Standards, will establish groundwater standards for Benzoic Acid, Bis(chloroethyl)ether (BCEE), Dibenzofuran, Dibromochloromethane, Ethyl Acetate, Hexachlorobutadiene, 2-Hexanone, 1,1,2,2-Tetrachloroethane, 1,2,4-Trichlorobenzene. Action to consider adoption of concentration levels for these nine substances as groundwater quality standards is necessary to satisfy requirements of Paragraph (c) of this Rule.

Comment Procedures: All persons interested in this proposed amendment are encouraged to submit written comments or questions to David Hance, DENR/DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, NC 27699-1636; Phone: (919) 715-6169; Fax: (919) 715-0588; Email: David.Hance@ncmail.net. The Environmental Management Commission will accept comments through October 1, 2002.

25 NCAC 01E .1510 – The General Assembly added a provision to the State Personnel Act, G.S. 126-34.1(a)(11) to allow State employees, except ones in policy-making positions, to file a contested case for violations of the Family and Medical Leave Act.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rule-making to Peggy Oliver, Human Resources Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

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 01D .1401-.1402; .1501-.1504; .2401-.2404. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4

Statement of the Subject Matter: These Rules set forth guidelines for state agencies and universities in administering on-call/emergency callback compensation and shift pay.

Reason for Proposed Action: A review of labor market rates for some of our supplemental compensation policies has revealed that the current rates for some occupations are out of date. This has led us to make exceptions to these policies/rules, particularly in the medical occupations. Thus, the agency is proposing a revision of the current policies/rules to allow the Office of State Personnel to establish the rates based on documented survey data of prevailing practices in the applicable labor market.

Comment Procedures: Written comments may be submitted on the subject matter of the proposed rule-making to Peggy Oliver, Office of state Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

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 01B .0107; 01E .1510 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-4; 126-5; P.L. 103-3

Statement of the Subject Matter:

25 NCAC 01B .0107 - Career State Employee Status
25 NCAC .01E .1510 – Family and Medical Leave Act

Reason for Proposed Action:

25 NCAC 01B .0107 - This Rule is proposed to be repealed in order to correct a rule that is out of date due to a change in the statute. In 1995, the General Assembly redefined "Career State Employee" by adding a new section 126-1.1 to the State Personnel Act. At the same time G.S. 126-1A was repealed.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 02 – RULES DIVISION

Notice of Rule-making Proceedings is hereby given by Office of Administrative Hearings in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of

RULE-MAKING PROCEEDINGS

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: *26 NCAC 02C. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 150B-21.1; 150B-21.17; 150B-21.19*

Statement of the Subject Matter: *These rules govern the procedures for submitting rules and other documents for publication in the NC Register and NC Administrative Code, and*

the rules for filing temporary rules for review by the Codifier of Rules.

Reason for Proposed Action: *To adopt or amend rules governing the submission of temporary rules for review by the Codifier of Rules. To review rules to consider changes to allow more to be done electronically versus print copies and to make other changes that would improve the rule publication functions.*

Comment Procedures: *Written comments should be directed to Molly Masich by mail to 6714 Mail Service Center, Raleigh, NC 27699-6714 or email to molly.masich@ncmail.net.*

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rules cited as 10 NCAC 03U .2402-.2411, amend the rules cited as 10 NCAC 03U .0102, .0302, .1701-.1702, .1720-.1723, .2401, .2702, .2704, .2808 and repeal the rule cited as 10 NCAC 03U .2703. Notice of Rule-making Proceedings was published in the Register on December 17, 2001.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 20, 2002

Time: 4:00-6:00 p.m.

Location: NC Division of Child Development, Room 300, 319 Chapanoke Rd., Raleigh, NC

Reason for Proposed Action: *The Child Care Commission proposes amending rules to update definitions and requirements for applying for a license. Changes to family child care home requirements are proposed in the areas of safety, record keeping, transportation, criminal records background checks, and compliance history. The Commission also proposes to adopt rules for centers that choose to care for mildly ill children.*

Comment Procedures: *Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Janice Fain, APA Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone 919-662-4543 or by email at janice.fain@ncmail.net. Written comments will be accepted through September 4, 2002. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

Fiscal Impact

- State** 10 NCAC 03U .2704, .2808
- Local**
- Substantive** (≥\$5,000,000)
- None** 10 NCAC 03U .0102, .0302, .1701-.1702, .1720-.1723, .2401-.2411, .2702-.2703

CHAPTER 03 – FACILITY SERVICES

SUBCHAPTER 03U - CHILD DAY CARE STANDARDS

SECTION .0100 - PURPOSE AND DEFINITIONS

10 NCAC 03U .0102 DEFINITIONS

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the rule clearly requires a

different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "A" license means the license issued to child care operators who meet the minimum requirements for the legal operation of a child care facility pursuant to G.S. 110-91 and applicable rules in this Subchapter.
- (4) "AA" license means the license issued to child care operators who meet the higher voluntary standards promulgated by the Child Care Commission as codified in Section .1600 of this Subchapter.
- (5) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development and the Division of Child Development on the elements of quality school-age care.
- (6) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (7) "Child care provider" as defined by G.S. 110-90.2 and used in Section .2700 of this Subchapter, includes but is not limited to the following employees: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (8) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (9) "Department" means the Department of Health and Human Services.
- (10) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (11) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (12) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (13) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford,

- 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for ten dollars and ninety-five cents (\$10.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (14) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents (\$8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Subchapter, using space which is identifiable for each group.
- (16) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, and eating and sleeping at the household address on a regular basis.
- (16)(17) "Infant/Toddler Environment Rating Scale" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents (\$8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the
- Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (17)(18) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- (18)(19) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual published jointly under the authority of the Department and the Department of Community Colleges. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (19)(20) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (20)(21) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (21)(22) "Passageway" means a hall or corridor.
- (22)(23) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- (23)(24) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for eight dollars and ninety-five cents (\$8.95) may call Teachers College Press at 1-800-575-6566. A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (24)(25) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the

principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.

~~(25)~~(26) "Seasonal Program" means a recreational program as set forth in G. S. 110-86(2)(b).

~~(26)~~(27) "Section" means Division of Child Development.

~~(27)~~(28) "Substitute" means any person who temporarily assumes the duties of a regular staff person for a time period not to exceed two consecutive months.

~~(28)~~(29) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.

~~(29)~~(30) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

Authority G.S. 110-88; 143B-168.3.

SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

10 NCAC 03U .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative.

(1) A provisional classification may be accepted in accordance with Rule .0401(1) of this Subchapter.

(2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Subchapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center will comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for

review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule 2701(g) of this Subchapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall, at a minimum, demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;
- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person that conducted the drill;
- (5) Records of monthly playground inspections documented on a checklist provided by the Division; and
- (6) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable standards.

- (1) If ~~the center is in compliance,~~ all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
- (2) If ~~the center does not comply,~~ all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.

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(3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care ~~facility center~~ license, the Secretary may deny the application for the license ~~based on the compliance history of the person applying for a license~~ under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; ~~or~~
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the ~~business.~~ business; or
- (5) based on the person's previous compliance as an operator with the requirements of G.S. 110 and this Subchapter; or
- (6) if child abuse or neglect has been substantiated against the person at a child care facility.

Authority G.S. 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3.

SECTION .1700 - DAY CARE HOME STANDARDS

10 NCAC 03U .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES

- (a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.
- (b) At the beginning of each fiscal year, the Division shall prepare a written plan explaining the guidelines for making

randomly-selected announced and unannounced compliance visits to family child care homes. The plan shall be dated and signed by the Division director and shall be kept in a confidential file.

(c) If an additional individual provides care on a regular basis of at least once per week, while the operator is not on the premises, the additional individual shall meet all requirements for qualifications, training, and records as found in G.S. 110-91(8), 10 NCAC 03U .2702 and this Section.

(d) An individual who is a regular substitute and provides care during planned absences of the operator such as vacations and scheduled appointments, shall be at least 21 years old, have a high school diploma or GED, have completed a first aid course as described in Rule .1705, Paragraphs (a)(3) and (b)(2) of this Section, complete a health questionnaire, and submit criminal records check forms as required in 10 NCAC 03U .2702, Paragraph (j).

(e) It shall be the operator's responsibility to review the appropriate requirements found in this Subchapter and in GS. 110 with any individuals who are providing care prior to the individual assuming responsibility for the children.

(e)(f) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in 10 NCAC 03U .2702, Paragraph (j). The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

~~(d)(g)~~ The provisions of G.S. 110-91(8) which exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in a family child care home are hereby incorporated by reference and shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for brief periods for the purpose of conducting business with the operator and who are not left alone with the children.

(e)(h) The parent, guardian, or full-time custodian of a child enrolled in any family child care home subject to regulation under Article 7 of Chapter 110 of the North Carolina General Statutes or these Rules shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent, guardian or custodian shall notify the operator of his or her presence immediately upon entering the premises.

~~(f)(i)~~ An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep provided:

- (1) the operator and the children in care, excluding the operator's own children, are on ground level; and
- (2) the operator can hear and respond quickly to the children if needed; and
- (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99;

10 NCAC 03U .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the Division upon request.

(c) The ~~operator~~ applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) Comply with the North Carolina Building Code for family child care homes or have written approval for use as a family child care home by the local building inspector as follows:

- (A) Meet Volume I-B Uniform Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations published by the NC Department of Insurance.
Exception: Single wide manufactured homes will be limited to a maximum of three preschool-aged children (not more than two may be two years of age or less) and two school-aged children.
- (B) All children shall be kept on the ground level with an exit at grade.
- (C) All homes shall be equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.

(D) All homes shall be provided with at least one five lb. 2A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.

(E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.

(2) Assure that all indoor areas used by children are heated in cool weather and ventilated in warm weather.

(3) Cover or insulate hot pipes or radiators which are accessible to the children.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where applicant's certified criminal history check from the Clerk of Superior Court's office where the individual has the applicant and any household member(s) over age 15, have resided during the previous 12 months; a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course; proof of negative results of the applicant's tuberculosis test completed within the past 12 months; a completed health questionnaire; a copy of current pet vaccinations for any pet in the home; a negative well water bacteriological analysis if the home has a private well; copies of any inspections required by local ordinances; and any other documentation required to support the issuance of a license required by the Division.

(e) Upon receipt of an acceptable application and supporting documentation as required by the Division, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the standards, to offer technical assistance when needed, and to provide information about local resources.

(1) If ~~the home is found to be in compliance with the all~~ applicable requirements of G.S. 110 and this Section are met, a license shall be issued.

(2) If the ~~home is not in compliance applicable requirements are not met~~ but the applicant has the potential to comply, the Division representative shall establish with the ~~operator applicant~~ a reasonable time period for the home to achieve full compliance. If the Division representative determines that ~~the home is in all applicable requirements for compliance~~ are met within the established time period, a license shall be issued.

(3) If ~~the home is not in compliance, all applicable requirements are not met,~~ cannot potentially ~~comply, be met,~~ or ~~fails to comply are not met~~ within the appropriate time, the Division shall deny the application. Final disposition of the

recommendation to deny is the decision of the Division.

(f) In emergency situations as determined by the Division, the Division may allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule. A person is not able to operate legally until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a ~~child care facility-family child care home~~ license, the Secretary may deny the application for the license ~~based on the compliance history of the person applying for a license~~ under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person; ~~or~~
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to the children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of director's, be a partner of the corporation, or otherwise have responsibility for the administration of the ~~business.~~ Business; or

(5) based on the person's previous compliance as an operator with the requirements of G.S. 110 and this Subchapter; or

(6) if child abuse or neglect has been substantiated against the person at a child care facility, or if child abuse or neglect was substantiated against a household member.

(h) Use of the license is limited to the following conditions:

- (1) The license cannot be bought, sold, or transferred from one individual to another.
- (2) The license is valid only for the location address/addresses listed on it.
- (3) The license must be returned to the Division in the event of termination or revocation.

(4) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent, guardian, or custodian when the child is enrolled.

(i) A licensee is responsible for notifying the Division whenever a change occurs which affects the information shown on the license.

Authority G.S. 110-88(5); 110-91; 110-93; 110-99; 143B-168.3.

10 NCAC 03U .1720 SAFETY AND SANITATION REQUIREMENTS

- (a) To assure the safety of children in care, the operator shall:
- (1) separate firearms from ammunition and keep both in locked storage;
 - (2) keep items used for starting fires, such as matches and lighters, out of the children's reach;
 - (3) keep all medicines in locked storage;
 - (4) keep hazardous cleaning supplies and other items that might be poisonous , e.g., toxic plants, out of reach or in locked storage when children are in care;
 - (5) keep first-aid supplies in a place easily accessible to the operator;
 - (6) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
 - (7) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone;
 - (8) have access to a means of transportation that is always available for emergency situations; and
 - (9) be able to recognize common symptoms of illnesses.

(b) The operator may provide care for a mildly ill child who has a Fahrenheit temperature of less than 100 degrees axillary, 101 degrees orally, or 102 degrees rectally and who remains capable of participating in routine group activities; provided the child does not:

- (1) have the sudden onset of diarrhea characterized by an increased number of bowel movements compared to the child's normal pattern and with increased stool water; or
- (2) have two or more episodes of vomiting within a 12 hour period; or
- (3) have a red eye with white or yellow eye discharge until 24 hours after treatment; or
- (4) have scabies or lice; or
- (5) have known chicken pox or a rash suggestive of chicken pox; or
- (6) have tuberculosis, until a health professional states that the child is not infectious; or
- (7) have strep throat, until 24 hours after treatment has started; or
- (8) have pertussis, until five days after appropriate antibiotic treatment; or
- (9) have hepatitis A virus infection, until one week after onset of illness or jaundice; or

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- (10) have impetigo, until 24 hours after treatment;
or
- (11) have a physician's or other health professional's written order that the child be separated from other children.

~~(b)~~(c) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.

- (1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the child's parent, only to the person for whom it is prescribed.
- (2) Over-the-counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over-the counter medicine, dosage instructions, the parent's signature, and the date signed. Over-the counter medicine may also be administered in accordance with instructions from a physician or other authorized health professional.
- (3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.
- (4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket permission for up to one year to authorize administration of topical ointments such as sunscreen and over-the-counter diapering creams. The written statement shall describe the specific conditions under which the medication and creams are to be administered and detailed instructions on how they are to be administered. A written statement from a parent may give blanket permission to administer a one-time, weight appropriate dose

of acetaminophen in cases where the child has a fever and the parent can not be reached.

- (5) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.
- (6) Any time the operator administers medication other than sunscreen and diapering creams to any child in care, the child's name, the date, time, amount and type of medication given, and the signature of the operator shall be recorded. This information shall be noted on a form provided by the Division or on a separate form developed by the operator which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.

~~(e)~~(d) To assure the health of children through proper sanitation, the operator shall:

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
- (2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas;
- (3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
 - (A) wash his or her hands before, as well as after, diapering each child;
 - (B) ~~wash—ensure~~ the child's hands are washed after diapering the child; and
 - (C) place soiled diapers in a covered, leak-proof container which is emptied and cleaned daily.
- (4) use sanitary procedures when preparing and serving food. The operator shall:
 - (A) wash his or her hands before and after handling food and feeding the children; and
 - (B) ~~wash—ensure~~ the child's hands are washed before and after the child is fed.
- (5) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids.
- ~~(5)~~(6) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;

- ~~(6)~~(7) date and label all bottles for each individual child, except when there is only one bottle-fed child in care;
 - ~~(7)~~(8) have a house that is free of rodents;
 - ~~(8)~~(9) screen all windows and doors used for ventilation;
 - ~~(9)~~(10) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs; and
 - ~~(10)~~(11) store garbage in waterproof containers with tight fitting covers.
- ~~(d)~~(e) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.

Authority G.S. 110-88; 110-91(6).

10 NCAC 03U .1721 REQUIREMENTS FOR RECORDS

(a) The operator shall maintain the following health records for each child who attends on a regular ~~basis~~basis, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;
- (3) a health and emergency information form provided by the Division that is completed and signed by the child's parents or guardian. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
 - (A) the child's name, address, and date of birth;
 - (B) the names of individuals to whom the child may be released;
 - (C) the general status of the child's health;
 - (D) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
 - (E) the names and phone numbers of persons to be contacted in an emergency situation;
 - (F) the name and phone number of the child's physician and preferred hospital; and
 - (G) ~~notarized~~—authorization for the operator to seek emergency medical care in the parent's absence;
- (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.

(b) The operator shall complete and maintain other records which shall include:

- (1) documentation for the operator's procedures in emergency situations, on a form which shall be provided by the Division;
 - (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
 - (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a representative of the Division within seven calendar days after the incident occurs;
 - (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division;
 - (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division; and
 - (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.
- (c) Written records shall be available for review, upon request, by a representative of the Division and shall be maintained as follows:
- (1) Records required in Paragraph (b)(2) – (b)(6) of this Rule shall be maintained for a minimum of three years, or during the length of time the program has operated, whichever is less.
 - (2) Children's records shall be maintained while the child is enrolled, and for a minimum of three years after the child is no longer enrolled.
 - (3) All other records shall be maintained for as long as the license to which they pertain remains valid.

Authority G.S. 110-88; 110-91(1),(9).

10 NCAC 03U .1722 DISCIPLINE POLICY

(a) The operator shall provide a written copy of and explain the operator's discipline practices to ~~each child's~~a parent, legal guardian, or full-time custodian of each child at the time of enrollment. A parent, legal guardian, or full-time custodian

must sign and date a statement which attests that a copy of the discipline policy was given to, and discussed with them. If an operator changes discipline practices, the child's parent, legal guardian, or full-time custodian must receive-sign and date a statement acknowledging that they received written notice of and discussed the new policy at least 30 days prior to the implementation of the new policy.

(b) No child shall be subjected to any form of corporal punishment by the family child care home operator, substitute caregiver, or any other person in the home, whether or not these persons reside in the home.

(c) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking.

(d) No child shall ever be placed in a locked room, closet, or box, or be left alone in a room separated from staff.

(e) No discipline shall ever be delegated to another child.

(f) Discipline shall in no way be related to food, rest or toileting:

- (1) No food shall be withheld, or given, as a means of discipline.
- (2) No child shall ever be disciplined for lapses in toilet training.
- (3) No child shall ever be disciplined for not sleeping during rest period.

(g) No child shall be disciplined by assigning chores that require contact with or use of hazardous materials, such as cleaning bathrooms or floors, or emptying diaper pails.

(h) Discipline shall be age and developmentally appropriate.

Authority G.S. 110-91(10).

10 NCAC 03U .1723 TRANSPORTATION REQUIREMENTS

To assure the safety of children whenever they are transported, the operator, or any other transportation provider, shall:

- (1) have written permission from a parent or guardian to transport his or her child and notify the parent when and where the child is to be ~~transported, transported, and who the transportation provider will be,~~
- (2) ensure that all children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices. Only one person shall occupy each seat belt or child restraint device.
- (3) be at least 18 years old, and have a valid driver's license issued by the Division of Motor Vehicles, not including a limited permit, of the type required under the North Carolina Motor Vehicle Law for the vehicle being driven, or comparable license from the state in which the driver resides, and no convictions of Driving While Impaired (DWI), or any other impaired driving offense, within the last three years.
- (4) ensure that each child is seated in a manufacturer's designated area.
- (5) ensure that a child shall not occupy the front seat if the vehicle has an operational passenger side airbag.

- (6) never leave children in a vehicle unattended by an adult.
- (7) have emergency and identification information about each child in the vehicle whenever children are being transported.

Authority G.S. 110-91; 110-91(13).

SECTION .2400 - CHILD CARE FOR MILDLY ILL CHILDREN

10 NCAC 03U .2401 SCOPE

~~Until such time as the commission adopts rules for the care of sick children in day care centers and homes, a licensed day care center or large home or a day care arrangement operating under the provisions of G.S. 110-106 may apply to the section chief for a special exemption from Rule .0804 of this Subchapter. The day care arrangement, center or home shall provide a satisfactory plan of operation which includes sufficient medical and nursing coverage with due regard to communicable disease control. The regulations in this Section apply to all child care centers offering short term care to children who are mildly ill. Care may be provided as a component of a child care center that provides child care to well children, or may be provided as a separate stand alone program. All rules in this Subchapter shall apply except as provided in this Section.~~

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2402 DEFINITIONS

(a) "Child care for mildly ill children" is defined as the care of children with short term illness, or symptoms of illness, or short term disability, who are not able to attend their regular school or child care arrangement due to inability to participate in regular activities as indicated in Rule .2404 of this Section.

(b) "Health care professional" is defined as:

- (1) a licensed physician;
- (2) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina;
- (3) a certified nurse practitioner;
- (4) a public health nurse meeting the Department's Standards for Early Periodic Screening, Diagnosis, and Treatment Program;
- (5) a registered nurse (RN); or
- (6) a certified physician assistant.

(c) "Short term care" is defined as attending for no more than three consecutive days, or for more than three consecutive days with written permission from a physician which was obtained prior to the fourth consecutive day of attendance.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2403 SPECIAL PROVISIONS FOR LICENSURE

(a) A center that enrolls mildly ill children as a component of a child care center shall have approval for short term care for mildly ill children indicated on their license. A copy of the license shall be posted in the area used by mildly ill children so that it is easily seen by the public.

PROPOSED RULES

(b) A center that enrolls mildly ill children as a component of a child care center may admit mildly ill children who do not regularly attend the center.

(c) A child care center operated as a separate stand alone program shall be issued a license restricting services to short term care for mildly ill children.

(d) Written policies shall be developed that contain the following:

- (1) Admission requirements;
- (2) Inclusion/Exclusion criteria;
- (3) Preadmission health assessment procedures; and
- (4) Plans for staff training and communication with parents and health care professionals.

These policies shall be reviewed prior to licensure by a child care health consultant or other health care professional. Each parent, legal guardian, or full time custodian shall sign a statement which attests that a copy of the policies were given to and discussed with him or her prior to a child's attendance.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2404 INCLUSION/EXCLUSION REQUIREMENTS

(a) Centers may enroll mildly ill children who meet the following inclusion criteria:

- (1) Centers who enroll children with Level One symptoms may admit children as follows:
 - (A) children who meet the guidelines for attendance in 10 NCAC 03U .0804, except that they are unable to participate fully in routine group activities and are in need of increased rest time or less vigorous activities; or
 - (B) children with controlled fever of 102 degrees orally, or 101 degrees axillary.
- (2) Centers who enroll children with Level Two symptoms may admit children with the following:
 - (A) Inability to participate in much group activity while requiring extra sleep, clear liquids, light meals and passive activities such as stories, videos or music as determined by a health care professional; or
 - (B) Controlled fever of 103 degrees orally, or 102 degrees axillary, with a health care professional's written screening; or
 - (C) Vomiting fewer than three times in any eight hour period, without dehydration; or

10 NCAC 03U .2406 STAFF/CHILD RATIOS

The staff/child ratio and group size shall be determined based on the age of the youngest child in the group and shall be as follows:

<u>Age of Child</u>	<u>No. of Children</u>	<u>No. of Staff</u>	<u>Max. Group Size</u>	<u>No. of Staff</u>
<u>Months to 2 Years</u>	<u>3</u>	<u>1</u>	<u>6</u>	<u>2</u>

(D) Diarrhea without signs of dehydration and without blood or mucus in the stool, fewer than five times in any eight hour period; or

(E) With written approval from a child's physician and preadmission screening by an on-site health care professional prior to the current day's attendance.

(b) Any child exhibiting the following symptoms shall be excluded from any care:

- (1) Unresponsive temperature; or
- (2) Undiagnosed or unidentified rash; or
- (3) Respiratory distress as evidenced by an increased respiratory rate and unresponsiveness to treatment, flaring nostrils, labored breathing or intercostal retractions; or
- (4) Major change in condition requiring further care or evaluation; or
- (5) Contagious diseases required to be reported to the health department; or
- (6) Other conditions as determined by a health care professional or onsite administrator; or
- (7) Sluggish mental status.

(c) Children less than three months of age shall not be in care.

(d) Once admitted, children shall be assessed and evaluated at least every four hours or more frequently if warranted based on medication administration or medical treatment to determine if symptoms continue to meet inclusion criteria.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2405 ADMISSION REQUIREMENTS

(a) Written parental or guardian permission is required for admission of a mildly ill child. If a child is assessed to need mildly ill care, permission may be given by telephone and documented if a child is to be moved from the well child component of the center to the mildly ill area, as long as follow up written permission is received prior to the second day of attendance.

(b) The onsite administrator or health care professional shall have the authority to require a written medical evaluation for a child to include diagnosis, treatment and prognosis, if such evaluation is necessary to determine the appropriateness of a child's attendance prior to admission or upon worsening of the child's symptoms.

(c) A parent must remain on the premises until the preadmission health assessment has been completed, and the child has been approved for attendance.

(d) No child shall be approved for attendance unless staff who meet the qualifications in Rule .2408 of this Section are on site and available to provide care.

Authority G.S. 110-88(11); 143B-168.3.

PROPOSED RULES

<u>2 to 5 Years</u>	<u>4</u>	<u>1</u>	<u>8</u>	<u>2</u>
<u>5 Years and older</u>	<u>5</u>	<u>1</u>	<u>10</u>	<u>2</u>

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2407 SPACE REQUIREMENTS

(a) There shall be at least 45 square feet of inside space per child present at any one time. When space is measured the following will not be included: closets, hallways, storage areas, kitchens, bathrooms, utility areas; thresholds, foyers, space or rooms used for administrative activities or space occupied by adult-sized desks, cabinets, file cabinets, etc.; any floor space occupied by or located under equipment, furniture, or materials not used by children; and any floor space occupied by or located under built-in equipment or furniture.

(b) A center that enrolls mildly ill children as a component of a child care center shall:

- (1) ensure that if the outdoor play area is shared by both components, different time schedules are in place, and well and mildly ill children do not use the area at the same time; and
- (2) ensure that the indoor area used by the mildly ill children shall be physically separate, including a separate entrance.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2408 STAFF QUALIFICATIONS

(a) All staff working with the mildly ill children shall complete all requirements in this Subchapter pertaining to preservice training, inservice training and staff records. In addition, the requirements for staff who care for children with Level One symptoms as described in Rule .2404, Paragraphs (a)(1)(A) and (B) of this Section shall be as follows:

- (1) Each group of children shall have a lead teacher present who has the North Carolina Early Childhood Credential or its equivalent prior to assuming caregiving responsibilities.
- (2) Each group of children shall have a staff person present who meets the requirements in 10 NCAC 03U .0705, Paragraphs (a)(b) and (d). This may or may not be the same individual referenced in Subparagraph (a)(1) of this Rule.
- (3) In addition to staff orientation requirements in Section .0700, prior to assuming caregiving duties all caregivers must complete 10 hours of training and demonstrate competency on how to perform the following:
 - (A) storage and administration of medication;
 - (B) infection control procedures;

<u>No. of Children</u>	<u>Type of Medical Staff</u>
<u>1 to 10</u>	<u>RN or a LPN with immediate physical access to a health care professional</u>
<u>10 to 20</u>	<u>RN</u>
<u>20 to 40</u>	<u>One RN and an additional RN or LPN</u>

Each medical staff shall have at least one year of pediatric nursing experience, and may count in staff/child ratio. Medical

- (C) aspiration of nasal secretions;
- (D) positioning for sleeping and eating;
- (E) temperature and respiratory rate taking;
- (F) documentation of signs, symptoms, physical assessment, intake and output, communication with family and/or physicians;
- (G) recognizing when to stop, increase, or decrease oral intake;
- (H) recognizing signs and symptoms associated with the increased severity of illness including behavioral changes, changes in bowel movements, increased lethargy, etc. ;
- (I) familiarity with guidelines regarding plan for medical care and appropriate notification of parents;
- (J) special dietary requirements and maintaining hydration ;and
- (K) emergency procedures.

(4) Any caregiver caring for a child whose illness requires special knowledge, skills or equipment shall obtain appropriate training and equipment when applicable prior to caring for the child.

(5) Completion of the above training may count toward meeting one year's annual on-going training requirements in Section .0700 of this Subchapter.

(6) When a center enrolls mildly ill children as a component of a child care center, the administrator shall meet the education requirements for administrators as required by G.S. 110-91(8).

(7) In a center exclusively enrolling mildly ill children, the administrator shall have a North Carolina Early Childhood Administration Credential or equivalent prior to assuming administrative duties.

(b) In addition to the staffing requirements listed in Subparagraphs (a)(1)-(a)(5) of this Rule, if children with Level Two symptoms as described in Parts (a)(2)(A) – (a)(2)(E) of Rule .0204 of this Section are in care, the following number of medical staff shall be on site based upon the total number of children in care.

staff may act as lead teachers also if they have the North Carolina Early Childhood Credential or equivalent.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2409 CHILDREN'S RECORDS

(a) In addition to all other children's records required in G.S. 110 and this Subchapter, the following shall be completed:

- (1) Preadmission health assessment which includes documentation of a health status check of current symptoms, temperature, any medications administered in the last 24 hours, and respiratory rate (breaths per minute).
- (2) General admission information which includes information about the child's typical behavior, activity level, patterns of eating, sleeping and toileting.
- (3) A daily written record shall be maintained and a copy given to parents of each child's eating, sleeping and toileting patterns; medications administered; activity levels; changes in symptoms; and any additional information that the provider deems relevant.

(b) All records shall be on file in the mildly ill area prior to attending. If a child is enrolled in the well child care component of a child care center, their records may be maintained in the well child care area, along with a copy of the child's enrollment application as required in Rule .0801 and the records specified in Subparagraphs (a)(1) – (a)(3) of this Rule are kept in the mildly ill area.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2410 CHILDREN'S ACTIVITIES

(a) Daily activities shall be provided in accordance with Section .0500 of these Rules and in accordance with a flexible plan to meet each child's individual needs. Activity areas are not required, but developmentally appropriate equipment and materials must be available daily for children in care.

(b) Eating, toileting, sleeping, resting, and playing shall be individually determined and flexible to allow each child to decide when and whether to participate in available activities, and to nap or rest at any time.

(c) Daily outdoor time shall be available for children with Level One symptoms who are present more than three consecutive days unless deemed inappropriate by the child's attending health care professional.

Authority G.S. 110-88(11); 143B-168.3.

10 NCAC 03U .2411 NUTRITION REQUIREMENTS

Meals and snacks shall be provided in accordance with Section .0900 of this Subchapter unless written instructions from the parent or the child's attending health care professional specify otherwise.

Authority G.S. 110-88(11); 143B-168.3.

SECTION .2700 - CRIMINAL RECORDS CHECKS

10 NCAC 03U .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) Child ~~day~~-care providers shall submit the following to their employer no later than five working days after beginning work:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child ~~day~~-care provider has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, the child ~~day~~-care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child ~~day~~-care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a second fingerprint card shall be submitted in order to complete a national check.

(b) If the child ~~day~~-care provider has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction that could be used by the Division in making the determination of the provider's qualification for employment. The Division may consider the following in making ~~their~~-a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number and type of prior offenses; and age of the individual at the time of occurrence.

(c) The child ~~day~~-care provider's employer shall mail the local criminal history check, Authority for Release of Information using the form provided by the Division, and fingerprint card(s) to the Division no later than three working days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the child ~~day~~-care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child ~~day~~-care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child ~~day~~-care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) The Division shall notify the child ~~day~~-care provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer if any, in writing of the Division's determination concerning the child ~~day~~-care provider; however, the employer shall not be told the specific information used in making the determination.

(f) If the child ~~day~~-care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five working days after

beginning work. The employer shall complete the steps as defined in Paragraphs (c), (d) and ~~(g)~~ (h) of this Rule. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification. If the criminal history check was completed more than one year prior to employment, the child ~~day~~ care provider shall complete all forms as required in Paragraph (a) of this Rule.

~~(g)~~ Family child care home providers and household members who change the location of their operation shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members had lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than ten business days after the location change. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification.

~~(g)~~(h) Child ~~day~~ care providers determined by the Division to be disqualified shall be terminated by the ~~facility-center or small day-care family child care~~ home immediately upon receipt of the disqualification notice.

~~(h)~~(i) Refusal on the part of the employer to dismiss a child ~~day~~ care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child ~~day~~ care provider shall not be employed during the appeal process.

~~(i)~~(j) A substitute child ~~day~~ care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (g) of this Rule.

Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10 NCAC 03U .2703 CRIMINAL RECORD CHECK REQS FOR CURRENT CHILD DAY CARE PROVIDERS

~~(a) Current child day care providers shall submit all forms as required in Rule .2702(a) of this Section.~~

~~(b) If the child day care provider has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction that could be used by the Division in making the determination of the provider=s qualification. The Division may consider the following in making their decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.~~

~~(c) The Division shall notify the child day care provider in writing of the determination by the Division of the individual=s fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer, if any, in writing of the Division=s determination concerning the child day care provider; however the employer shall not be told the specific information used in making the determination.~~

~~(d) Child day care providers determined by the Division to be disqualified shall be terminated by the facility or small day care home immediately upon receipt of the notification.~~

~~(e) Refusal on the part of the employer to dismiss a child day care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division.~~

~~(f) Determination by the Division that the employer is disqualified is reasonable cause to suspend, deny or revoke the permit in addition to any other administrative actions or civil penalties pursued by the Division.~~

Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

10 NCAC 03U .2704 CRIMINAL RECORD CHECK REQUIREMENTS FOR NONLICENSED HOME PROVIDERS

(a) The ~~nonregistered nonlicensed~~ home provider or household member over age 15 shall submit the following to the local purchasing agency:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

~~(b) Current nonregistered home providers shall submit this information by the time of their next reenrollment as a provider of subsidized child day care. New nonregistered nonlicensed home providers and any household member over the age of 15 shall submit this information no later than five working days after applying for enrollment as a nonregistered nonlicensed home provider of subsidized child day care. If more than 12 months have elapsed since the criminal records check has been completed and subsidy funds were not received, then a new criminal record check must be submitted by the nonlicensed home provider and any household member over the age of 15.~~

~~(c) Any new individual over the age of 15 who becomes a household member of a nonlicensed home provider shall submit all criminal records check forms as required in 10 NCAC 03U .2704, Subparagraphs (a)(1) – (a)(4) within 10 business days of joining the household.~~

~~(e)~~(d) If the ~~nonregistered nonlicensed~~ home provider or household member has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, the ~~nonregistered nonlicensed~~ home provider shall acknowledge on the statement that he or she is aware that payment is conditional pending approval by the Division. If the ~~nonregistered nonlicensed~~ home provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a second fingerprint card shall be submitted in order to complete a national check.

~~(d)~~(e) If the ~~nonregistered nonlicensed~~ home provider or household member has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may

submit to the Division additional information concerning the conviction that could be used by the Division in making the determination of the provider's qualification. The Division may consider the following in making ~~their~~ a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number of prior offenses; and age of the individual at the time of occurrence.

~~(e)(f)~~ The local purchasing agency shall mail the local criminal history check, Authority for Release of Information using the form provided by the Division, and fingerprint card(s) to the Division no later than five working days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the ~~nonregistered-nonlicensed~~ home provider's file until the notice of qualification is received by the ~~nonregistered-nonlicensed~~ home provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the ~~nonregistered-nonlicensed~~ home provider's file.

~~(f)(g)~~ A ~~nonregistered-nonlicensed~~ home provider may receive payment during the period in which the state or national criminal history check is being completed if the applicant would otherwise receive approval or temporary approval from the local purchasing agency for enrollment in the subsidized child day care program, subject to the provisions referenced in 10 NCAC 46G .0111(b), 10 NCAC 46G .0214, and 10 NCAC 46G .0215.

~~(g)(h)~~ The Division shall notify the ~~nonregistered-nonlicensed~~ home provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the local purchasing agency in writing of the Division's determination concerning the ~~nonregistered-nonlicensed~~ home provider; however, the local purchasing agency shall not be told the specific information used in making the determination.

~~(h)(i)~~ Disqualification of a ~~nonregistered-nonlicensed~~ home provider by the Division shall be reasonable cause for the local purchasing agency to deny further payment.

~~(i)(j)~~ If a ~~nonregistered-nonlicensed~~ home provider disagrees with the decision of disqualification and files a civil action in district court, the provider may continue to operate as a nonlicensed home provider only but shall not receive payment during the proceedings. If the determination is that the ~~nonregistered-nonlicensed~~ home provider is qualified, the ~~nonregistered-nonlicensed~~ provider shall receive retroactive payment for the care that was provided.

Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25.

SECTION .2800 - VOLUNTARY RATED LICENSES

10 NCAC 03U .2808 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

(a) To achieve one point for compliance history standards for a star rating, a family child care home shall have a compliance history of 60% - 64% as assessed by the Division.

~~(a)(b) To achieve two points for compliance history standards for a star rating, the operator shall have no more than one substantiated complaint of violations of family child care home~~

~~requirements and no substantiation of abuse or neglect by either the Division of Child Development or the local department of social services within the past year. The Division shall assess this by evaluating the number of substantiated complaints that have occurred over the previous year or during the length of time since the home began operating, whichever is less. a family child care home shall have a compliance history of 65% - 69% as assessed by the Division.~~

~~(b)(c) To achieve three points for compliance history standards for a star rating, the operator shall have no more than one substantiated complaint of violations of family child care home requirements and no substantiations of abuse or neglect by either the Division of Child Development or the local department of social services within the last three years. The Division shall assess this by evaluating the number of substantiated complaints that have occurred over the previous three years or during the length of time since the home began operating, whichever is less. a family child care home shall have a compliance history of 70% - 74% as assessed by the Division.~~

~~(c)(d) To achieve four points for compliance history standards for a star rating, the operator shall have no substantiated complaints of violations of family child care home requirements and no substantiations of abuse or neglect by either the Division of Child Development or the local department of social services within the last three years. The Division shall assess this by evaluating the number of substantiated complaints that have occurred over the previous three years or during the length of time since the home began operating, whichever is less. a family child care home shall have a compliance history of 75% - 79% as assessed by the Division.~~

~~(d)(e) To achieve five points for compliance history standards for a star rating, the operator shall have none of the following: a family child care home shall have a compliance history of 80% or higher as assessed by the Division.~~

- ~~(1) Substantiated complaints of violations of family child care home requirements within the last three years;~~
- ~~(2) Substantiations of abuse or neglect by either the Division of Child Development or the local department of social services within the last three years;~~
- ~~(3) Violations of overenrollment or lack of supervision in the past year, excluding emergency situations as determined by the Division.~~

~~(e)(f) The Division shall assess the items in Paragraph (d) of this Rule by evaluating the number of substantiated complaints and violations of overenrollment or supervision that have occurred over the previous three years or during the length of time since the home began operating, whichever is less. compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the family child care home has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations of these requirements:~~

- (1) supervision of children (6 points);
- (2) staff/child ratio (6 points);
- (3) staff qualifications and training (2-5 points);
- (4) health and safety practices (3-6 points);
- (5) discipline (6 points);

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- (6) developmentally appropriate activities (2-4 points);
(7) adequate space (6 points);
(8) nutrition and feeding practices (1-3 points);
(9) program records (1-3 points);
(10) sanitation inspections (6 points); and
(11) transportation (1-3 points), if applicable.

The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHHS - Division of Medical Assistance intends to amend the rules cited as 10 NCAC 26D .0116; 26H .0102, .0211, .0213, .0215, .0304, .0401, .0502, .0506, .0602. Notice of Rule-making Proceedings was published in the Register on October 1, 2001 for 10 NCAC 26H .0401, December 3, 2001 for 10 NCAC 26H 0102, .0211, .0502, .0506, .0602, January 2, 2002 for 10 NCAC 26H .0213, .0215, .0304, and February 1, 2002 for 10 NCAC 26D .0116.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 22, 2002

Time: 12:00-1:00 p.m.

Location: Kirby Building, Room 132, 1985 Umstead Dr., Raleigh, NC

Reason for Proposed Action:

10 NCAC 26D .0116 - This change is based on recent General Assembly legislation to implement reduction number 33 of the Conference Report on the Continuation, Capital, and Expansion Budget. This change increases co-payments for brand name prescription drugs from \$1 to \$3 per prescription. Co-payments for generic prescriptions remain at \$1 per prescription.

10 NCAC 26H .0102, .0211, .0502, .0506, .0602 - This action was necessitated by the determination of the Carolina Alternatives Waiver and the exclusion of state hospitals as eligible providers.

10 NCAC 26H .0102, .0211, .0506 - This amendment limits annual inflation increases to the amount calculated per the state plan but not to exceed the percentage increase approved by the NC General Assembly.

10 NCAC 26H .0502 - This amendment authorizes a change in the public health departments cost settlement period from the fiscal year ended June 30. This change also allows the settlement to be performed in nine months, rather than the previous six months.

10 NCAC 26H .0602 - This amendment limits the annual inflation adjustment to the lesser of the state plan formula or the amount approved by the NC General Assembly. This amendment allows the Division of Medical Assistance to limit annual inflation, based on action by the General Assembly.

10 NCAC 26H .0213, .0215, .0304 - These changes are necessary in order not to exceed Medicaid expenditures greater than that approved by the General Assembly. This action is in accordance with SL 2001-424, Section 21.19.(t) to reduce Medicaid expenditures.

10 NCAC 26H .0213 - This amendment allows the Division of Medical Assistance to use the most current available information to determine hospital qualification for disproportionate share hospital payments.

10 NCAC 26H .0215 - This amendment adopts the Medicare discharge policy when the patient discharged is assigned to a qualifying diagnosis-related group. Said discharge policy applies when the discharge is to hospital or distinct part hospital unit excluded from the DRG reimbursement system, or skilled nursing facility, or to home under a written plan of care for the provision of home health services from a home health agency and those services begin within 3 days after the date of discharge.

10 NCAC 26H .0304 - This amendment allows the Division of Medical Assistance to rebase rates and allows for rate reductions if necessary in order to prevent payment rates from exceeding upper payment limits established by federal regulations.

10 NCAC 26H .0401 - This change represents a portion of the action that the Division of Medical Assistance will undertake to control program expenditures for the current and future fiscal years. Physician providers will receive approximately a five-percent decrease in Medicaid payment.

Comment Procedures: Written comments concerning this rule-making action must be submitted by September 30, 2002 to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504.

Fiscal Impact

- State 10 NCAC 26D .0116; 26H .0102, .0211, .0215, .0304, .0401, .0506, .0602
Local 10 NCAC 26D .0116; 26H .0102, .0211, .0215, .0401, .0304, .0506, .0602
Substantive (>\$5,000,000) 10 NCAC 26D .0116; 26H .0102, .0211, .0215, .0304, .0401
None 10 NCAC 26H .0502

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION: AND SCOPE

10 NCAC 26D .0116 CO-PAYMENT

(a) Co-payment Requirements. The following requirements are imposed on all Medicaid recipients for the following services:

- (1) Outpatient Hospital Services. Co-payment will be charged at the rate of three dollars (\$3.00) per outpatient visit.

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- (2) Chiropractic Services. Co-payment will be charged at the rate of one dollar (\$1.00) per chiropractic visit.
- (3) Podiatric Services. Co-payment will be charged at the rate of one dollar (\$1.00) per podiatric visit.
- (4) Optometric Services. Co-payment will be charged at the rate of two dollars (\$2.00) per optometric visit.
- (5) Optical Supplies and Services. Co-payment will be charged at the rate of two dollars (\$2.00) per item. Co-payment for repair of eyeglasses and other optical supplies will be charged at the rate of two dollars (\$2.00) per repair exceeding five dollars (\$5.00).
- (6) Prescribed Drugs. Co-payment will be charged at the rate of one dollar (\$1.00) per prescription dispensing for Generic drugs and three dollars (\$3.00) for dispensing for Brand Name drugs, including refills.
- (7) Dental Services. Co-payment will be charged at the rate of three dollars (\$3.00) per visit, except when more than one visit is required. If more than one visit is required but the service is billed under one procedure code with one date of service, then only one co-payment shall be collected. Full and partial dentures are examples.
- (8) Physicians. Co-payment will be charged at the rate of three dollars (\$3.00) per visit.

(b) Co-payment Exemptions. No co-payment will be charged for the following services:

- (1) EPSDT related services;
- (2) Family Planning Services;
- (3) Services in state owned mental hospitals;
- (4) Services covered by both Medicare and Medicaid;
- (5) Services to persons under age 21;
- (6) Services related to pregnancy;
- (7) Services provided to residents of ICF, ICF-MR, SNF, Mental Hospitals; and
- (8) Hospital emergency room services.

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d).

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

10 NCAC 26H .0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care shall be determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient shall be classified in one of the two categories depending on the services needed. Rates are derived from either filed, desk, or field audited cost reports for a base year period to be selected by the state. Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference

between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports shall be filed and audited under provisions set forth in 10 NCAC 26H .0104. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

- (1) The direct rate shall based on the Medicaid cost per day incurred in the following cost centers:
 - (A) Nursing,
 - (B) Dietary or Food Service,
 - (C) Laundry and Linen,
 - (D) Housekeeping,
 - (E) Patient Activities,
 - (F) Social Services,
 - (G) Ancillary Services (includes several cost centers).
- (2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day shall be increased by adjustment factors for price changes as set forth in Rule .0102(c).
 - (A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.
 - (B) A standard per diem amount shall be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount shall be based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.
- (3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate shall be assigned as determined in Rule .0102(d) of this Section for the new type of care.
- (4) The direct maximum rates shall be developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays,

one for skilled care and one for intermediate care. Each array shall be weighted by total patient days. The per diem cost at the 80th percentile in each array shall be selected as the base for the maximum rate. The base cost in each array shall be adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

(5) Effective October 1, 1990, the direct rates shall be adjusted as follows:

(A) A standard per diem amount shall be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;
- (ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and
- (iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) A standard amount shall be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility

only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases shall be equal to the exact additional amount required to meet the licensed nursing requirements.

(C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which shall reflect each facility's actual cost of complying with all OBRA '87 requirements.

(6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein shall be repaid to the State. This shall be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments shall not be reimbursable.

(7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:

- (A) Administrative and General,
- (B) Operation of Plant and Maintenance,
- (C) Property Ownership and Use,
- (D) Mortgage Interest.

(8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates shall be fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that shall be paid in subsequent years under this plan as provided in this Rule.

(9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates shall be computed as follows:

(A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] shall be the base rate.

(B) The base rate shall be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates shall apply in accordance with the procedure set

forth in Rule .0102(c) of this Section to establish the ICF per diem indirect rate.

(C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment shall be made to recognize the additional administrative expense incurred in the provision of SNF patient care.

(10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount shall be based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.

(11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and shall be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate shall be adjusted annually by the indirect cost adjustment factors.

(c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), shall be adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors shall be computed using aggregate base year costs in the following manner:

(1) Costs shall be separated into direct and indirect cost categories.

(2) Costs in each category shall be accumulated into the following groups:

- (A) labor,
- (B) other,
- (C) fixed.

(3) The relative weight of each cost group shall be calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).

(4) Price adjustment factors for each cost group shall be established as follows:

(A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs shall be based on the projected average hourly wage of N.C. service workers.

(B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(C) Fixed. No adjustment shall be made for this category, thus making the factor zero.

(D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.

(E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, effective October 1, 1997 for fiscal year 1998, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall be adjusted to 2.04% for direct rates and 1% for indirect rates, in order to produce fair and reasonable reimbursement of efficient operators.

(G) Effective October 1, 2001, the price level adjustment factors calculated in Part (c)(4)(E) of this Rule shall not exceed that approved by the North Carolina General Assembly.

(d) The skilled and intermediate direct patient care rates for new facilities shall be established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider shall be reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Specialized Service Rates:

(1) Head Injury Intensive Rehabilitation Services.

(A) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A facility must specialize to the extent of staffing at least 50 percent of its

Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).

(B) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.

(C) Cost reports for this service must be filed in accordance with the rules in 10 NCAC 26H .0104, but there will be no cost settlements for any differences between cost and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider shall not be eligible to receive separate payments for return on equity as defined in 10 NCAC 26H .0105.

(2) Ventilator Services.

(A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. Ventilator services shall be paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.

(B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. Rates in subsequent years shall be determined by applying the nursing facility direct adjustment factor to the previous 12 month cost report direct cost.

(C) Cost reports and settlements for this service shall be in accordance with 10 NCAC 26H .0104 and return on equity shall be allowed as defined in 10 NCAC 26H .0105.

(D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be

negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that shall be eligible for a combined single rate are small freestanding facilities with fewer than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule.

(g) Effective October 1, 1994 the bloodborne pathogen cost required under Title 29, Part 1910, Subpart 2, Section 1910.0130 of the Code of Federal Regulations shall be included in the nursing facility's direct cost reimbursement. The initial per diem amount shall be set at the lower of the actual or eightieth percentile of bloodborne pathogen costs incurred in fiscal year 1993.

(h) Religious Dietary Considerations.

(1) A standard amount may be added to a nursing facility's skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule, for special dietary need for religious reasons.

(2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates are determined from a new data base. Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.

(3) The special dietary add-on rate may not exceed more than a 30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on will be adjusted by the direct rate inflation factor each year until a new data base is used to determine rates.

(4) This special dietary add-on rate shall become part of the facility's direct rates to be reconciled in the annual cost report settlement.

(i) Effective October 1, 1994 nursing facilities shall be responsible for providing medically necessary transportation for residents, unless ambulance transportation is needed. Reimbursement shall be included in the nursing facility's direct cost. The initial amount shall be based on a per diem fee derived from estimated industry cost for transportation and associated salaries.

(j) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 447, Subpart C; S.L. 1991, c. 689, s. 95.

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

10 NCAC 26H .0211 DRG RATE SETTING METHODOLOGY

(a) Diagnosis Related Groups is a system of classification for hospital inpatient services. For each hospital admission, a single DRG category shall be assigned based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status. For claims with dates of services prior to January 1, 1995 payments shall be based on the reimbursement per diem in effect prior to January 1, 1995. However, for claims related to services where the admission was prior to January 1, 1995 and the discharge was after December 31, 1994, then the greater of the total per diem for services rendered prior to January 1, 1995, or the appropriate DRG payment shall be made.

(b) The Division of Medical Assistance (Division) shall use the DRG assignment logic of the Medicare Grouper to assign individual claims to a DRG category. Medicare revises the Grouper each year in October. The Division shall install the most recent version of the Medicare Grouper implemented by Medicare.

The initial DRG in Version 12 of the Medicare Grouper, related to the care of premature neonates and other newborns numbered 385 through 391, shall be replaced with the following classifications:

- 385 Neonate, died or transferred, length of stay less than 3 days
- 801 Birthweight less than 1,000 grams
- 802 Birthweight 1,000 - 1,499 grams
- 803 Birthweight 1,500 - 1,999 grams
- 804 Birthweight >=2,000 grams, with Respiratory Distress Syndrome
- 805 Birthweight >= 2,000 grams, premature with major problems
- 810 Neonate with low birthweight diagnosis, age greater than 28 days at admission
- 389 Birthweight >= 2,000 grams, full term with major problems
- 390 Birthweight >= 2,000 grams, full term with other problems or premature without major problems
- 391 Birthweight >= 2,000 grams, full term without complicating diagnoses

(c) DRG relative weights are a measure of the relative resources required in the treatment of the average case falling within a particular DRG category. The average DRG weight for a group of services, such as all discharges from a particular hospital or all North Carolina Medicaid discharges, is known as the Case Mix Index (CMI) for that group.

- (1) The Division shall establish relative weights for each utilized DRG based on a recent data set of historical claims submitted for Medicaid recipients. Charges on each historical claim shall be converted to estimated costs by

applying the cost conversion factors from each hospital's submitted Medicare cost report to each billed line item. Cost estimates are standardized by removing direct and indirect medical education costs at the appropriate rates for each hospital.

- (2) Relative weights shall be calculated as the ratio of the average cost in each DRG to the overall average cost for all DRGs combined. Prior to calculating these averages, low statistical outlier claims shall be removed from the data set, and the costs of claims identified as high statistical outliers shall be capped at the statistical outlier threshold. The Division of Medical Assistance shall employ criteria for the identification of statistical outliers which are expected to result in the highest number of DRGs with statistically stable weights.

- (3) The Division of Medical Assistance shall employ a statistically valid methodology to determine whether there are a sufficient number of recent claims to establish a stable weight for each DRG. For DRGs lacking sufficient volume, the Division shall set relative weights using DRG weights generated from the North Carolina Medical Data Base Commission's discharge abstract file covering all inpatient services delivered in North Carolina hospitals. For DRGs in which there are an insufficient number of discharges in the Medical Data Base Commission data set, the Division sets relative weights based upon the published DRG weights for the Medicare program.

- (4) Relative weights shall be recalculated whenever a new version of the DRG Grouper is installed by the Division of Medical Assistance. When relative weights are recalculated, the overall average CMI will be kept constant.

(d) The Division of Medical Assistance shall establish a unit value for each hospital which represents the DRG payment rate for a DRG with a relative weight of one. This rate is established as follows:

- (1) Using the methodology described in Paragraph (c) of this Rule, the Division shall estimate the cost less direct and indirect medical education expense on claims for discharges occurring during calendar year 1993, using cost reports for hospital fiscal years ending during that period or the most recent cost report available. All cost estimates are adjusted to a common 1994 fiscal year and inflated to the 1995 rate year. The average cost per discharge for each provider is calculated.

- (2) Using the DRG weights effective on January 1, 1995, a CMI is calculated for each hospital for the same population of claims used to develop the cost per discharge amount in Subparagraph (d)(1) of this Rule. Each hospital's average cost per discharge is divided

- by its CMI to get the cost per discharge for a service with a DRG weight of one.
- (3) The amount calculated in Subparagraph (d)(2) of this Rule is reduced by 7.2% to account for outlier payments.
- (4) Hospitals are ranked in order of increasing CMI adjusted cost per discharge. The DRG Unit Value for hospitals at or below the 45th percentile in this ranking is set using 75% of the hospital's own adjusted cost per discharge and 25% of the cost per discharge of the hospital at the 45th percentile. The DRG Unit Value for hospitals ranked above the 45th percentile is set at the cost per discharge of the 45th percentile hospital. The DRG unit value for new hospitals and hospitals that did not have a Medicaid discharge in the base year is set at the cost per discharge of the 45th percentile hospital.
- (5) The hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated annually by the National Hospital Market Basket Index as published by Medicare and applied to the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management. This annual update shall not exceed the update amount approved by the North Carolina General Assembly. Effective October 1, 1997, for fiscal year ended September 30, 1998 only, the hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated by the lower of the National Hospital Market Basket Index as published by Medicare and applied to the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management or the Medicare approved Inpatient Prospective Payment update factor.
- (6) Allowable and reasonable costs will be reimbursed in accordance with the provisions of the Medicare Provider Reimbursement Manual referred to as HCFA Publication 15-1.
- (e) Reimbursement for capital expense is included in the DRG hospital rate described in Paragraph (d) of this Rule.
- (f) Hospitals operating Medicare approved graduate medical education programs shall receive a DRG payment rate adjustment which reflects the reasonable direct and indirect costs of operating those programs.
- (1) The Division defines reasonable direct medical education costs consistent with the base year cost per resident methodology described in 42 CFR 413.86. The ratio of the aggregate approved amount for graduate medical education costs at 42 CFR 413.86 (d) (1) to total reimbursable costs (per Medicare principles) is the North Carolina Medicaid direct medical education factor. The direct medical education factor is based on information supplied in the 1993 cost reports and the factor will be updated annually as soon as practicable after July 1 based on the latest cost reports filed prior to July 1.
- (2) Effective October 1, 2001, and for each subsequent year, the The North Carolina Medicaid indirect medical education factor is equal to the Medicare indirect medical education factor in effect on October 1 each year, computed by the following formula:

$$1.89 \left(\frac{1 + R}{1.405} - 1 \right)$$
where R equals the number of approved full time equivalent residents divided by the number of staffed beds, not including nursery beds. The indirect medical education factor will be updated annually as soon as practicable after July 1 based on statistics contained in the latest cost reports filed prior to July 1.
- (3) Hospitals operating an approved graduate medical education program shall have their DRG unit values increased by the sum of the direct and indirect medical education factors.
- (g) Cost outlier payments are an additional payment made at the time a claim is processed for exceptionally costly services. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Cost Outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for services not covered by the North Carolina Medical Assistance program.
- (1) A cost outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information used to establish those relative weights. The cost threshold is the greater of twenty-five thousand dollars (\$25,000) or mean cost for the DRG plus 1.96 standard deviations.
- (2) Charges for non-covered services and services not reimbursed under the inpatient DRG methodology (such as professional fees) shall be deducted from total billed charges. The remaining billed charges are converted to cost using a hospital specific cost to charge ratio. The cost to charge ratio excludes medical education costs.
- (3) If the net cost for the claim exceeds the cost outlier threshold, a cost outlier payment is made at 75% of the costs above the threshold.
- (h) Day outlier payments are an additional payment made for exceptionally long lengths of stay on services provided to children under six at disproportionate share hospitals and children under age one at non-disproportionate share hospitals. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Day outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for

services not covered by the North Carolina Medical Assistance program.

- (1) A day outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information used to establish the relative weights. The day outlier threshold is the greater of 30 days or the arithmetical average length of stay for the DRG plus 1.50 standard deviations.
 - (2) A day outlier per diem payment may be made for covered days in excess of the day outlier threshold at 75% of the hospital's payment rate for the DRG rate divided by the DRG average length stay.
- (i) Services which qualify for both cost outlier and day outlier payments under this rule shall receive the greater of the cost outlier or day outlier payment.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

SUBCHAPTER 26H - REIMBURSEMENT PLANS

10 NCAC 26H .0213 DISPROPORTIONATE SHARE HOSPITALS (DSH)

(a) Hospitals that serve a disproportionate share of low-income patients and have Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance (Division) on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective ~~July 1~~ of any particular year are based on most current available information. each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for

- all hospitals that receive Medicaid payments in the state; or
- (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or
- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
- (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State; or
- (6) It is a Psychiatric hospital operated by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.
 - (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.
 - (c) An additional one time payment for the 12-month period ending September 30th, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the Public hospitals that are the primary affiliated teaching hospitals for the University of North Carolina Medical Schools less payments made under authority of Paragraph (d) of this Rule. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments shall not exceed the limits on DSH funding as set for the State by HCFA.
 - (d) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule shall be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

- (1) An eligible hospital shall receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (a)(5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (a)(5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (a)(5) of this Rule divided by three. In Subparagraph (d)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided. Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made. Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923(g), limit on amount of payment to hospitals.
- (e) Subject to the availability of funds, hospitals licensed by the State of North Carolina shall be eligible for disproportionate share payments for such services from a disproportionate share pool under the following conditions and circumstances:
- (1) For purposes of this Paragraph eligible hospitals are hospitals that for the fiscal year for which payments are being made and either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director:
- (A) qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule;
- (B) operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs;
- (C) incur unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000.00); and
- (D) meet the definition of qualified public hospitals set forth in Subparagraph (7) of this Paragraph;
- (2) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
- (3) Payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule, and may cover periods within the fiscal year preceding or following the payment date.
- (4) For the 12-month period ending September 30, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients.
- (5) In subsequent 12-month periods ending September 30th of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.
- (6) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f).

- (7) For purposes of this Paragraph, a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (a)(5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (D) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payments;
 - (E) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as shall be determined by the Director; and
 - (F) Submits to the Division on or before 10 working days prior to the date any such payments under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 CFR. 433.51(b).
- (8) To ensure that the estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments established by applicable federal law and regulation described in Subparagraph (6) of this Paragraph, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. If any hospital received payments pursuant to this Paragraph in excess of the percentage established by the Director under Subparagraphs (4) or (5) of this Paragraph, ascertained without regard to other disproportionate share hospital payments that may have been received for services during the

- 12-month period ending September 30th for which such payments were made, such excess payments shall promptly be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement.
- (9) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).
- (f) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals licensed by the State of North Carolina. For purposes of this Paragraph, a qualified public hospital is a hospital that:
 - (1) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (2) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (3) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (4) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payment;
 - (5) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director; and
 - (6) Submits to the Division on or before 10 working days prior to the date of any such payment under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
 - (A) The payments to qualified public hospitals pursuant to this Paragraph for any given period shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients either for the fiscal year immediately preceding the period for which

payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. Payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

- (B) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any other disproportionate share hospital payments that may have been or may be paid by the Division for the same fiscal year.
- (C) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.
- (D) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part C of this Subparagraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the

fiscal year for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Part C of this Subparagraph will be promptly repaid. Subject to the availability of funds, and to the upper limits described in Part C of this Subparagraph, additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital-specific upper limit for each such hospital.

- (E) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A -55 (c).
- (g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of State Agencies are considered to be a Disproportionate Share Hospital (DSH) when the following conditions are met:
 - (1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and
 - (2) The State Agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and
 - (3) The inpatient and outpatient services are authorized by the State Agency for which the uninsured client meets the program requirements.
 - (A) For purposes of this Paragraph, uninsured patients are those clients of the State Agency that have no third parties responsible for any hospital services authorized by the State Agency.
 - (B) DSH payments are paid for services to qualified uninsured clients on the following basis:
 - (i) For inpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.
 - (ii) For outpatient services the amount of the DSH payment is determined by the State Agency in accordance with the applicable Medicaid outpatient payment methodology as stated in Section 24 of Chapter 18 of the 1996 General Assembly of North Carolina.

(iii) No federal funds are utilized as the non-federal share of authorized payments unless the federal funding is specifically authorized by the federal funding agency as eligible for use as the non-federal share of payments.

(C) Based upon this Subsection, DSH payments as submitted by the State Agency, shall be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments shall not exceed the limits on Disproportionate Share Hospital funding as set forth for the state by HCFA.

(h) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that qualify for disproportionate share hospital status under Subparagraph (a)(1) through (a)(5) of this Rule and provide inpatient or outpatient hospital services to Medicaid Health Maintenance Organization (HMO) enrollees during the period for which payments under this Paragraph are being ascertained.

(1) For purposes of this Paragraph, a Medicaid HMO enrollee is a Medicaid beneficiary who receives Medicaid services through a Medicaid HMO; a Medicaid HMO is a Medicaid managed care organization, as defined in the Social Security Act, Title XIX, Section 1903(m)(1)(A), that is licensed as an HMO and provides or arranges for services for enrollees under a contract pursuant to the Social Security Act, Title XIX, Section 1903(m)(2)(A)(i) through (xi).

(2) To qualify for a DSH payment under this Paragraph, a hospital shall also file with the Division at least 10 working days prior to the date of any payment under this Paragraph, by use of a form prescribed by the Division, a certification of its charges for inpatient and outpatient services provided to Medicaid HMO enrollees either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director.

(A) The payments to qualified hospitals pursuant to this Paragraph for any given period shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services either for the fiscal year immediately preceding the

period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director to be converted by the Division to cost by multiplying charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division shall be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent as a percentage of reasonable cost to the Medicaid Supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of 10 NCAC 26H .0212. Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

(B) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.

(C) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph

2 of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.

(D) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(i) Additional disproportionate share hospital payments for the 12 month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals licensed by the State of North Carolina.

(1) For purposes of this Paragraph a large free-standing inpatient rehabilitation hospital is a hospital licensed for more than 100 rehabilitation beds.

(2) For purposes of this Paragraph a qualified public hospital is a hospital that:

(A) Qualifies for disproportionate share hospital status under Subparagraph (a)(1) through (5) of this Rule;

(B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;

(C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained; and

(D) Verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Paragraph that is still valid as of the date of any such payment.

Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

(3) Payments authorized by this Paragraph for any given period shall be based on and shall not exceed for the 12 month period ending September 30th of the year for which payments are made the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to

be received for these services. For purposes of this Subparagraph:

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of 10 NCAC 26H .0212.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received

(4) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by an analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant

(5) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year for which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.

(6) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph 3 of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal

year for which such payments are made. No additional payments shall be made in connection with the cost settlement.

(7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(j) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that: are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the period to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid patients; and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).

(1) Qualification for 12-month periods ending September 30th shall be based on the most recent cost report data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.

(2) Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually, may cover periods within the fiscal year preceding or following the payment date, and shall be calculated, paid and cost settled after any other Medicaid payments of any kind to which a hospital may be entitled for the same fiscal year.

(3) Payments to qualified hospitals under this Paragraph for any period shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:

(A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212.

(B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.

(C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by

analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

(D) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923 (f) for the fiscal year in which such payments are made.

(E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part D of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost for the fiscal year for which such payments are made. No additional payments shall be made in connection with such cost settlement.

(F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

10 NCAC 26H .0215 SPECIAL SITUATION

(a) In order to be eligible for inpatient hospital reimbursement under Section .0200 of this Subchapter, a patient must be admitted as an inpatient and stay past midnight in an inpatient bed. The only exceptions to this requirement are those admitted inpatients who die or are transferred to another acute care hospital on the day of admission. Hospital admissions prior to 72 hours after a previous inpatient hospital discharge are subject to review by the Division of Medical Assistance.

Services for patients admitted and discharged on the same day and who are discharged to home or to a non-acute care facility must be billed as outpatient services. In addition patients who are admitted to observations status do not qualify as inpatients, even when they stay past midnight. Patients in observation status for more than 30 hours must either be discharged or converted to inpatient status.

(b) Outpatient services provided by a hospital to patients within the 24 hour period prior to an inpatient admission in the same hospital that are related to the inpatient admission shall be bundled with the inpatient billing.

(c) When a patient is transferred between hospitals, the discharging hospital shall receive a pro-rated payment equal to the normal DRG payment multiplied by the patient's actual length of stay divided by the geometric mean length of stay for the DRG. When the patient's actual length of stay equals or exceeds the geometric mean length of stay for the DRG, the transferring hospital receives full DRG payment. Transfers are eligible for cost outlier payments. The final discharging hospital shall receive the full DRG payment.

(d) For discharges occurring on or after October 1, 2001, a discharge of a hospital inpatient is considered to be a transfer under Paragraph (c) of this Rule when the patient's discharge is assigned to one of the following qualifying diagnosis-related groups, DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483 and the discharge is made under any of the following circumstances:

- (1) To a hospital or distinct part hospital unit excluded from the DRG reimbursement system;
- (2) To a skilled nursing facility; or
- (3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within three days after the date of discharge.

~~(e)~~(e) Days for authorized skilled nursing for intermediate care level for service rendered in an acute care hospital shall be reimbursed at a rate equal to the average rate for all such Medicaid days based on the rates in effect for the long term care plan year beginning each October 1.

Days for lower than acute level of care for ventilator dependent patients in swing-bed hospitals or that have been down-graded through the utilization review process may be paid for up to 180 days at a lower level ventilator-dependent rate if the hospital is unable to place the patient in a lower level facility. An extension maybe granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance of the patient. A single all inclusive prospective per diem rate is paid, equal to the average rate paid to nursing facilities for ventilator-dependent services. The hospital must actively seek placement of the patient in an appropriate facility.

~~(e)~~(f) The Division of Medical Assistance may make a retrospective review of any transfers to a lower level of care

prior to the expiration of the average length of stay for the applicable DRG. The Division of Medical Assistance may adjust the DRG payment if the transfer is deemed to be inappropriate, based on the preponderance of evidence of a case by case review.

~~(g)~~(g) In state-operated hospitals, the appropriate lower level of care rates equal to the average rate paid to state operated nursing facilities, are paid for skilled care and intermediate care patients awaiting placement in a nursing facility bed.

~~(g)~~(h) For an inpatient hospital stay where the patient is Medicaid eligible for only part of the stay, the Medicaid program shall pay the DRG payment less the patient's liability or deductible, if any, as provided by 10 NCAC 50B .0406 and .0407.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447 Subpart C.

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

10 NCAC 26H .0304 RATE SETTING METHOD FOR NON-STATE FACILITIES

(a) A prospective rate shall be determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. The prospective rate is based on the base year period to be selected by the state. The prospective rate may be changed due to a rate appeal under Rule .0308 of this Section or facility reclassification under Paragraph (b) of this Rule. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

- (1) Group 1 - Facilities with 32 beds or less.
- (2) Group 2 - Facilities with more than 32 beds.
- (3) Group 3- Facilities with medically fragile clients. For rate reimbursement purposes under this Rule medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.
- (4) Facilities in group 1 or 2 in Subparagraph (a)(1) or (2) of this Rule shall be further classified in accordance to the level of disability of the facility's clients, as measured by the Developmental Disabilities Profile (DDP) copyrighted assessment instrument which along with the scoring instrument are hereby incorporated by reference, including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603 at a cost of twenty cents (\$.20) per page. A summary of the levels of disability is shown in the following chart:

FACILITY DDP SCORE

Level	Low	High
1	200.00	300.00
2	125.00	199.99
3	100.00	124.99
4	75.00	99.99
5	50.00	74.99

(b) Facilities shall be reclassified into appropriate groups as defined in Paragraph (a) of this Rule.

- (1) When a facility is reclassified, the rate shall be adjusted retroactively back to the date of the event that caused the reclassification. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical Assistance.
- (3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.
- (4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each facility is properly classified for rate setting purposes.
- (5) A provider shall file any request for facility reclassification in writing with the Division of Medical Assistance no later than 60 days subsequent to the proposed reclassification effective date.
- (6) For facilities certified prior to July 1, 1993, the facility DDP score calculated for fiscal year 1993 shall be used to establish proper classification at July 1, 1995.
- (7) For facilities certified after June 30, 1993, the most recent facility DDP score shall be used to establish proper classification.
- (8) A facility reclassification review shall use the most current facility DDP score.
- (9) A facility's DDP score shall be subject to independent validation by the Division of Medical Assistance.
- (10) A new facility that has not had a DDP survey conducted on its clients shall be categorized as a level 2 facility for rate setting purposes, pending completion of the DDP survey. Upon completion of the DDP survey, the facility shall be subject to reclassification and rates shall be adjusted retroactively back to the date of certification. Overpayments related to this retroactive adjustment shall be paid to the

Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(c) Facility rates under this Rule shall be established at July 1, 1995, under the following:

- (1) For facilities certified prior to July 1, 1993, rates shall be derived from the 1993 cost reports.
- (2) For facilities certified during fiscal year 1993-1994, the fiscal year 1994 facility specific cost report shall be used to derive rates.
- (3) For facilities certified during fiscal year 1994-1995, the fiscal year 1995 facility specific cost report shall be used to derive rates. Rates for these facilities shall not be adjusted, except for the impact of inflation under Paragraph (k) of this Rule, until the fiscal year 1995 cost report has been properly reviewed. Rates for these facilities shall be adjusted retroactively back to July 1, 1995, once the fiscal year 1995 facility specific cost report has been reviewed. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.
- (4) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 shall not have their rates established in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule. The rates for these facilities shall remain at the level approved in the rate appeal proceeding adjusted only for inflation, as reflected in Paragraph (k) of this Rule.

(d) For facilities certified after June 30, 1993, rates developed from filed cost reports for fiscal years subsequent to 1993 may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

PROPOSED RULES

- (e) Each prospective rate developed in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule consists of the sum of two components as follows:
- (1) Indirect care rate.
 - (2) Direct care rate.
- (f) A uniform industry wide indirect care rate shall be established for each facility category shown under Subparagraph (a)(1), (a)(2), or (a)(3) of this Rule.
- (1) The indirect rate for group 1 facilities is based on the fiftieth percentile of the following costs incurred by all group 1 facilities with six beds or less, except those related by common ownership or control to more than 40 said facilities. The sum of the cost of property ownership and use, administrative and general, and operation and maintenance of plant, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (2) The indirect rate for group 2 facilities is based on the fiftieth percentile of the costs noted in Subparagraph (f)(1) of this Rule incurred by the group 2 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (3) The indirect rate for group 3 facilities is based on the fiftieth percentile of the costs noted in Subparagraph (f)(1) of this Rule incurred by the group 3 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.
 - (4) The indirect rates established under Subparagraphs (f)(1), (f)(2), and (f)(3) of this Rule shall be reduced as determined based on industry cost analysis by an amount not to exceed four percent to account for expected operating efficiencies.
- (g) The direct care rate for facilities certified prior to July 1, 1993, shall be based on the Myers and Stauffer study performed on the 1993 base year cost reports.
- (1) The direct care rate for all facilities certified during fiscal years subsequent to fiscal year 1993 is based on the first facility specific cost report filed after certification. Based on said cost report, the direct care rate is equal to the sum of all allowable costs reflected in the ICF-MR cost report cost centers, as included in the ICF-MR cost report format effective July 1, 1993, except for the following indirect cost centers:
 - (A) Property Ownership and Use
 - (B) Operation and Maintenance of Plant and Housekeeping-Non-Labor
 - (C) Administrative and General
 - (2) The direct care rate shall be limited to the lesser of the actual amount incurred in the base year or the cost limit derived from the fiftieth percentile of direct care costs incurred by the related facility group in the fiscal year 1993 base year, based on the Myers and Stauffer study.
- (3) The fiftieth percentile cost limit shall be reduced by one percent each year, for the four year period beginning July 1, 1996, in order to account for expected operating efficiencies, as determined based on industry cost analysis.
 - (4) The fiftieth percentile cost limit shall be increased each year by price level changes calculated in accordance with Paragraph (k) of this Rule.
- (h) The indirect rate shall not be subject to cost settlement.
- (1) Costs above the indirect rate shall not be paid to the provider.
 - (2) Costs savings below the indirect rate shall not be recouped from the provider.
- (i) The direct care rate shall be subject to cost settlement, based on the cost report, subject to audit, filed with the Division of Medical Assistance.
- (1) Costs above the direct rate shall not be paid to the provider.
 - (2) Cost savings below the direct rate shall be recouped from the provider.
- (j) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 may choose to cost settle under the provisions of Paragraphs (h) and (i) of this Rule, or under the following procedure:
- (1) If, during a cost reporting period, total allowable costs are less than total prospective payments, then a provider may retain one-half of said difference, up to an amount of five dollars (\$5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. Costs in excess of a facility's total prospective payment rate are not reimbursable.
 - (2) The facilities subject to this Paragraph shall make the election on cost settlement methodology on or before the filing of the annual cost report with the Division of Medical Assistance.
 - (3) An election to follow the cost settlement procedures of Paragraphs (h) and (i) of this Rule shall be irrevocable.
 - (4) Rates established for these facilities during future rate appeal proceedings shall be subject to the cost settlement procedures of Paragraphs (h) and (i) of this Rule.
- (k) To compute each facility's current prospective rate, the direct and indirect rates established by Paragraphs (f) and (g) of this Rule shall be adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.
- (1) Price level adjustment factors are computed using aggregate costs in the following manners:
 - (A) Costs shall be separated into three groups:
 - (i) Labor;
 - (ii) Non-labor;
 - (iii) Fixed.

(B) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total cost of the three categories.

(C) Price level adjustment factors for each cost group shall be established as follows:

(i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance based upon market analysis.

(ii) Nonlabor. The percentage change for nonlabor costs is based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(iii) Fixed. No price level adjustment shall be made for this category.

(D) The weights computed in Part (k)(1)(B) of this Rule shall be multiplied by the rates computed in Part (k)(1)(C) of this Rule. These weighted rates shall be added to obtain the composite inflation rate to be applied to both the direct and indirect rates.

(2) If necessary, the Division of Medical Assistance shall adjust the annual inflation factor or rates in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.

(l) Effective July 1, 1995, any rate reductions resulting from this Rule shall be implemented based on the following deferral methodology:

- (1) Rates shall be reduced for the excess of current rates over base year costs plus inflation.
- (2) Rates shall be reduced a maximum of 50 percent of the fiscal 1996 inflation rate for the excess of actual costs over applicable cost limits. This reduction shall result in the facility receiving at a minimum 50 percent of the 1996 inflation rate. Any excess reduction shall be carried forward to future years.
- (3) Total reduction in future years related to the excess reduction carried forward from

Subparagraph (l)(2) of this Rule, shall not exceed the annual rate of inflation. This reduction shall result in the facility receiving at a minimum the rate established in Paragraph (l)(2) of this Rule. Any excess reduction shall be carried forward to future years, until the established rate equals that generated by Paragraphs (f), (g), and (k) of this Rule.

(4) Rates calculated based on Subparagraphs (l)(2) and (3) of this Rule shall be cost settled based on the provisions of Subparagraph (j)(1) of this Rule until the fiscal year that the facility receives full price level increase under Paragraph (k) of this Rule.

(A) A provider may make an irrevocable election to cost settle under the provisions of Paragraphs (h) and (i) of this Rule during the deferral period.

(B) Once the rates calculated based on Subparagraphs (l)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k) of this Rule, then said fiscal year's rates shall be cost settled based on Paragraphs (h) and (i) of this Rule.

(C) Chain providers are allowed to file combined cost reports, for cost settlement purposes, for facilities that use the same cost settlement methodology and have the same uniform rate.

(D) A provider may elect to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said election shall be made each year, 30 days prior to the cost report due date.

(m) The initial rate for facilities that have been awarded a Certificate of Need is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application, adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (k) of this Rule, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year an audit of the first year of normal operation is completed.

(1) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner.

(2) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing

- of properly prepared budgets and supporting information.
- (3) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certified by the Medicaid Program.
 - (4) The initial rate for a new facility shall not be entered into the Medicaid payment system until the facility is enrolled in the Medicaid program and a Medicaid identification number has been assigned to the facility by the Division of Medical Assistance.
- (n) A provider with more than one facility may be allowed to recover costs through a combined uniform rate for all facilities.
- (1) Combined uniform rates for chain providers shall be approved upon written request from the provider and after review by the Division of Medical Assistance.
 - (2) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.
 - (3) A chain provider with facility(s) that fall under Paragraphs (h) and (i) of this Rule and with facility(s) that fall under Subparagraph (1)(4) of this Rule may elect to include the facilities in a combined cost report and elect to cost settle under either Paragraphs (h) and (i) or Subparagraph (1)(4) of this Rule. The cost settlement election shall be made each year, 30 days prior to the cost report due date.
- (o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this Rule for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.
- (p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.
- (q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance may approve an interim rate.
- (1) The interim rate shall not exceed the rate cap established under this Rule for the applicable facility group.
 - (2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.
 - (3) The provider shall repay to the Division of Medical Assistance any overpayment resulting from the interim rate exceeding the subsequent permanent rate.
- (r) In addition to the prospective per diem rate developed under this Rule, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Rule 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Rule 1910.1030 in the prospective rate. This interim add on shall be removed, upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.
- (s) All rates, except those noted otherwise in this Rule, approved under this Rule are considered to be permanent.
- (t) In the event that the rate for a facility cannot be developed so that it shall be effective on the first day of the rate period, due to the provider not submitting the required reports by the due date, the average rate for facilities in the same facility group, or the facility's current rate, whichever is lower, shall be in effect until such time as the Division of Medical Assistance can develop a new rate.
- (u) When the Division of Medical Assistance develops a new rate for a facility for which a rate was paid in accordance with Paragraph (t) of this Rule, the rate developed shall be effective on the first day of the second month following the receipt by the Division of Medical Assistance of the required reports. The Division of Medical Assistance may, upon its own motion or upon application and cause related to patient care shown by the provider, within 60 days subsequent to submission of the delinquent report, make the rate retroactive to the beginning of the rate period in question. Any overpayment to the provider resulting from this temporary rate being greater than the final approved prospective rate for the facility shall be repaid to the Medicaid Program.
- (v) ICF-MR facilities meeting the requirements of the North Carolina Division of Facility Services as a facility affiliated with one or more of the four medical schools in the state and providing services on a statewide basis to children with various developmental disabilities who are in need of long-term high acuity nursing care, dependent upon high technology machines (i.e. ventilators and other supportive breathing apparatus) monitors, and feeding techniques shall have a prospective payment rate that approximates cost of care. The payment rate may be reviewed periodically, no more than quarterly, to assure proper payment. A cost settlement at the completion of the fiscal period year end is required. Payments in excess of cost are to be returned to the Division of Medical Assistance.
- (w) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost of vacation leave earned for that year and all previous years less vacation leave used or expended over the same time period and vacation leave accrued prior to

the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on an estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(x) The annual prospective rate, effective beginning each July 1, for facilities that commenced operations under the Medicaid Program subsequent to the base year used to establish rates, and therefore did not file a cost report for the base year, shall be based on the facility's initial rate, established in accordance with Paragraph (m) of this Rule, and the applicable price level changes, in accordance with Paragraph (l) of this Rule.

(y) Effective for fiscal years beginning on or after fiscal year 1998, installation cost of Fire Sprinkler Systems in an ICF-MR Facility shall be reimbursed in the following manner.

- (1) Upon receipt of the documentation listed in Parts (A) through (E) of this Subparagraph, the Division of Medical Assistance shall reimburse directly to the provider 90 percent of the verified cost.
 - (A) All related invoices.
 - (B) Verification from the Division of Facility Services that the Sprinkler System is needed to maintain certification for participation in the Medicaid program.
 - (C) Statement from appropriate authorities that the Sprinkler System has been installed. Examples of appropriate authorities for this purpose would include local building inspectors, fire/safety inspectors, insurance company inspectors, or the construction section of the Division of Facilities Services.
 - (D) Three bids to install the system.
 - (E) Prior approval from the Division of Medical Assistance for any installation projected to cost more than twenty-five thousand dollars (\$25,000). Prior approval shall be granted based upon determination by the Division of Medical Assistance that the cost is reasonable considering the specifics of the installation. The burden to provide adequate documentation that the cost is reasonable is the responsibility of the provider.
- (2) The unreimbursed installation cost shall be reimbursed after audit through the annual Cost Settlement Process. This portion shall be offset by profits, after taking into consideration any indirect profits and direct losses. Any overpayments determined after audit shall be returned to the program by the provider through the annual cost settlement process.
- (3) The installation of the Sprinkler System is subject to Prudent Buyer Standards contained in the HCFA-15.

- (4) The Sprinkler System's installation costs shall be recorded on the provider's ICF-MR Cost Report.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C.

SECTION .0400 - PROVIDER FEE SCHEDULES

10 NCAC 26H .0401 PHYSICIAN'S FEE SCHEDULE

(a) Effective ~~January 1, 2000~~, September 1, 2001, physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere shall be reimbursed based on the North Carolina Medicaid Fee Schedule ~~shall be which is~~ based on 95 percent of the Medicare Fee Schedule Resource Based Relative Value System ~~(RBRVS)~~, (RBRVS) in effect on the date of service, except for payments to the various Medical Faculty Practice Plans of the University of North Carolina - Chapel Hill and East Carolina University which shall be reimbursed at cost and cost settled at year end; but with the following clarifications and modifications:

- (1) A maximum fee is established for each service and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the providers customary charge to the general public for the particular service rendered.
- (2) Fees for services deemed to be associated with adequacy of access to health care services may be increased based on administrative review. The service must be essential to the health needs of the Medicaid recipients, no other comparable treatment available and a fee adjustment must be necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients.
- (3) Fees for new services are established based on this Rule, utilizing the most recent RBRVS, if applicable. If there is no relative value unit (RVU) available from Medicare, fees shall be established based on the fees for similar services. If there is no RVU or similar service, the fee shall be set at 75 percent of the provider's customary charge to the general public. For codes not covered by Medicare that Medicaid covers, annual changes in the Medicaid payments shall be applied each January 1 and fee increases shall be applied based on the forecasted Gross National Product (GNP) Implicit Price Deflator. Said manual changes in the Medicaid payments shall not exceed the percentage increase granted by the North Carolina State Legislature.
- (4) For codes not covered by Medicare that Medicaid covers, a code may also be decreased, based on administrative review, if it is determined that the fee may exceed the Medicare allowable amount for similar services, or if the fee is higher than Medicaid fees for similar services, or if the fee is too

high in relation to the skills, time, and other resources required to provide the particular service.

The Resource Based Relative Value System (RBRVS), published annually in the Federal Register, is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC. Copies may be obtained from Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of nine dollars (\$9.00) for the issue containing the RBRVS values. Purchasing instructions may be received by calling 202/512-1800.

(b) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c). These changes to the Physician's Fee Schedule allowables shall become effective when the ~~Health Care Financing Administration, Centers for Medicare and Medicaid Services~~, U.S. Department of Health and Human Services, approves amendment to ~~HCFACMS~~ by the Director of the Division of Medical Assistance on or about ~~January 1, 2000~~ September 1, 2001, as #MA ~~99-12, 01-18~~, wherein the Director proposes amendments of the State Plan to amend the Physician's Fee Schedule.

Authority G.S. 108A-25(b).

SECTION .0500 - REIMBURSEMENT FOR S SERVICES

10 NCAC 26H .0502 CLINIC SERVICES

~~Reimbursement for clinic services will be made based on a fee schedule as developed by the Division of Medical Assistance.~~

(a) Payments will be based on negotiated fee, not to exceed reasonable cost:

(1) For services provided by or through the memorandum of understanding between the Division of Medical Assistance and the Division of Public Health, a supplemental payment will be made between September 20, 1995 and September 30, 1995, in an amount which represents the difference between the estimated cost of services for the 12-month period ending September 30, 1995, and the estimate of payments made by the Division of Medical Assistance for these services. The amount of the supplement payment will be set by the Director of the Division of Medical Assistance and will not exceed fifteen million dollars (\$15,000,000). Effective with dates of services for the fiscal period beginning October 1, 1995, and for subsequent periods beginning October 1 an interim payment for services will be made by the Division of Medical Assistance.

(2) To assure payments do not exceed the upper payment limits set forth at 42 CFR 447.321, the payments made by this Paragraph will be cost settled on a statewide average per service to determine the difference between the reasonable cost of services provided as determined by the Division of Medical Assistance and the amount of payment made for the services for each fiscal period

corresponding to the payment periods specified. Cost settlements for the September 30, 1995, and September 30, 1996, fiscal period will occur within six months after the approval date of the initial state plan amendment, subsequent fiscal periods will be cost settled within six months of the end of each fiscal period.

(b) This cost methodology does not apply to the reimbursement of services which are billed by health departments for physicians, nurse midwives, and nurse practitioners who are not salaried employees of a health department and whose compensation is not included in the service cost of a health department. These services are reimbursed in accordance with the fees established in 10 NCAC 26H .0401 and 10 NCAC 26H .0404.

(c) Effective October 1, 2001 the cost settlement period shall be the 12 months ended June 30. The first settlement period after the change shall be short period from October 1, 2001 to June 30, 2002. Subsequent cost settlement periods shall be the 12 months ended June 30.

(d) Effective July 1, 2001, the cost settlement shall occur within nine months of the end of the settlement period.

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.

10 NCAC 26H .0506 PERSONAL CARE SERVICES

(a) Payment for personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse, shall be based on a negotiated hourly fee not to exceed reasonable cost.

(b) The Division of Medical Assistance will enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in adult care homes.

(1) Effective August 1, 1995 reimbursement for private providers ~~is shall be~~ determined by the Division of Medical Assistance based on a capitation per diem fee (~~fee~~) derived from review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial ~~basic per diem~~ fee is based on one hour of services per patient day. Additional payments may be made utilizing the ~~basic~~ one hour ~~per diem~~ fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial ~~basic~~ one hour fee is computed by ~~determining~~ adding together the estimated salary, fringes, direct supervision and allowable overhead. Effective January 1, 2000 the cost of medication administration and additional personal care services direct supervision shall be added to the fee. The ~~per diem fee(s)~~ may be recalculated ~~from a cost reporting period selected by each year based on the most current annual cost report available to the state. This annual adjustment shall not exceed the amount approved by the North Carolina~~

General Assembly. Payments may not exceed the limits set in 42 CFR 447.361. Effective January 1, 2000, private provider payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payment to the provider shall be made due to cost settlement. The first cost settlement period shall be the nine months ended September 30, 2000. Subsequently, the annual cost settlement shall be the 12 months ended September 30.

- (2) Effective January 1, 1996 public providers ~~will~~ shall be paid on an interim basis using the above method. Payments ~~are to shall~~ be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payments to the provider shall will be made due to cost settlement.

(c) ~~These changes~~ Changes to the Payment for Services Prospective Plan for Personal Care Services will become effective when the Centers for Medicare and Medicaid Services (CMS) Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCEFA-CMS by the Director of the Division of Medical Assistance as #TN 01-14, #MA00-01.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; 1995 S.L. c.507, s. 23.10; 42 C.F.R. 440.170(f).

SECTION .0600 - HOME HEALTH PROSPECTIVE REIMBURSEMENT

10 NCAC 26H .0602 REIMBURSEMENT METHODS

(a) A maximum rate per visit is established annually for each of the following services:

- (1) Registered or Licensed Practical Nursing Visit;
- (2) Physical Therapy Visit;
- (3) Speech Therapy Visit;
- (4) Occupational Therapy Visit;
- (5) Home Health Aide Visit.

(b) The maximum rates for the services identified in Paragraph (a) of this Rule are computed and applied as follows:

- (1) Payment of claims for visits is based on the lower of the billed customary charges or the maximum rate of the particular service. Governmental providers with nominal charges may bill at cost. For this purpose, a charge that is less than 50 percent of cost is considered a nominal charge. For such governmental providers, the payment amount is equal to the lower of the cost as billed or the applicable maximum rate.
- (2) Maximum per visit rates effective July 1, 1996, for Registered or Licensed Practical Nursing, Physical Therapy, Speech Therapy, and Occupational Therapy shall be equal to the rates in effect on July 1, 1995. To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, the maximum rates per visit are adjusted as described in

Subparagraphs (4), (5), and (6) of this Paragraph.

- (3) Maximum per visit rate effective July 1, 1996 for Home Health Aide shall be equal to the rate in effect on July 1, 1995. To compute the annual maximum rates effective each July 1 subsequent to July 1, 1996, perform the following steps:

- (A) Sort all providers by the cost per visit using the 1994 cost reports (low to high),
- (B) Run a cumulative total on visits from each provider based on the sorting,
- (C) When the cumulative total number of visits reaches the fiftieth percentile, the cost per visit rate associated with that provider shall be adjusted as described in Subparagraphs (4), (5), and (6) of this Paragraph.

(4) Each year maximum rates are adjusted by an annual cost index factor. The cost index has a labor component with a relative weight of 75 percent and a non-labor component with a relative weight of 25 percent. The relative weights are derived from the Medicare Home Health Agency Input Price Index published in the Federal Register dated May 30, 1986. Labor cost changes are measured by the annual percentage change in the average hourly earnings of North Carolina service wages per worker. Non-labor cost changes are measured by the annual percentage change in the GNP Implicit Price Deflator.

(5) The annual cost index equals the sum of the products of multiplying the forecasted labor cost percentage change by 75 percent and multiplying the forecasted non-labor cost percentage change by 25 percent. For services included under Subparagraph (2) of this Paragraph, the July 1, 1996 effective rates are multiplied by the cost index factor for each subsequent year up to the year in which the rates apply. For services included under Subparagraph (3) of this Paragraph, base year costs per visit are multiplied by the cost index factor for each subsequent year up to the year in which rates apply. The annual cost index factor shall not exceed the amount approved by the North Carolina General Assembly.

(6) Other adjustments may be necessary for home health services to comply with federal or state laws or rules.

(c) Medical supplies except those related to provision and use of Durable Medical Equipment are reimbursed at the lower of a provider's billed customary charges or a maximum amount determined for each supply item. Fees will be established based on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. Estimates of reasonable cost will be used if a Medicare allowable amount cannot be obtained for a particular supply or equipment item. The Medicare allowable amounts will be those amounts

10 NCAC 41I .0303 DEFINITIONS

Definitions relating to child abuse, neglect and dependency may be found in G.S. 7B-101.

As used in this Subchapter, unless the context requires otherwise, the following terms shall have the meaning specified:

- (1) "Abused child" means a person less than 18 years of age as defined in G.S. 7A-517(1).
(2) "Neglected child" means a person less than 18 years of age as defined in G.S. 7A-517(21). A neglected child is also a disabled infant with a life threatening condition from whom appropriate nutrition, hydration or medication is being withheld; a neglected child is also a disabled infant under one year of age with a life threatening condition from whom medically indicated treatment, which in the treating physician's reasonable medical judgement would be most likely to be effective in ameliorating or correcting such life threatening conditions, is being withheld, unless in the treating physician's reasonable medical judgement any of the following conditions exist:
(a) infant is chronically ill and irreversibly comatose; or
(b) the provision of medical treatment would merely prolong dying, would not ameliorate or correct all of the life threatening conditions, or would otherwise be futile in terms of the survival of the infant; or
(c) the provision of medical treatment would be virtually futile in terms of the survival of the infant and under the circumstances the treatment would be inhumane.

The term "infant" means a child less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any other protection regarding medical neglect of children over one year of age.

- (3) "Dependent child" means a person less than 18 years of age as defined in G.S. 7A-517(13).
(4) "Dependency" refers to the condition defined in G.S. 7A-517(13).
(5) "Report" means any oral or written communication to the county department of social services which provides information that the person or institution making the report suspects a child is abused, neglected or dependent.
(6) "Institution" means any public or private institution, facility, agency, group,

available to the Division of Medical Assistance as of July 1 of each year.

(d) These changes Changes to the Payment for Services Prospective Reimbursement Plan for Home Health Agencies will become effective when the Health Care Financing Administration, Centers for Medicare and Medicaid Services (CMS), US Department Health and Human Services, approves amendment submitted to HCFA-CMS by the Director of the Division of Medical Assistance as TN#01-16, on or about July 1, 1997 as #MA97-06 wherein the Director proposes amendments of the State Plan to amend Payment for Services Prospective Reimbursement Plan for Home Health Agencies.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c.479, s. 86; 42 C.F.R. 440.70.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10 NCAC 41I .0303-.0306, .0311-.0312; 41J .0204-.0205, .0207, .0501. Notice of Rule-making Proceedings was published in the Register on May 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 18, 2002

Time: 10:00 a.m.

Location: Albemarle Building, Room 864, 325 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: Because child welfare services is a dynamic field, changes to rules governing its practice need updating. As a result, the Social Services Commission will adopt, amend and repeal rules in 10 NCAC 41. A variety of changes are proposed. As the field has progressed, new practice standards are implemented. North Carolina recently participated in a Child and Family Review by the Federal Agency for Children, Youth and Families. This review found that our State needs to make better efforts in the areas of safety, permanence and well-being for children. Toward this end, amendments will be proposed to several rules in 10 NCAC 41, deleting those procedures that are obsolete and adding clarification where needed so that North Carolina will achieve the levels required by the federal review.

Comment Procedures: Anyone wishing to comment should contact Kris Horton, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055. Written comments will be accepted through 10:00 a.m. on September 18, 2002, verbal comments may be expressed during the hearing. Please contact Ms. Horton if you desire to speak at the meeting.

Fiscal Impact

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

~~organization, corporation or partnership employing, directing, assisting or providing its facilities to persons who, as a part of their usual responsibilities, give care or services to children less than 18 years of age and any hospital or other health care facility providing treatment to infants with life threatening conditions.~~

- ~~(7) "Complaint" means a "report" by a person or institution regarding a child who is alleged to be abused, neglected, or dependent.~~
- ~~(8) "County director" means the county director of social services and any staff member to whom responsibility for protective services has been delegated by the Director.~~
- ~~(9) "Investigation" means the assessment process by which sufficient information is gathered to determine whether protective services are required and what services would be most helpful to the child and the parents or other caretakers.~~

Authority G.S. 7B-101; 7B-301; 143B-153.

10 NCAC 41I .0304 RECEIVING INFORMATION: INITIATING PROMPT INVESTIGATIONS OF REPORTS

(a) The county director shall receive and initiate an investigation on all reports of suspected child abuse, neglect, or dependency, including anonymous reports:

(b) The county director shall make a diligent effort to obtain the following information from the person making the report:

- (1) The name, address, and actual or approximate age of the juvenile(s);
- (2) The names and ages of other juveniles residing in the home;
- (3) The name and address of the juvenile's parent, guardian, or caretaker;
- (4) The name and address of the alleged perpetrator;
- (5) The present whereabouts of the juvenile(s) if not at the home address;
- (6) The nature and extent of any injury or condition resulting from abuse, neglect, or dependency;
- (7) Other information that the reporter has which might be helpful in establishing the need for protective services, including the names, addresses, and telephone numbers of other individuals who may have information about the condition of the juvenile(s); and
- (8) The name, address, and telephone number of the person making the report.

(c) When a county director receives a report of suspected abuse or of criminal maltreatment of a juvenile by a person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall notify the appropriate law enforcement agency in accordance with G.S. ~~7B-307~~, 7B-307. The county director shall provide the law enforcement agency with any information obtained from the person making the report as outlined in Subparagraphs (b)(1) through (b)(7) of this Rule. The name, address, and telephone number of the individual making the

report, included as Subparagraph (b)(8) of this Rule, may be shared with law enforcement when this information is necessary for law enforcement to perform their duties as related to the report.

(d) The county director shall promptly initiate an investigation of suspected abuse, neglect or dependency, and in all cases shall initiate an investigation of suspected abuse, within 24 hours after receiving a report and shall initiate an investigation of suspected neglect or dependency within 72 hours after receiving a ~~report~~, report, except that investigations of all accepted reports of child abandonment shall be initiated immediately. Initiation of an investigation is defined as having face-to-face contact with the alleged victim child or children. If there is not such face-to-face contact within the prescribed time period, the case record shall contain documentation to explain why such contact was not made and what other steps were taken to assess the risk of harm to the child or children.

(e) When the director is unable to initiate the investigation within the prescribed time period, as indicated in Paragraph (d) of this Rule, because the alleged victim child or children cannot be located, the director shall make diligent efforts to locate the alleged victim child or children until such efforts are successful or until the director concludes that the child or children cannot be located. Diligent efforts shall include, but not be limited to, visits to the child's or children's address at different times of the day and on different days. All efforts to locate the child or children shall be documented in the case record.

(f) When abuse, neglect, or dependency is alleged to have occurred in an institution, in addition to the procedures described in Paragraphs (a) through (e) of this Rule, the county director shall notify the individual who is administratively responsible for on-site operation of the institution in order to solicit the cooperation of the administration of the institution. Notification shall occur within the time frames required in Paragraph (d) of this Rule, and prior to contact with the alleged victim juvenile(s) if the director determines that such notice would not place the alleged victim(s) at risk of further harm.

(g) The county director must have an internal two-level review, including at a minimum the worker and the worker's supervisor, prior to making a decision that information received does not constitute a report of abuse, neglect, or dependency.

(h) The county director must establish a process by which the person providing this information may obtain a review of the agency's decision not to accept the information as a report of abuse, neglect, or dependency. The process shall include:

- (1) informing the person providing the information that the agency will not conduct an investigation, the basis for that decision, and their right to and the procedures for obtaining such a review; and
- (2) designating the persons by whom and the manner in which such reviews will be conducted.

Authority G.S. 7B-301; 7B-302; 7B-306; 7B-307; 143B-153.

10 NCAC 41I .0305 CONDUCTING A THOROUGH INVESTIGATION

(a) The county director shall make a thorough investigation to assess:

PROPOSED RULES

- (1) whether the specific environment in which the child or children is found meets the child's or children's need for care and protection; and
- (2) facts regarding the existence of abuse, neglect, or dependency; and
- (3) the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and
- (4) the risk of harm to and need for protection of the child or children.

(b) When the county director receives a report of suspected abuse, neglect, or dependency, the county director shall check the county agency's records and the North Carolina Central Registry of child abuse, neglect, and dependency reports to ascertain if any previous reports of abuse, neglect, or dependency have been made concerning the alleged victim child or children. Central Registry checks are not necessary when the agency has conducted such a check within the previous 60 days or when the agency is providing continuous child protective services to the family.

(c) Face-to-face ~~contact interviews with other children residing in the home all alleged victim children~~ shall be ~~conducted made as soon as possible, but no later than seven working days after the initiation of the investigation, within statutory time frames,~~ unless there is documentation in the case record to explain why such contact was not made.

(d) There shall be a face-to-face interview with any parent or caretaker with whom the victim child or children reside, unless there is documentation in the case record to explain why such an interview was not conducted. The parent or caretaker shall be interviewed on the same day as the victim child or children unless there is documentation in the case record to explain why such interviews were not conducted.

(e) The investigation shall include a visit to the place where the child or children reside.

(f) There shall be a face-to-face interview with the alleged perpetrator or perpetrators unless there is documentation to explain why such an interview was not conducted.

(g) Any persons identified at the time the report was accepted for investigation as having information concerning the condition of the child or children shall be interviewed in order to obtain any information relevant to the investigation unless there is documentation in the case record to explain why such interviews were not conducted.

(h) The county director shall implement a structured decision making process that includes the following comprehensive assessments:

- (1) an assessment of the immediate safety of the child or children;
- (2) an assessment of the future risk of harm to the child or children;
- (3) an assessment of the family's strengths and needs;
- (4) documentation of an assessment of all of the information obtained during the investigation;
- (5) documentation of a safety response plan; and
- (6) documentation of the case decision.

~~(h)(i)~~ When additional information is necessary to complete a thorough investigation, information from the following sources shall be obtained and utilized:

- (1) Professionals or staff at an out-of-home care setting having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (2) Other persons living in the household or attending or residing in the out-of-home care setting;
- (3) Any other source having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (4) Records; i.e., school, medical, mental health, or incident reports in an out-of-home care setting.

~~(j)~~ The county director shall exercise discretion in the selection of collateral sources in order to protect the family's or out-of-home care setting's right to privacy and the confidentiality of the report.

~~(k)~~ Conducting a thorough investigation as outlined in Paragraph (a) of this Rule when the alleged abuse, neglect, or dependency occurred in an institution shall include the following:

- (1) A discussion of the allegation with the individual who has on-site administrative responsibility for the institution;
- (2) A discussion of the procedure to be followed during the investigation;
- (3) The utilization of resources within and without the institution as needed and appropriate;
- (4) A discussion of the findings with the Administrator of the institution which shall be confirmed in writing by the county director and shall be held confidential by all parties as outlined in 10 NCAC 411 .0313, of this Subchapter.

Authority G.S. 7B- 302; 143B-153.

10 NCAC 411 .0306 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) When a thorough investigation reveals the presence of abuse, neglect, or dependency, the county director shall notify the following persons or agencies of the case finding:

- (1) any parent or caretaker who was alleged to have abused or neglected the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
- (3) any agency with whom the court has vested legal custody.

Notification shall be in writing, and within five working days of the case decision. If the county director is unable to contact a parent, caretaker, or perpetrator, documentation of reasonable efforts to locate that person must be included in the case record.

(b) The county director shall conduct a comprehensive, structured risk-family assessment of every family in which an investigation of abuse, abuse or neglect or dependency is substantiated, completed. This risk-family assessment shall be completed within seven working days following a case finding of abuse or neglect according to the instructions provided by the Department of Health and Human Services, Division of Social Services and the findings of the risk-family assessment shall be

used to evaluate the need for services and to develop an intervention case plan.

~~(c) The director shall evaluate the appropriateness of using the formal risk assessment process in individual substantiated dependency cases. Examples of substantiated dependency cases that are appropriate for formal risk assessment are cases involving both neglect and dependency, and cases involving dependent children who are being considered for reunification with their family.~~

~~(d)(c)~~ In all cases in which abuse, neglect, or dependency is found, the county director shall determine whether protective services are needed and, if so, shall develop, implement, and oversee an intervention plan to ensure that there is adequate care for the victim child or children. The intervention case plan shall:

- (1) be based on the findings of the structured risk family assessment ~~when such a risk assessment was determined to be required according to the instructions provided by the Department of Human Resources, Division of Social Services;~~ and
- (2) contain goals representing the desired outcome toward which all case activities shall be directed; and
- (3) contain objectives that:
 - (A) describe specific desired outcomes;
 - (B) are measurable;
 - (C) identify necessary behavior changes;
 - (D) are based on an assessment of the specific needs of the child or children and family;
 - (E) are time-limited; and
 - (F) are mutually accepted by the county director and the client;
- (4) specify all the activities needed to achieve each stated objective;
- (5) have clearly stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

~~(e) For those cases that require the completion of a structured risk assessment, the risk assessment tool shall be completed at the following points in the case:~~

- ~~(1) within seven working days following a case finding of abuse, neglect, or dependency, and prior to the development of the intervention plan and prior to the provision of treatment or supportive services; and~~
- ~~(2) as part of the six month review and the annual review, if the case remains open for services; and~~
- ~~(3) when the county director is considering taking court action in relation to the case; and~~
- ~~(4) when the county director is considering closing the case for services; and if the director decides to close the case, the case must be~~

~~closed within 30 days following completion of the risk assessment; and~~

~~(5) at other times, at the county director's discretion, when conducting a structured risk assessment would help the director in making decisions concerning an open child protective services case.~~

~~(f)(d)~~ When an investigation leads a county director to find evidence that a child may have been abused or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the county director shall follow all procedures outlined in G.S. ~~7A-548-7B-307~~ in making reports to the prosecutor and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator when this person is different from the parents or caretaker;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what evidence of abuse was found;
- (6) what plan to protect the child has been developed and what is being done to implement it.

~~(g)(e)~~ When a thorough investigation reveals the presence of abuse, neglect, or dependency in an institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

Authority G.S. 7B-302; 7B-307; 143B-153.

10 NCAC 411 .0311 REVIEW OF COURT ORDERED PLACEMENTS

(a) In cases where the court removes custody of a child from a parent or caregiver because of dependency, neglect or abuse and places the child in the custody of the Department of social services, the county director shall not return the child to his parents or caregivers without the judge finding sufficient facts to show that the child will receive proper care and supervision.

~~(b) When the county department of social services receives custody of a child from the court, the county director shall make a written request for a review of the custody order to the clerk of court at least one month before the date a legally mandated review is due or whenever the family circumstances change sufficiently to warrant a review. After making the request for review, In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review~~

hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter.

(c) The county director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review.

~~(e)~~(d) The county director shall submit a written report to the judge that shall include but not be limited to:

- (1) The services plan developed with the family to preserve the child's own home or to reunite the parents and children;
- (2) The specific changes on the part of the parents and children;
- (3) Whether the child can remain at home or be returned home, and the plan to be used when the child returns home;
- (4) If the child cannot return home, the plan to be used to establish the permanent living arrangement for the child, including projected time frames and any considerations of termination of parental rights;
- (5) Goals and objectives for the child's continuation in foster care if indicated and the role of foster parents in planning for the child;
- (6) A summary of the child's specific experiences in placement, both positive and negative, including the different placements the child has had since the last court hearing;
- (7) Any other information the court deems necessary.

Authority G.S. 7B-906; 143B-153.

10 NCAC 41I .0312 CASE RECORDS FOR PROTECTIVE SERVICES

(a) The county director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the county department of social services by the court. The case record documentation shall be kept confidential.

(b) The protective services case record shall document a thorough investigation. In addition, when applicable, the protective services case record shall include, but not be limited to:

- (1) Summary documentation of the results of the check of the Central Registry of abused, neglected, and dependent children whenever a report is accepted for ~~investigation.~~ investigation, unless the agency has conducted such a check in the 60 days prior to the new report, or the agency is providing ongoing childrens' services to the family.
- ~~(2) Copies of all comprehensive family assessments, including safety assessments, risk assessments, assessments of family strengths and needs, re-assessments of family~~

strengths and needs at intervals specified by the Department of Health and Human Services, Division of Social Services, and assessments of the child's and family's progress or lack of progress in completing the items documented in the intervention plan.

- ~~(2)~~(3) Documentation of any ~~protection plan safety response plan~~ that was developed to ensure the child's safety during the course of the investigation.
- ~~(3)~~(4) Documentation of the case decision, the basis for the case decision, and the names of those participating in the decision.
- ~~(4)~~(5) Documentation of notifications to parents, caretakers, the alleged perpetrator, or others specified in Rules .0306 and .0308 of this Section regarding the case decision.
- ~~(5)~~(6) Documentation of contacts with and services provided to the family, current within ~~40~~ seven working days of service delivery. Documentation may be taped for transcription, typed or legibly handwritten, and shall include understandable, significant information about the family's response to and use of services, as well as any change in the assessment of safety or risk to the children.
- ~~(6)~~ Copies of the Family Risk Assessment Factor Worksheet completed in accordance with the time frames specified in Rule .0306 of this Section.
- (7) The intervention plan developed at the beginning of the treatment phase, with any subsequent revisions to the plan. ~~The intervention plan shall incorporate all items specified in Rule .0306 of this Section.~~
- (8) Documentation of reviews of the intervention plan, current within three months, which reflect an assessment of the plan's effectiveness, the family's use of services, and the need for continued agency involvement.
- (9) Copies of the following:
 - (A) Intake/Screening Form specified in policy, or its equivalent, for all reports concerning the family whether these reports have been received while a case was active or while a case was closed;
 - (B) Notices to the reporter;
 - (C) Requests made of other county departments of social services for information relating to prior contacts by that agency with the family, when applicable;
 - (D) DSS 5104, Application/Report to the Central Registry.
- (10) Copies of the following reports or documents, when applicable:
 - (A) Petitions relating to the legal or physical custody of children while receiving child protective services;
 - (B) Reports to the court;

- | | |
|--|--|
| <p>(C) Reports or notifications to prosecutors;</p> <p>(D) Reports to law enforcement agencies;</p> <p>(E) Child Medical Evaluations and Child Mental Health Evaluation requests, consents, and reports;</p> <p>(F) Any other medical, psychological, or psychiatric reports;</p> <p>(G) Notifications to licensing agencies; and</p> <p>(H) Any other reports, notifications, or documents related to the provision of child protective services.</p> <p>(11) Summaries of the following information, when not otherwise documented in the case record:</p> <p>(A) At the time treatment services begin, a summary of the reasons services are being provided;</p> <p>(B) When filing a petition for custody, the reasons custody is being sought; and</p> <p>(C) At the time treatment services are terminated, a summary of the basis for the decision.</p> | <p>social services by either the court order removing him from his home or by the voluntary placement agreement signed by the parent or guardian;</p> <p>(4) The child lives in:</p> <p>(A) a foster care facility under the supervision of a county department of social services and licensed by the Department of Human Resources; <u>Health and Human Services;</u></p> <p>(B) a private child caring institution which is licensed or approved by the Department of Human Resources <u>Health and Human Services</u> and which is in compliance with Title VI of the Civil Rights Act;</p> <p>(C) a private group home which is licensed or approved by the Department of Human Resources <u>Health and Human Services</u> and which is in compliance with Title VI of the Civil Rights Act;</p> <p>(D) a foster car facility which is under the auspices of a licensed or approved private child caring institution, provided such foster care services program has been licensed by the Department of Human Resources <u>Health and Human Services</u> and is in compliance with Title VI of the Civil Rights Act;</p> <p>(E) a foster care facility under the supervision of a private child placing agency (including those providing adoption services) and licensed by the Department of Human Resources; <u>Health and Human Services;</u> or</p> <p>(F) a foster care facility located in another state, provided such facility is in compliance with Title VI of the Civil Rights Act and is licensed or approved in the other state, and provided such placement has been approved under the appropriate interstate placement procedure;</p> |
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Authority G.S. 7B-302; 7B-306; 7B-2901; 143B-153.

SUBCHAPTER 41J - FOSTER CARE SERVICES

SECTION .0200 - FOSTER CARE ASSISTANCE PAYMENTS

10 NCAC 41J .0204 ELIGIBILITY

(a) A county department of social services may determine a child eligible for foster care assistance payments if the following factors are established:

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| <p>(1) The child has been removed for any reason from his own home or from the home of a specified relative by a judicial determination and placed in foster care as a result of that determination;</p> <p>(2) The placement of the child in foster care has occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of the child and such placement has not been in excess of 180 <u>90</u> consecutive days unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 <u>90</u> days of such placement) to the effect that such placement is in the best interest of the child; <u>child. If the voluntary placement agreement is continued for the second 90 day period, a new voluntary placement agreement must be completed and signed by all parties. Prior to the end of the second 90 day period, the agency must file a juvenile petition and a hearing must be held before the end of the second 90 day period, or the child must be returned home;</u></p> <p>(3) Responsibility for care and placement of the child is designated to the county department of</p> | <p>(5) The child is in need of care which is not available in his own home or the home of a relative;</p> <p>(6) The child is less than 18 years of age and is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and may reasonably be expected to complete the program before reaching age 19; or</p> <p>(7) The child is less than 21 years of age and is a full-time student or has been accepted for enrollment as a full-time student for the next school term pursuing a high school diploma or its equivalent, a course of study at the college level; or a course of vocational or technical</p> |
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training designed to fit him for gainful employment.

(b) Court action terminating parental rights shall not render a child ineligible for foster care assistance benefits if that child is otherwise eligible. A child may be eligible for foster care assistance benefits until the final order decree of adoption is issued.

Authority G.S. 108A-24; 108A-48; 108A-49; 143B-153.

10 NCAC 41J .0205 REIMBURSEMENT

(a) Foster care assistance payments means payments for food, and shelter, and pursuant to Title ~~IVE~~ IV-A, IVE, and State Foster Home Funds, shall include ~~includes:~~ clothing, personal incidentals, usual school expenses, and usual transportation.

(b) County departments of social services may request reimbursement for providing foster care assistance payments to eligible children in accordance with procedures established by the Division of Social Services and contained in the Family Services Manual, Volume I: Children's Services.

Authority G.S. 108A-24; 108A-48; 108A-49; 143B-153.

10 NCAC 41J .0207 GOALS AND STRATEGIES

(a) The goal for each fiscal year commencing with the fiscal year which begins on October 1, 1983, of all the children in foster care receiving Title IV-E Foster Care Assistance the number of children who remain in foster care in excess of 24 months will not exceed:

- (1) 1200 for the period October 1, 1989 through September 30, 1990;
- (2) 1000 for the period October 1, 1990 through September 30, 1991.

(b) The following steps will be taken to achieve the goals stated in Paragraph (a) of this Rule:

- (1) implement a preplacement preventive services program designed to help children remain with their families;
- (2) maintain a statewide information system;
- (3) insure that there is an individual case plan for each child in foster care;
- (4) insure that the status of each child is reviewed periodically but no less frequently than once every six months;
- (5) institute procedural safeguards to assure each child of ~~a~~-dispositional and permanency planning hearings ~~hearing~~ in accordance with statutory requirements; and
- (6) institute procedural safeguards with respect to parental rights to be informed of changes in the child's placement and to visit the child.

Authority G.S. 108A-49; 143B-153; P.L. 96-272.

SECTION .0500 - RISK ASSESSMENT

10 NCAC 41J .0501 WHEN TO COMPLETE A RISK ASSESSMENT

(a) For foster care services cases, the county director shall complete a structured risk ~~assessment re-assessment and reunification assessment~~ for all cases in which family

reunification is being considered as the permanent ~~plan, plan and where abuse or neglect has been substantiated. It also shall be completed in dependency cases at the discretion of the Director.~~ If the court has relieved the agency of reunification efforts, then completion of a structured risk ~~assessment re-assessment and reunification assessment~~ is no longer required. The findings of the risk ~~assessment re-assessment and reunification assessment~~ shall be used in developing a service plan with the family.

(b) For those cases in which children enter foster care and reunification is the permanent plan, the structured risk ~~assessment re-assessment and reunification assessment~~ shall be completed at intervals specified by the Department of Health and Human Services, Division of Social Services ~~least once every six months~~ and shall support the current case plan.

~~(c) A structured risk assessment shall be completed within 30 days prior to placement of the child back in the home and shall support the decision to return the child home.~~

~~(d) A structured risk assessment shall be completed within 30 days prior to case closure and shall support the decision to close the case.~~

~~(e) A structured risk assessment shall be completed at other times, at the county director's discretion, when the risk assessment would assist the agency in making decisions concerning an open foster care case, for example, to support a change in the case plan; or prior to court action in which the agency is asking the court to sanction the agency's plan to: allow unsupervised visits, return the child home, stop reunification efforts, or initiate other significant changes in the case.~~

Authority G.S. 143B-153.

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 .0234. Notice of Rule-making Proceedings was published in the Register on December 1, 1999.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 21, 2002

Time: 7:00 p.m.

Location: Wayne Center, 208 West Chestnut Street, Goldsboro, NC

Reason for Proposed Action: *In October 1998, the U.S. Environmental Protection Agency (EPA) entered into a settlement agreement with the Neuse River Foundation. In response to that agreement and in accordance with Section 303(d) of the Clean Water Act and 40 CFR 130.7, the North Carolina Division of Water Quality submitted to the EPA a total maximum daily load (TMDL) for total nitrogen for the Neuse River estuary. The TMDL prescribed allocations of total nitrogen for wastewater dischargers and for various nonpoint source categories. EPA approved the TMDL in July 1999, conditioned upon the Division completing additional studies and submitting a Phase II TMDL upon their completion. The*

Division submitted the Phase II TMDL, and EPA approved the TMDL in March 2002. The subject rule defines the nutrient management requirements for wastewater dischargers in the Neuse River Basin. The original rule contains errors and, as a result, the wastewater discharges will not meet the nitrogen allocation specified in the approved TMDL. In accordance with 40 CFR 122.4(i) and 122.44, nitrogen limits specified in the dischargers' NPDES permits must conform with the approved TMDL in order for the EPA to approve the permits. The Division proposes to amend the rule in order to make the necessary corrections to satisfy applicable state and federal requirements.

Comment Procedures: *The Division will accept written and oral comments at the public hearing on August 21, 2002, and written comments received at the following address by 4:00 p.m., September 3, 2002; DWQ/NPDES Unit, Attn: Mike Templeton, 1617 Mail Service Center, Raleigh, NC 27699-1617.*

Fiscal Impact

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0234 NEUSE RIVER BASIN – NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

- ~~(1) All new and expanding dischargers shall document that all practical alternatives to surface water discharge were evaluated pursuant to 15A NCAC 02H .0105(c)(2), prior to a submittal of an application for a discharge. For purposes of this Rule, permitted discharges means those individually permitted and not those covered under general permits.~~
- ~~(2) All wastewater dischargers greater than or equal to 0.5 million gallons per day (MGD) permitted flow regardless of current loading levels shall evaluate and optimize the operation of their facilities in order to reduce nutrient loadings. One year after the effective date of this Rule, a report shall be submitted to the division by each wastewater discharger or collectively by an Association, documenting the efforts/level of reductions achieved.~~
- ~~(3) The collective total nitrogen load for all individually permitted wastewater discharges~~

~~shall, on an annual mass basis, be no more than 2.8 million pounds per year, unless individual wastewater discharges separately or collectively purchase a portion of the nonpoint source allocation in accordance with the formula for offset payments set forth in 15A NCAC 02B .0240. Items (5), (6) and (7) of this Rule indicate how this load is allocated in the basin. Compliance with the 2.8 million pounds annual average mass load of total nitrogen shall be required within five years of the effective date of this Rule. If dischargers individually choose to make nutrient offset payments per Rule .0240 of this Section, those offset payments shall be required prior to permit issuance and reissuance. Nutrient offset payments made to purchase nitrogen load reductions from nonpoint sources shall not be credited to the existing nonpoint source's load allocation.~~

- ~~(4) Any existing individual discharger or collective group of wastewater dischargers that accepts wastewater from another wastewater treatment facility in the Neuse River Basin and that results in the elimination of the discharge from that wastewater treatment facility shall be allowed to increase the annual mass load of total nitrogen discharged by the annual mass load of total nitrogen allocated to the wastewater treatment facility that is eliminated. If the wastewater treatment system that is to be eliminated has a permitted flow of less than 0.5 MGD, the annual mass load of total nitrogen shall be calculated from the most recent available data on that facility.~~

- ~~(5) The individually permitted wastewater discharges to the Neuse River basin with permitted flows of less than 0.5 MGD in 1995 shall be allocated an annual average mass load of 280,000 pounds of total nitrogen. All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/l. More stringent limits may apply to protect water quality standards in localized areas.~~

- ~~(6) The following Sub-Item specifies the nutrient allocations for discharges above Falls Lake with permitted flows greater than or equal to 0.5 MGD in 1995.~~

~~(a) The individually permitted discharges above Falls Lake Dam with permitted flows of greater than or equal to 0.5 MGD in 1995 shall be allocated an annual average mass load of 444,000 pounds of total nitrogen. The estimate of the total nitrogen load discharged through the Falls Lake Dam to the lower Neuse River shall be 15 percent, or 66,600 pounds annual average total nitrogen discharged to~~

the lower Neuse River. The load shall be allocated to the individual facilities based upon the ratio of their 1995 permitted flow to the total permitted flow of those dischargers greater than or equal to 0.5 MGD above the Falls Lake Dam.

- (b) All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/l. More stringent limits may apply to protect water quality standards in localized areas.
- (7) The following Sub-Item specifies the nutrient allocations for discharges below Falls Lake with permitted flows greater than or equal to 0.5 MGD in 1995.
 - (a) Wastewater treatment plants below Falls Lake Dam that have a permitted flow greater than or equal to 0.5 MGD shall be assigned an annual mass loading limit for total nitrogen based upon the ratio of their flow to the sum of the individual flows as set forth in Sub-item (7)(b) of this Rule multiplied by 2.45 million pounds within five years of the effective date of this Rule.
 - (b) For purposes of the above calculation the flows shall be: Central Johnston County 4.99 MGD, Raleigh 60 MGD, Clayton 1.9 MGD, Burlington Industries 5 MGD, Cary Northside 12 MGD, Wake Forest 6 MGD, Cary Southside 16 MGD, Apex 3.6 MGD, Fuquay Varina 6 MGD, Benson 3 MGD, Goldsboro 16.8 MGD, Kinston Peachtree 6.75 MGD, LaGrange 0.75 MGD, Kinston Northside 4.5 MGD, Dupont Kinston 3.6 MGD, Kenly 0.63 MGD, Wilson 14 MGD, Contentnea Sewerage District 2.85, Farmville 3.5 MGD, Zebulon 1.85 MGD, Weyerhaeuser 32 MGD, New Bern 4.7 MGD, Havelock 1.9 MGD, US Marine Corps Cherry Point 3.5 MGD, CWS Inc. NE Craven Utilities 1 MGD, and Snow Hill 0.5 MGD.
 - (c) All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/l. Upon expansion, these facilities must meet a monthly average total phosphorous limit of 1 mg/l. More stringent limits may apply to protect water quality standards in localized areas.

- (8) All new wastewater discharge flows, flows not permitted prior to December 31, 1995, shall document efforts to obtain allocation from the load established in Item (3) of this Rule from existing wastewater discharges. If allocation can not be obtained from the existing dischargers, new dischargers may purchase a portion of the nonpoint source load allocation at a rate of 200 percent of the cost as set in 15A NCAC 2B .0240 to implement practices designed to reduce that same loading created by the new discharge. Payment for the portion of the nonpoint source load allocation purchased shall be made prior to permit issuance and reissuance. The new discharge shall at a minimum comply with an annual mass load of total nitrogen based on a concentration of 3.5 mg/l and their permitted flow. These facilities must meet a monthly average total phosphorous limit of 1 mg/l. More stringent limits may be given to protect water quality standards in localized areas.
- (9) The following Sub-Item describes the option for dischargers to join an Association to collectively meet nutrient load allocations.
 - (a) All dischargers within the basin may form an Association to meet their allocated total nitrogen load collectively. For dischargers that join the Association, an agreement shall be drafted between the Division and the Association that includes annual loading targets. The total nitrogen load allocated to the Association shall be calculated by the sum of the individual allocated loads developed in Items (5), (6) and (7) of this Rule. The membership of the Association shall be established no later than March 1, 1998. All facilities who apply for membership in the Association prior to March 1, 1998 shall be accepted. Thereafter, the Division shall accept new members in the Association on every five year anniversary of March 1, 1998 based on applications for membership received before that date from facilities existing as of the effective date of this Rule.
 - (b) This annual total nitrogen loading target shall be met within five years of the effective date of this Rule. The agreement may also require stepwise decreases in total nitrogen loads for the five years following the effective date of this Rule. When developing a final agreement, the Commission shall acknowledge the differences in transport percentages between dischargers above and below Falls

Lake Dam. The Association shall also document reduction in total nitrogen loadings for any member facilities located in Craven, Jones, Pamlico and Carteret Counties as a result of their immediate proximity to the estuary. If the Association does not meet its annual total nitrogen loading target in any given year, the Association shall make payments for nonpoint source controls at a rate as set in 15A NCAC 02B .0240. No Association exists, for the purposes of this Rule, until the Agreement is formally approved by the Commission.

(e) All existing Association dischargers below Falls Lake Dam that have a permitted flow greater than or equal to 0.5 MGD shall receive a quarterly average total phosphorus limit of 2 mg/l in their NPDES permits. All existing Association dischargers above Falls Lake Dam that have a permitted flow greater than or equal to 0.05 MGD shall receive a quarterly average total phosphorus limit of 2 mg/l in their NPDES permits. New and expanding Association dischargers shall receive a quarterly average total phosphorus limit of 2 mg/l in their NPDES permits. More stringent phosphorous limits may apply to protect water quality standards in localized areas.

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source discharges in the Neuse River Basin in order to restore the water quality in the Neuse River Estuary and protect its designated uses.
- (2) Applicability. This Rule applies to all wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits.
- (3) Definitions. For the purposes of this Rule, the following definitions apply:
 - (a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters,
 - (i) "Existing" means that which obtained a NPDES permit on or before December 31, 1995.
 - (ii) "Expanding" means that which increases beyond its

<u>Facility Name</u>	<u>NPDES No.</u>	<u>Permitted Flow (MGD)</u>
Benson	NC0020389	3.00
Goldsboro	NC0023949	16.80
Kenly	NC0064891	0.63

- permitted flow as defined in this Rule.
- (iii) "New" means that which had not obtained a NPDES permit on or before December 31, 1995.
- (b) "MGD" means million gallons per day.
- (c) "Nitrogen wasteload allocation" is that portion of the Neuse River nitrogen TMDL assigned to individually permitted wastewater facilities in the basin and represents the maximum allowable load of total nitrogen to the estuary from these point source dischargers.
- (d) "Nitrogen estuary allocation" or "estuary allocation" means the mass loading of total nitrogen at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge allocation multiplied by its assigned transport factor.
- (e) "Nitrogen discharge allocation" or "discharge allocation" means the mass loading of total nitrogen at the point(s) of discharge that is reserved for a discharger or group of dischargers. A discharger's or group's discharge allocation is equivalent to its estuary allocation divided by its assigned transport factor.
- (f) "Nitrogen TMDL," or "TMDL," means the total nitrogen load to the Neuse River estuary that is predicted to maintain adequate water quality to support all designated uses in the estuary and is approved by the United States Environmental Protection Agency in accordance with the federal Clean Water Act.
- (g) "Nonpoint source load allocation" is that portion of the Neuse River nitrogen TMDL assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen to the estuary from these nonpoint sources.
- (h) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

<u>Snow Hill</u>	<u>NC0020842</u>	<u>0.50</u>
<u>Wilson</u>	<u>NC0023906</u>	<u>14.00</u>

- (i) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen.
- (j) "Transport factor" is the fraction of the total nitrogen in a discharge that is predicted to reach the estuary.
- (4) The following Sub-Items specifies the nitrogen wasteload allocation for point sources.
 - (a) Beginning with the calendar year 2003, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year plus any portion of the nonpoint source load allocation purchased in accordance with the provisions in Items (7) and (8) of this Rule and 15A NCAC 02B .0240.
 - (b) The Commission may adjust the nitrogen wasteload allocation whenever necessary to ensure that water quality in the estuary meets all standards in 15A NCAC 02B .0200 or to conform with applicable state or federal requirements.
- (5) The following Sub-Items specifies nitrogen discharge allocations for point sources.
 - (a) Upon adoption of this Rule and until revised as provided elsewhere in this Rule, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
 - (i) Dischargers with permitted flows less than 0.5 MGD shall be assigned collectively an annual discharge allocation of 138,000 pounds of total nitrogen.
 - (ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 443,700 pounds of total nitrogen.
 - (iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 2,021,400 pounds of total nitrogen.
 - (iv) Industrial dischargers downstream of Falls Lake
- Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 396,900 pounds of total nitrogen.
- (v) Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger shall be assigned an individual discharge allocation and the equivalent estuary allocation. Each discharger's discharge allocation shall be calculated as its permitted flow divided by the total permitted flow of the group, multiplied by the group discharge allocation.
- (b) In the event that the nitrogen wasteload allocation for point sources is revised, as provided in Item (4) of this Rule, the Commission shall apportion the revised load among the existing facilities and shall revise discharge allocations as needed. The Commission shall consider:
 - (i) fate and transport of nitrogen in the river basin;
 - (ii) technical feasibility and economic reasonableness of source reduction and treatment methods;
 - (iii) economies of scale;
 - (iv) nitrogen control measures already implemented;
 - (v) probable need for growth and expansion;
 - (vi) incentives for responsible planning, utilities management, resource protection, and cooperative efforts among dischargers; and
 - (vii) other factors the Commission deems relevant.
- (6) The following Sub-Items specifies nutrient controls for existing facilities.
 - (a) Beginning with calendar year 2003, each discharger with a permitted flow equal to or greater than 0.5 MGD shall be subject to a total nitrogen permit limit equal to its individual discharge allocation, pursuant to Item (5) of this Rule.

- (b) Effective January 1, 2003, dischargers shall be subject to the following limits for total phosphorus:
 - (i) All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
 - (ii) All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
- (c) The director may establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (7) The following Sub-Items specifies nutrient controls for new facilities.
 - (a) New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.
 - (b) New facilities submitting an application shall make every reasonable effort to obtain estuary allocation for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance.
 - (c) The nitrogen discharge allocation for a new facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L and the maximum monthly average flow limit in the facility's NPDES permit.
 - (d) For new dischargers of an industrial nature, the maximum nitrogen discharge allocation shall be calculated using the nitrogen concentration representing the best available technology economically achievable.
- (e) New dischargers must meet a monthly average total phosphorous limit of 1 mg/L.
- (f) The director may establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (8) The following Sub-Items specifies nutrient controls for expanding facilities.
 - (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.
 - (b) Facilities submitting an application for increased discharge shall make every reasonable effort to minimize increases in their nitrogen discharges, such as reducing sources of nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; or to obtain estuary allocation from existing dischargers.
 - (c) If these measures do not produce adequate estuary allocation for the expanded flows, facilities may purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance.
 - (d) The nitrogen discharge allocation for an expanded facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L and the maximum monthly average flow limit in the NPDES permit, or its existing allocation, whichever is greater.
 - (e) For expanding dischargers of an industrial nature, the maximum nitrogen discharge allocation shall be calculated using the nitrogen concentration representing the best available technology economically achievable.
 - (f) Expanding facilities must meet a monthly average total phosphorous limit of 1 mg/L unless they are a member in good standing of a group compliance association described in Item (9) of this Rule, in which case

- they must meet a quarterly average total phosphorus limit of 2 mg/L.
- (g) The director may establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (9) The following Sub-Items describes the option for dischargers to join a group compliance association to collectively meet nutrient load allocations.
 - (a) Any or all facilities within the basin have the option of forming a group compliance association to meet nitrogen estuary allocations collectively. More than one group compliance association may be established and approved by the Commission. No facility may belong to more than one association at a time.
 - (b) An agreement shall be drafted between the Division and member facilities to establish an operating framework for group compliance. The agreement shall identify, at a minimum, the member facilities and the roles and responsibilities of the association, its members, and the Division of Water Quality. No association exists, for the purposes of this Rule, until the agreement is formally approved by the Commission.
 - (c) The membership of an association shall be established no later than March 15, 2000. All existing permitted facilities that apply for membership in an association prior to March 15, 2000, shall be accepted. Thereafter, the association shall accept new members as provided in the agreement.
 - (d) No later than 180 days prior to expiration of the association NPDES permit, the association and its members shall submit an application for a NPDES permit for the discharge of total nitrogen to the surface waters of the Neuse River Basin. The NPDES permit shall be issued to the association and its members as co-permittees ("association NPDES permit"). It shall contain the association's estuary allocation and individual estuary allocations for each of the members.
 - (e) An association's estuary allocation of total nitrogen shall be the sum of its members' individual estuary allocations plus any other estuary

- allocation obtained by the association or its members.
- (f) An association may reapportion the individual estuary allocations of its members on an annual basis. The association NPDES permit shall be modified to reflect the revised individual estuary allocations.
- (g) Beginning in calendar year 2003, if an association does not meet its estuary allocation, it shall make offset payments for nonpoint source controls no later than May 1 of the following year at the rate set in 15A NCAC 02B .0240.
- (h) Association members shall be exempted from the permit limits for total nitrogen contained in their individually issued NPDES permits so long as they remain members in an association. Association members shall be exempted from their individual estuary allocations in the association NPDES permit as long as the association is in compliance with its estuary allocation. If the association fails to meet its estuary allocation, the association and the members that have failed to meet their individual estuary allocations in the association NPDES permit will be out of compliance with the association NPDES permit.
- (10) Regional Facilities. In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse River Basin and that acceptance results in the elimination of the discharge from the treatment facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to the accepting discharger's estuary allocation.

Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .0959-.0960 and amend the rules cited as 15A NCAC 02D .0105, .0506-.0507, .0509, .0515-.0516, .0521, .0606, .0608, .0912, .0927, .0932, .0952, .0954, .1109; 02Q .0306, .0526. Notice of Rule-making Proceedings was published in the Register on April 15, 1997 for 15A NCAC 02Q .0306, August 16, 1999 for 15A NCAC 02D .0506, .0521, May 1, 2000 for 15A NCAC 02D .0932, .0959-.0960, June 15, 2001 for 15A NCAC 02D .0105, .0506-.0507, .0509, .0515-.0516, .0606, .0608, .0912, .0952, .0954; 02Q .0306, and May 15, 2002 for 15A NCAC 02D .0521, .1109; 02Q .0526.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 20, 2002

Time: 7:00 p.m.

Location: Division of Air Quality Training Room AQ 526, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action:

15A NCAC 02D .0105 – This Rule is proposed to be amended to correct the mailing address.

15A NCAC 02D .0506 – This Rule is proposed to be amended to lower the opacity standard for older asphalt plants.

15A NCAC 02D .0507, .0509, .0515 – These Rules are proposed to be amended to make wording consistent.

15A NCAC 02D .0516 – This Rule is proposed to be amended to exempt incinerators that have specific sulfur dioxide emission standards.

15A NCAC 02D .0521 – This Rule is proposed to be amended to revise requirements for determining compliance when continuous opacity monitors are used and to exempt from this Rule sources that have specific opacity standards in other rules.

15A NCAC 02D .0606, .0608 – These Rules are proposed to be amended to add an optional test procedure for taking fuel samples for analysis.

15A NCAC 02D .0912 – This Rule is proposed to be amended to correct the Division's name.

15A NCAC 02D .0927 – This Rule is proposed to be amended to add requirements for tank degassing.

15A NCAC 02D .0932 – This Rule is proposed to be amended to require gasoline truck tanks to be certified leak tight by a certified tester.

15A NCAC 02D .0952 – This Rule is proposed to be amended to remove obsolete language and make the rule more flexible.

15A NCAC 02D .0954 – This Rule is proposed to be amended to correct the Department's name.

15A NCAC 02D .0959 – This Rule is proposed to be adopted to allow use of control devices and methodologies that are superior to those required by the rules.

15A NCAC 02D .0960 – This Rule is proposed to be adopted to establish procedures for certifying testers of gasoline truck tanks.

15A NCAC 02D .1109; 02Q .0526 – These Rules are proposed to be amended to incorporate new federal requirements for implementing case-by-case maximum achievable control (MACT) requirements when the Environmental Protection Agency fails to promulgate a MACT standard in a timely manner.

15A NCAC 02Q .0306 – This Rule is proposed to be amended to correct a filing error by removing language that had been removed as a result of an earlier hearing but was subsequently reinserted.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until September 3, 2002, to receive additional written statements. To be

included, the statement must be received by the Division by September 3, 2002. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone 919-733-1489, fax 919-715-7476, email thom.allen@ncmail.net.

Fiscal Impact

- State** 15A NCAC 02D .0932 .0960
- Local**
- Substantive** (\geq \$5,000,000)
- None** 15A NCAC 02D .0105, .0506-.0507, .0509, .0515-.0516, .0521, .0606, .0608, .0912, .0927, .0952, .0954, .0959, .1109; 02Q .0306, .0526

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER – 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

15A NCAC 02D .0105 MAILING LIST

(a) The Division shall develop and maintain a mailing list of persons who have requested notification of rule-making as required by ~~150B-21.2(b)~~, 150B 21.2(d). Such persons shall receive a copy of the complete notice as filed with the Office of Administrative Hearings.

(b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written request to the Division of Air Quality ~~Division, P.O. Box 29580, 1641 Mail Service Center,~~ Raleigh, North Carolina, 27699, 27626. Payment of fees required under this Section may be by check or money order for thirty dollars (\$30.00) made payable to the Department of Environment and Natural Resources. Payment shall be submitted with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year.

Authority G.S. 143-215.3(a)(1); 150B 21.2(d).

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0506 PARTICULATES FROM HOT MIX ASPHALT PLANTS

(a) The allowable emission rate for particulate matter resulting from the operation of a hot mix asphalt plant that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation $E = 4.9445(P)^{0.4376}$ calculated to ~~two~~-three significant figures, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the ~~maximum~~-process rate in tons per hour. The allowable emission rate shall be 60.0 pounds per hour for process ~~rates~~weights equal to or greater than 300 tons per hour.

(b) Visible emissions from stacks or vents at a hot mix asphalt plant shall be less than 20 percent opacity when averaged over a six-minute period.

~~(b)(c)~~ All hot mix asphalt plants shall be equipped with a fugitive-scavenger process dust control system for the drying,

conveying, classifying, and mixing ~~equipment~~ equipment which ~~The scavenger process dust control system~~ shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b) of this Rule. ~~reduce to a minimum the emission of particulate matter from any point other than the stack outlet. Emissions from this equipment shall be controlled such that the applicable opacity standards in Rule .0521 or .0524 of this Section are not exceeded.~~

~~(e)(d)~~ Fugitive non-process dust emissions shall be controlled by Rule .0540 of this Section.

~~(e) Any asphalt batch plant that was subject to the 40-percent opacity standard before April 1, 2003 shall be in compliance with the 20-percent opacity standard by January 1, 2004.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0507 PARTICULATES FROM CHEMICAL FERTILIZER MANUFACTURING PLANTS

The allowable emissions rate for particulate matter resulting from the manufacture, mixing, handling, or other operations in the production of chemical fertilizer materials that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation $E = 9.377(P)^{0.3067}$ calculated to three significant figures, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process rate (the sum of the production rate and the recycle rate) in tons per hour.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0509 PARTICULATES FROM MICA OR FELDSPAR PROCESSING PLANTS

(a) The allowable emission rate for particulate matter resulting from the processing of mica or feldspar that are discharged from any chimney, stack, vent, or outlet into the atmosphere shall not exceed the level calculated with the equation $E = 4(P)^{0.677}$ calculated to three significant figures for process rates less than or equal to 30 tons per hour. For process rates greater than 30 tons per hour but less than 1,000 tons per hour, the allowable emission rate for particulate matter shall not exceed the level calculated with the equation $E = 20.421(P)^{0.1977}$ calculated to three significant figures. For process rates greater than or equal to 1,000 tons per hour but less than 3,000 tons per hour, the allowable emission rate for particulate matter shall not exceed the level calculated with the equation $E = 38.147(P)^{0.1072}$ calculated to three significant figures. The allowable emission rate shall be 90.0 pounds per hour for process weight rates equal to or greater than 3,000 tons per hour. For the purpose of these equations, "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the actual process weight rate in tons per hour.

(b) Fugitive non-process dust emissions shall be controlled by Rule .0540 of this Section.

(c) The owner or operator of any mica or feldspar plant shall control process-generated emissions:

(1) from crushers with wet suppression, and

(2) from conveyors, screens, and transfer points,

such that the applicable opacity standards in Rule .0521 or .0524, of this Section are not exceeded.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D.0515 PARTICULATES FROM MISCELLANEOUS INDUSTRIAL PROCESSES

(a) The allowable emission rates for particulate matter from any stack, vent, or outlet, resulting from any industrial process for which no other emission control standards are applicable, shall not exceed the level calculated with the equation $E = 4.10(P)^{0.67}$ calculated to three significant figures for process weight rates less than or equal to ~~60,000 pounds~~ 30 tons per hour. For process weight rates greater than ~~60,000 pounds~~ 30 tons per hour, the allowable emission rates for particulate matter shall not exceed the level calculated with the equation $E = 55.0(P)^{0.11}$ - 40 calculated to three significant figures. For the purpose of these equations "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P" equals the process weight rate in tons per hour.

(b) Process rate weight per hour means the total weight of all materials introduced into any specific process that may cause any emission of particulate matter. Solid fuels charged are considered as part of the process weight, but liquid and gaseous fuels and combustion air are not. For a cyclical or batch operation, the process rate weight per hour is derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process rate weight per hour is derived by dividing the process weight for a typical period of time by the number of hours in that typical period of time.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

(a) Emission of sulfur dioxide from any source of combustion that is discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) A source subject to an emission standard for sulfur dioxide in Rules .0524, .0527, .1110, ~~or .1111~~, .1111, .1205, .1206, or .1210 of this Subchapter shall meet the standard in that particular rule instead of the standard in Paragraph (a) of this Rule. that standard.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can be reasonably expected to occur, except during startup, shutdowns, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However,

sources subject to a visible emission standard in Rules .0506, .0508, .0524, .1110, ~~or .1111, .1111, .1205, .1206, or .1210~~ of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule may be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits necessary data to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that

it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, and malfunctions approved as such according to procedures approved under Rule .0535 of this ~~Section~~, Section:

- (1) No more than 10 six-minute periods shall exceed the opacity standard in any 24-hour period; and
- (2) ~~the~~ The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in 15A NCAC 02D Section .0400 or 40 CFR Part 50.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .0600 - MONITORING; RECORDKEEPING; REPORTING

15A NCAC 02D .0606 SOURCES COVERED BY APPENDIX P OF 40 CFR PART 51

(a) The following sources shall be monitored as described in Paragraph 2 of Appendix P of 40 CFR Part 51:

- (1) fossil fuel-fired steam generators;
- (2) nitric acid plants;
- (3) sulfuric acid plants; and
- (4) petroleum refineries.

Sources covered by Rule .0524 of this Subchapter are exempt from this Rule.

(b) The monitoring systems required under Paragraph (a) of this Rule shall meet the minimum specifications described in Paragraphs 3.3 through 3.8 of Appendix P of 40 CFR Part 51.

(c) The excess emissions recorded by the monitoring systems required to be installed under this Rule shall be reported no later than 30 days after the end of the quarter to the Division in the manner described in Paragraphs 4 and 5.1 through 5.3.3 of Appendix P of 40 CFR Part 51 except that a six-minute time period shall be deemed as an appropriate alternative opacity averaging period as described in Paragraph 4.2 of Appendix P of 40 CFR Part 51. The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide or nitrogen oxides under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter and the nitrogen oxide emission standard in Rule .0519 or Section .1400 of this Subchapter with

a continuous emission monitoring system. Compliance with sulfur dioxide and nitrogen oxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(d) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, the test methods described in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(e) Wherever the language of the referenced portion of Appendix P of 40 CFR Part 51 speaks of the "state" or "state plan", the requirements described therein shall apply to those sources to which the requirements pertain.

(f) The owner or operator of the source shall conduct a daily zero and span check of the continuous opacity monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(g) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
 - (A) the quantity and type of fuels burned;
 - (B) the BTU value;
 - (C) the sulfur content in percent by weight; and
 - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
 - (A) the daily calculated sulfur dioxide and nitrogen oxide emission rates expressed in the same units as the applicable standard for each day; and

- (B) other information required under Appendix P of 40 CFR Part 51.

(h) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

(i) If emission testing for compliance with the nitrogen oxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 7.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4).

15A NCAC 02D .0608 OTHER LARGE COAL OR RESIDUAL OIL BURNERS

(a) The owner or operator of any fuel burning unit shall determine sulfur dioxide emissions into the ambient air if the unit:

- (1) burns coal or residual oil;
- (2) is not required to monitor sulfur dioxide emissions by Rules .0524 or .0606 of this Subchapter.
- (3) has a total heat input of more than 250 million BTU per hour from coal and residual oil; and
- (4) has an annual average capacity factor greater than 30 percent as determined from the three most recent calendar year reports to the Federal Power Commission or as otherwise demonstrated to the Director by the owner or operator. (If the unit has not been in existence for three calendar years, its three-calendar-year average capacity factor shall be determined by estimating its annual capacity factors for enough future years to allow a three-calendar-year average capacity factor to be computed. If this three-calendar-year average capacity factor exceeds 30 percent, the unit shall be monitored. If this three-calendar-year average capacity factor does not exceed 30 percent, the unit need not be monitored.)

(b) Once the unit is being monitored in accordance with Paragraph (a) of this Rule, it shall continue to be monitored until its most recent three-calendar-year average capacity factor does not exceed 25 percent. Once the unit is not being monitored in accordance with Subparagraph (a) of this Rule, it need not be monitored until its most recent three-calendar-year average capacity factor exceeds 35 percent.

(c) If units required to be monitored have a common exhaust or if units required to be monitored have a common exhaust with units not required to be monitored, then the common exhaust may be monitored, and the sulfur dioxide emissions need not be apportioned among the units with the common exhaust.

(d) The owner or operator of the source shall determine sulfur dioxide emissions by:

- (1) an instrument for continuous monitoring and recording of sulfur dioxide emissions,
- (2) analyses of representative samples of fuels to determine BTU value and percent sulfur content.

(e) The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide under any other state or federal rule with continuous emission

monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(f) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, then:

- (1) for coal, the test methods described in Rule 2D .0501(c)(4)(A) of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

- (2) for residual oil, the test methods described in Rule .0501(c)(4)(B) of this Subchapter shall be used except that sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be

composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. Residual oil shall be collected in accordance with ASTM D4177 or D4057.

(g) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
 - (A) the quantity and type of fuels burned;
 - (B) the BTU value;
 - (C) the sulfur content in percent by weight; and
 - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
 - (A) the daily calculated sulfur dioxide emission rates expressed in the same units as the applicable standard for each day; and
 - (B) other information required under Appendix P of 40 CFR Part 51.

(h) The owner or operator of the source shall conduct a daily zero and span check of the continuous emission monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(i) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with rules in this Section shall, at his own expense, demonstrate compliance by the methods described in Rules .0912 through .0916 and .0939 through .0942 of this Section. The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed. All tests shall be made by, or under the direction of, a person qualified by training or experience in the field of air pollution testing.

(b) Volatile organic compound emissions compliance testing shall be allowed and the results shall be accepted, only if the Director has been notified as required by Paragraph (c) of this Rule and if the Director has granted approval.

(c) Any person proposing to conduct a volatile organic compound emissions test shall notify the Director at least 21 days before beginning the test so that the Director may at his option observe the test. Any person notifying the Director of a

proposed volatile organic compound emissions test shall include as part of notification the following minimum information:

- (1) a statement indicating the purpose of the proposed test;
 - (2) a detailed description of the facility to be tested;
 - (3) a detailed description of the test procedures, equipment, and sampling sites; and
 - (4) a timetable, setting forth the dates on which:
 - (A) The testing will be conducted;
 - (B) Preliminary test results will be reported (not later than 30 days after sample collection); and
 - (C) The final test report will be submitted (not later than 60 days after completion of on-site sampling).
- (d) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit along with the final test report proposed corrective action.
- (e) For compliance determination, the owner or operator of any volatile organic compound emissions source shall be responsible for providing:
- (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure;
 - (2) safe access to the sample and data collection locations; and
 - (3) light, electricity, and other utilities required for sample and data collection.
- (f) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:
- (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume (gallons) of coating solids consumed during that day on that coating line; or
 - (2) Compliance shall be determined as follows:
 - (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.
 - (B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.
- (g) The Director may authorize the Division of Air Quality Environmental Management to conduct independent tests of any source subject to a rule in this Section to determine the compliance status of that source or to verify any test data submitted about that source. Any test conducted by the Division of Air Quality Environmental Management using the appropriate

testing procedures described in this Section shall have precedence over all other tests. The United States Environmental Protection Agency (EPA) may verify any test submitted by the owner or operator of a source, and any test conducted by EPA using the appropriate testing procedures described in this Section shall have precedence over tests conducted by the owner or operator of the source.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

- (a) For the purpose of this Rule, the following definitions apply:
- (1) "Bulk gasoline terminal" means:
 - (A) breakout tanks of an interstate oil pipeline facility; or
 - (B) a gasoline storage facility which that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
 - (2) "Breakout tank" means a tank used to:
 - (A) relieve surges in a hazardous liquid pipeline system, or
 - (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
 - (3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
 - (4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.
 - (5) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit by:
 - (A) circulating a large volume of air through the vapor space to evaporate any remaining gasoline after the tank has been emptied; or
 - (B) using liquid displacement.
 - (6) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psia. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psia.
 - (7) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psia.
- (b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
- (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
- (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
- (4) All loading and vapor lines are equipped with fittings ~~which that~~ make vapor-tight connections and ~~which that~~ are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:

- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation; or
- (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:

- (1) rim-mounted secondary seals on all external and internal floating roof tanks;
- (2) gaskets on deck fittings; and
- (3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:

- (1) deck seams shall be welded, bolted or riveted; and
- (2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and
- (2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located

(including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

The annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

~~(k) Within one year after December 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.~~

~~(k)~~ The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Documentation of degassing external or internal floating roof tanks shall be made according to 15 NCAC 2D .0903 Recordkeeping: Reporting: Monitoring.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means:
 - (A) breakout tanks of an interstate oil pipeline facility; or
 - (B) a gasoline storage and distribution facility that has an average daily throughput of less than 20,000 gallons of gasoline and usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via

account trucks to local farms, businesses, and service stations.

- (3) "Bulk gasoline terminal" means a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of no less than 20,000 gallons of gasoline.
- (4) ~~"Certified facility" means any facility that has been certified under Rule .0960 of this Section to perform leak tightness tests on truck tanks.~~
- (5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 psia or greater.
- (6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (8) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (9) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- (10) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- (11) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks

- (1) Gasoline truck tanks and their vapor collection systems shall be tested ~~annually.~~ annually by a certified facility. The test procedure that shall be used is described in Rules .0940 and .0941 of this Section, and is according to Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18

inches of water or when evacuated to a gauge pressure of 6.0 inches of water.

- (2) Each gasoline truck tank that has been certified leak tight, according to Subparagraph (1) of this Paragraph shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b. ~~This sticker shall show the identification number of the tank and the date that the tank last passed the pressure and vacuum test.~~
- (3) There shall be no liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight according to Subparagraph (1) of this Paragraph.

(d) Vapor Collection System

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.
- (2) During loading and unloading operations there shall be:
 - (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Rule .0940 of this Section; and
 - (B) no liquid leaks.
- (3) If a leak is discovered that exceeds the limit in Part (2) (A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.
- (4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to Rule .0912 and .0940 of this Section, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the Director may allow less frequent monitoring. If more than 20 leaks are found, the Director may require that the frequency of monitoring be increased.

(e) The owner or operator of a source subject to this Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection

system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:

- (1) the gasoline truck tank identification number;
- (2) the initial test pressure and the time of the reading;
- (3) the final test pressure and the time of the reading;
- (4) the initial test vacuum and the time of reading;
- (5) the final test vacuum and the time of the reading, and
- (6) the date and location of the tests.

A copy of the most recent certification report shall be kept with the truck tank. The owner or operator of the truck tank shall also file a copy of the most recent certification test with each bulk gasoline terminal that loads the truck tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0952 PETITION FOR ALTERNATIVE CONTROLS FOR RACT

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered ~~by Paragraph (c), (d), or (e) of Rule .0902 of under~~ this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through ~~.0938~~ .0937 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility ~~is~~ are 100 tons per year or more;
- ~~(2) sources covered under Rule .0946 of this Section; or~~
- ~~(3)~~ (2) sources covered under Rule .0953 or .0954 of this Section.

(c) If the owner or operator of any source of volatile organic compounds subject to the requirements of this ~~Section on May 1, 1997, Section~~, can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the ~~Director before May 1, 1997. The petition can be made only for sources in existence or under construction on May 1, 1997. Director.~~

~~(d) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section because of the application of Paragraph (d) or (e) of Rule .0902 of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director within six months after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone. The petition can be made only for sources in existence or under construction on~~

~~the date that the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.~~

~~(e)~~ (d) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction ~~which~~ that will be achieved, and the quantity and composition of volatile organic compounds ~~which that~~ will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;
- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule ~~0907 or~~ .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

~~(f)~~ (e) The Director ~~and the U.S. Environmental Protection Agency (EPA)~~ shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph ~~(d)~~ (e) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;

- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the petition.

~~(e)(f)~~ When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, ~~and the EPA,~~ the permit shall contain a condition stating such controls.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0954 STAGE II VAPOR RECOVERY

(a) Applicability. In accordance with Paragraphs (e), (f), or (g) of Rule .0902 of this Section, this Rule applies to the control of gasoline vapors at the vehicle fill-pipe during refueling operations at a facility. The vapors shall be captured and returned to a vapor-tight underground storage tank or shall be captured and destroyed. These systems shall be installed at all facilities that dispense gasoline to motor vehicles unless exempted under Paragraph (b) of this Rule.

(b) Exemptions. The following gasoline dispensing facilities are exempt from this Rule based upon the previous two years records:

- (1) any facility which dispenses less than 10,000 gallons of gasoline per calendar month;
- (2) any facility which dispenses less than 50,000 gallons of gasoline per calendar month and is an independent small business marketer of gasoline;
- (3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or
- (4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3) or (4) in this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Subparagraph (f) of this Rule, and shall remain subject to these provisions even if the facility's later operation meets the exemption requirements.

(c) Proof of Eligibility. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain the following:

- (1) chronologically arranged bills of lading for receipt of gasoline shipments from the last three years; and
- (2) daily inventory of each gasoline type for each day of operation or equivalent records as required; this shall be maintained for the last three years.

These records shall be furnished to the Director upon request.

(d) Definitions. For the purpose of this Rule, the following definitions apply:

- (1) "CARB" means the California Air Resources Board.

- (2) "Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.
- (3) "Defective equipment" means any absence, disconnection, or malfunction of a Stage II vapor recovery system component which is required by this Rule including the following:
 - (A) a vapor return line that is crimped, flattened or blocked or that has any hole or slit that allows vapors to leak out;
 - (B) a nozzle bellows that has any hole or tear large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length;
 - (C) a nozzle face-plate or cone that is torn or missing over 25 percent of its surface;
 - (D) a nozzle with no automatic overflow control mechanism or an inoperable overflow control mechanism;
 - (E) an inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this Rule; or
 - (F) a failure to meet the requirements of Paragraph (g) of this Rule.
- (4) "Facility" means any gas oline service station, gasoline dispensing facility, or gasoline cargo tanker.
- (5) "ISBM" means independent small business marketer.
- (6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.
- (7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.
- (8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (9) "Pressure Balanced Stage II System" means one which is not vacuum-assisted. That is, the volume of vapor in the automobile's fuel tank displaced by the incoming liquid gasoline equals the space in the underground tank created by the gasoline leaving.
- (10) "Remote Vapor Check Valve" means a check valve in the vapor return line but not located in the nozzle.
- (11) "Stage II Vapor Recovery" means to the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight storage tank or are captured and destroyed.

PROPOSED RULES

- (12) "Throughput" means the amount of gasoline dispensed at a facility during any calendar month after June 30, 1994.

(e) Stage II Requirements. No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

- (1) the transfer is made using a Certified Stage II vapor recovery system that meets the requirements of the inspections;
- (2) all installed Stage II vapor recovery systems use coaxial vapor recovery hoses; no dual-hose designs shall be used;
- (3) all installed Stage II vapor recovery systems used are certified by CARB except that the Stage I system need not be CARB certified. In addition, no Stage II system shall employ a remote vapor check valve. Pressure balanced Stage II systems may be used; and
- (4) the underground vapor return piping satisfies the requirements of Rule .0953 of this Subchapter.

In the event that CARB revokes certification of an installed system, the owner or operator of the facility shall have four years to modify his equipment to conform with re-certification requirements unless modifications involve only the replacement of dispenser check valves, hoses, or nozzles or appurtenances to these components in which case the allowed time period is three months. This time period is defined as the period from the day that the owner or operator of the facility has been officially notified by the Director.

(f) Compliance Schedule. If the gasoline service station or gasoline dispensing facility is subject to the requirements of this Rule in accordance with Paragraphs (e), (f), or (g) of Rule .0902 of this Section, compliance shall be achieved no later than:

- (1) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of at least 100,000 gallons per month;
- (2) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;
- (3) for affected facilities owned by a single ISBM:
 - (A) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 33 percent of affected facilities;
 - (B) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 66 percent of the affected facilities;
 - (C) three years from the date that the Director notices in the North Carolina

Register that an area is in violation of the ambient air quality standard for ozone, for the remainder of the affected facilities;

- (4) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or
- (5) before beginning operation for islands constructed after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone.

(g) Testing Requirements

- (1) Within 30 days after the commencement of operation of the Stage II system and every five years thereafter, the owner or operator of the facility shall submit reports of the following tests as described in EPA-450/3-91-022b:
 - (A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure every five years;
 - (B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure every five years; and
 - (C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices every five years.

If the tests have been performed within the last two years the owner or operator may submit a copy of those tests in lieu of retesting. Testing shall be in accordance with Rule .0912 of this Section.

- (2) The owner or operator shall perform daily testing and inspections as follows:
 - (A) daily tests to ensure proper functioning of nozzle automatic overfill control mechanisms and flow prohibiting mechanisms, and
 - (B) daily visual inspection of the nozzle bellows and face-plate.
- (3) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.
- (4) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.
- (5) Where the Division of Air Quality conducts tests or upon requirement from the Director to test the vapor control system it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(h) Operating Instructions and Posting

PROPOSED RULES

- (1) The owner or operator of the facility shall post operating instructions for the vapor recovery system on the top one-third of the front of each gasoline dispenser to include the following:
 - (A) a clear description of how to correctly dispense gasoline with the vapor recovery nozzles,
 - (B) a warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline,
 - (C) a telephone number to report problems experienced with the vapor recovery system to the owner or operator of the facility, and
 - (D) a telephone number to report problems experienced with the vapor recovery system to the Director.
- (2) The owner or operator shall provide written instructions on site as detailed in EPA-450/3-91-022b to insure that employees of the facility have an accurate understanding of the operation of the system and, in particular, when the system is malfunctioning and requires repair.

(i) Other General Requirements. The owner or operator of the facility shall conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until the system has been repaired to bring it back into compliance with this Rule.

(j) Record-keeping and Reporting. Owners or operators of the facility shall maintain records in accordance with Rule .0903 of this Section on compliance and testing.

(k) Referenced document. EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of ~~Environment, Health, Environment~~ and Natural Resources (addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U. S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services, 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851 and the cost is fifty-two dollars (\$52.00).

Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.

15A NCAC 02D .0959 PETITION FOR SUPERIOR ALTERNATIVE CONTROLS

- (a) This Rule applies to all sources covered under this Section.
- (b) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section, can demonstrate that an alternative operational or equipment control is superior to the required control, he may petition the Director

to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. The petition shall be made for each source to the Director.

(c) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted; and
- (5) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(d) The Director shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (c) of this Rule;
- (2) The Director determines that the proposed alternative operational or equipment control is superior to the required controls;
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the petition.

(e) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0960 CERTIFICATION OF LEAK TIGHTNESS TESTER

PROPOSED RULES

(a) Purpose. The purpose of this Rule is to establish procedures for certifying facilities to perform leak tightness tests on truck tanks, as defined under Rule .0932 of this Section.

(b) Certification request. To request certification to perform leak tightness testing on truck tanks for the purposes of complying with Rule .0932 of this Section, a facility shall submit to the Director the following information:

- (1) the name and address of the facility requesting certification, including the primary contact and telephone number;
- (2) evidence that the facility is registered with the United States Department of Transportation to perform leak checks;
- (3) evidence that the facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
- (4) evidence that the facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly.

(c) Approval. The Director shall certify a facility requesting certification to perform leak tightness testing if he finds that:

- (1) All the information required under Paragraph (b) of this Rule has been submitted;
- (2) The Division has observed the facility conducting one or more leak tightness tests and finds that:
 - (A) The facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
 - (B) The facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly.

(d) Expiration. A certification to perform leak tightness testing under this Rule shall expire one year from the date of its issuance.

(e) Renewal. To have a certification renewed, the certified facility shall submit to the Director a request to have the certification renewed. Within 30 days after receipt of the request, the Division shall observe the certified facility conducting one or more leak tightness tests. If the Director finds that:

- (1) The certified facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
- (2) The certified facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly,

he shall renew the certification. If the certified facility submits a request for renewal after the expiration of the last certification, the Director shall reject the renewal request, and the facility shall request a new certification under Paragraph (b) of this Rule.

(f) Interim certification. If the Division is unable to observe the performance of leak tightness testing required under Paragraphs (c) or (e) of this Rule, the Director may issue an interim certification for up to 90 days to allow the certified facility to perform leak tightness tests. An interim certification shall not be renewed.

(g) Revocation of Certification. If the Director finds that a certified facility is not performing Method 27 of 40 CFR Part 60, Subpart A correctly or that the certified facility is certifying tanks as leak tight that have not passed the leak tightness test, the

Director shall revoke the facility's certification or interim certification.

(h) Stickers. The Division shall provide serialized stickers at no cost, or the facility may choose to provide the stickers. If the facility provides the stickers, the stickers shall meet the Division's standard and a sample sticker shall accompany the application for certification. Once a facility is certified under this Rule to perform leak tightness tests, stickers are to be:

- (1) affixed to tanks that have passed the test under Rule .0932 of this Section; and
- (2) placed near the Department of Transportation Certification plate (DOT, 49 CFR 178.340-10b).

The certified facility performing the test shall maintain a log matching sticker serial numbers and tank identification numbers. The certified facility shall send this log to the Director monthly.

(i) Certification report. The certified facility performing the test shall give a copy of the certification report to the truck tank owner and shall retain a copy of the certification report. The certification report shall contain the following information:

- (1) name, address, and telephone number of certified facility performing the test;
- (2) name and signature of the individual actually performing the test;
- (3) name and address of the owner of the tank;
- (4) serial number of the sticker and identification number of the tank;
- (5) the date that the sticker is issued and the date that the sticker expires, which shall be one year after the issuance date;
- (6) the pressure drops measured and vacuum drops measured; and
- (7) list or description of problems with tank (if none are found, the report shall state that none were found).

The certified facility performing the test shall provide the Director each month a copy of each certification report produced for the previous month. After July 2005, the certified facility shall cease sending the Director copies of the certification reports.

(j) Record retention. The certified facility performing the test and the owner of the truck tank shall keep the certification report for at least two years. Certification reports shall be made available to the Division upon request.

(k) Verification of leak tightness. The Division may use Method 21 to verify the leak tightness of a tank.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (13).

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1109 112(J) CASE-BY-CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) Applicability. This Rule applies only to sources of hazardous air pollutants required to have a permit under 15A NCAC 02Q .0500. This Rule does not apply to research or laboratory activities as defined in Paragraph (c) of this Rule.

(b) Effective. This Rule shall apply only after it ~~and 15A NCAC 02Q-.0500 have~~ has been approved by the EPA.

(c) Definitions. For the purposes of this ~~Rule~~Rule, the definitions in 40 CFR 63.2, 63.51, 15A NCAC 2Q .0526, and the following definitions apply:

~~(1)~~ "Affected source" means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a section 112(c) source category or subcategory for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to 40 CFR Part 63 Subpart B;

~~(1)(2)~~ "Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including measures that:

- (A) reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials, or other modifications;
- (B) enclose systems or processes to eliminate emissions;
- (C) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emission point;
- (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or
- (E) are a combination of Parts (A) through (D) of this definition.

~~(2)~~ "Emission point" means any part or activity of a facility that emits or has the potential to emit, under current operation design, any hazardous air pollutants.

~~(3)~~ "Emission unit" means any building, structure, facility, or installation. This could include an emission point or collection of emission points, within a major source, which the Director determines is the appropriate entity for making a MACT determination under Section 112 (j) of the federal Clean Air Act, i.e., any of the following:

- ~~(A)~~ an emission point that can be individually controlled;
- ~~(B)~~ the smallest grouping of emission points, that when collected together can be commonly controlled by a single control device or work practice;
- ~~(C)~~ any grouping of emission points, that, when collected together can be commonly controlled by a single control device or work practice;
- ~~(D)~~ a grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was

~~specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.~~

~~(E)~~ the entire geographical entity comprising a major source in a source category subject to a MACT determination under Section 112(j) of the federal Clean Air Act.

~~(4)(3)~~ "EPA" means the United States Environmental Protection Agency or the Administrator of U.S. Environmental Protection Agency.

~~(5)~~ "Existing facility" means a facility for which construction is commenced before EPA proposed a standard, applicable to the facility, under Section 112(d) or (h) of the federal Clean Air Act, or if no proposal was published, then on or before the Section 112(j) deadline.

~~(6)~~ "Existing source" means a source, construction or reconstruction of which is commenced before EPA proposed a standard, applicable to the source, under Section 112(d) or (h) of the federal Clean Air Act, or if no proposal was published, then on or before the Section 112(j) deadline.

~~(7)(4)~~ "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.

~~(8)(5)~~ "MACT" means maximum achievable control technology.

~~(9)(6)~~ "Maximum achievable control technology" means:

- (A) for existing sources,
 - (i) a MACT standard that EPA has proposed or promulgated for a particular category of facility or source,
 - (ii) the average emission limitation achieved by the best performing 12 percent of the existing facilities or sources for which EPA has emissions information if the particular category of source contains 30 or more sources, or
 - (iii) the average emission limitation achieved by the best performing five facilities or sources for which EPA has emissions information if the particular category of source contains fewer than 30 sources, or
- (B) for new sources, the maximum degree of reduction in emissions that is deemed achievable but not less stringent than the emission control that is achieved in practice by the best controlled similar source.

~~(10)~~(7) "MACT floor" means:

- (A) for existing sources:
 - (i) the average emission limitation achieved by the best performing 12 percent of the existing sources ~~in the United States~~ (for which EPA has emissions information) excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in Section 171 of the federal Clean Air Act) applicable to the source category or subcategory for categories and subcategories with 30 or more sources; or
 - (ii) the average emission limitation achieved by the best performing five sources ~~in the United States~~ (for which EPA has emissions or ~~reasonably could reasonably obtain emission information~~ emissions information), in the category or ~~subcategory subcategory, of sources for categories or subcategories~~ with fewer than 30 sources;
- (B) for new sources, the emission limitation achieved in practice by the best controlled similar source.

(8) "New affected source" means the collection of equipment, activities, or both, that constructed after the issuance of a section 112(j) permit for the source pursuant to 40 CFR 63.52, is subject to the applicable MACT emission limitation for new sources. Each permit shall define the term "new affected source," which will be the same as the "affected source" unless a different collection is warranted based on consideration of factors including:

- (A) Emission reduction impacts of controlling individual sources versus groups of sources;
- (B) Cost effectiveness of controlling individual equipment;
- (C) Flexibility to accommodate common control strategies;
- (D) Cost/benefits of emissions averaging;

- (E) Incentives for pollution prevention;
- (F) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);
- (G) Feasibility and cost of monitoring; and
- (H) Other relevant factors.

~~(11) "New emission unit" means an emission unit for which construction or reconstruction is commenced after the section 112(j) of the federal Clean Air Act deadline, or after proposal of a relevant standard under section 112(d) or section 112(h) of the federal Clean Air Act (as amended in 1990), whichever comes first, except that, as provided by 40 CFR 63.52(f)(1), an emission unit, at a major source, for which construction or reconstruction is commenced before the date upon which the area source becomes a major source, shall not be considered a new emission unit if, after the addition of such emission unit, the source is still an area source.~~

~~(12)~~(9) "New facility" means a facility for which construction is commenced after the Section 112(j) deadline, or after proposal of a relevant standard under Section 112(d) or (h) of the federal Clean Air Act, whichever comes first.

~~(13) "New source" means a source for which construction or reconstruction is commenced after the Section 112(j) deadline, or after proposal of a relevant standard under Section 112(d) or (h) of the federal Clean Air Act, whichever comes first.~~

(10) "Research or laboratory activities" means activities whose primary purpose is to conduct research and development into new processes and products; where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner; and where the source is not in a source category specifically addressing research or laboratory activities, that is listed pursuant to section 112(c)(7) of the Clean Air Act.

~~(14)~~(11) "Section 112(j) deadline" means the date occurring 18 months after the ~~scheduled promulgation date for which~~ of a relevant standard is scheduled to be promulgated under 40 CFR Part 63, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999, under Section

~~112(e)(1) and (3) of the federal Clean Air Act. The applicable date for categories of sources is contained in the source category schedule for standards.~~

~~(15)(12) "Similar source" means a source that has comparable emissions and is structurally similar in design and capacity to other sources such that the source could be controlled using the same control technology, that equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected source.~~

~~(16) "United States" means the United States, their possessions and territories.~~

(d) Missed promulgation dates: 112(j). If EPA fails to promulgate a standard for a category of source under Section 112 of the Federal Clean Air Act by the date established pursuant to Sections 112(e)(1) or (3) of the Federal Clean Air Act, the owner or operator of any source in such category shall submit, within 18 months after such date, a permit application, in accordance with the procedures in 15A NCAC 02Q .0526, to the Director and to EPA to apply MACT to such sources. Sources subject to this Paragraph shall be in compliance with this Rule within three years from the date that the permit is issued.

(e) New facilities. The owner or operator of any new facility that is a major source of hazardous air pollutants (HAP) that is subject to this Rule shall apply MACT ~~to the new facility before beginning construction and operation, in accordance with the provisions of Rule .1112 of this Section, 15A NCAC 02Q .0528, and 02Q .0526(e)(2).~~

(f) Case-by-case MACT determination. The ~~owner or operator of the source~~ Director shall determine MACT according to 40 CFR 63.55(a).

(g) Monitoring and recordkeeping. The owner or operator of a source subject to this Rule shall install, operate, and maintain monitoring capable of detecting deviations from each applicable emission limitation or other standards with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emissions limitations established under this Rule.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10).

SUBCHAPTER 02Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on significant public interest relevant to air quality;
- (2) a source to which 15A NCAC 02D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 02D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in Section 15A NCAC 02D .0500 ~~in accordance with~~ according to 15A NCAC 02D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 02D .0400;
- ~~(5) any physical or operational limitation on the capacity of the source to emit a pollutant, including air cleaning device and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such a limitation is necessary to avoid the applicability of rules in 15A NCAC 2D .0900 or 15A NCAC 2Q .0500;~~
- ~~(6)(5) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 in accordance with~~ according to 15A NCAC 02D .0952;
- ~~(7) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;~~
- ~~(8)(6) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system in accordance with~~ according to 15A NCAC 02D .0936;
- ~~(9)(7) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 02D .1205(b)(2); .1204(c)(2)(B) and .1208 (b)(2)(B);~~
- ~~(10)(8) an alternative mix of controls under 15A NCAC 02D .0501(f);~~
- ~~(11)(9) a source that is subject to the requirements of 15A NCAC 02D .1109 or .1112; or~~
- ~~(12)(10) the owner or operator who requests that the draft permit go to public notice with an opportunity to request a public hearing.~~

~~(b) Failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit shall be grounds for:~~

- ~~(1) enforcement action;~~
- ~~(2) permit termination, revocation and reissuance, or modification; or~~
- ~~(3) denial of permit renewal applications.~~

~~(c) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule.0103 (effective date of July 1, 1994) of this Subchapter. The permit shall not waive or make less stringent any limitation or requirement contained in any applicable requirement.~~

~~(d) Emissions limitations, controls and requirements contained in permits issued pursuant to the Rule shall be permanent,~~

~~quantifiable, and otherwise enforceable as a practical matter under G.S. 143-215.114A, 143-215.114B, and 143-215.114C.~~

~~(e)~~(b) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Authority G.S. 143-215.3(a)(1), (3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C.

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES

(a) The owner or operator of a source required to apply maximum achievable control technology (MACT) under 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

(b) For the purposes of this Rule, the definitions in 15A NCAC 02D ~~.1109, 1109, 40 CFR 63.51, 40 CFR 63.2,~~ and the following definitions apply:

- (1) "Equivalent emission limitation" means an emission limitation, established under Section 112(j) of the federal Clean Air Act, which is ~~at least as stringent as equivalent to~~ the MACT standard that EPA would have promulgated under Section 112(d) or (h) of the federal Clean Air Act.
- (2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.
- (3) "Title V permit" means a permit issued under this Section.

(c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT under 15A NCAC 2D .1109 shall submit an application for a permit or for a significant permit revision under this Section, whichever is applicable.

(d) Approval process for new and existing affected sources.

- (1) Sources subject to section 112(j) as of the section 112(j) deadline. The requirements of Subparagraphs (d)(1)(A) and (B) of this Paragraph shall apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an emission standard under 40 CFR Part 63 on or before an applicable section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.
- (A) The owner or operator shall submit an application for a permit or for a revision to an existing title V permit

issued or a pending title V permit meeting the requirements of Subparagraph (m)(1) of this Rule by the section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the Federal Clean Air Act.

(B) The owner or operator of a source that does not submit an application under Subparagraph (d)(1)(A) of this Rule and that is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the Federal Clean Air Act shall submit an application for a title V permit or for a revision to an existing title V permit meeting the requirements of Subparagraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division is not required to make such notification.

(C) The requirements in Parts (i) and (ii) of this Subparagraph shall apply when the owner or operator has obtained a title V permit that incorporates a section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of Section 112(j) of the Federal Clean Air Act.

(i) When the owner or operator has a title V permit that incorporates a section 112(g) case-by-case MACT determination under 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a title V permit revision within 30 days of the section 112(j) deadline or within 30 days of being notified that in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant

to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the Federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the Federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

- (ii) When the owner or operator that has submitted a title V permit application that incorporates a section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not received the permit incorporating the section 112(g) requirements, shall continue to pursue a title V permit that addresses the requirements of Section 112(g) of the Federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of issuance of that title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the Federal Clean Air Act for the source

in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the Federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

- (e) Sources that become subject to Section 112(j) of the Federal Clean Air Act after the section 112(j) deadline and that do not have a title V permit addressing section 112(j) requirements. The requirements of this Paragraph apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the section 112(j) deadline and are therefore not subject to Section 112(j) of the Federal Clean Air Act on that date, but where events occur subsequent to the section 112(j) deadline that would bring the source under the requirements of this Rule, and the source does not have a title V permit that addresses the requirements of Section 112(j) of the Federal Clean Air Act.

- (1) When one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the Federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously

adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

- (2) When one or more sources in a category or subcategory subject to 112(j) requirements are installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted under 15A NCAC 02Q .0528, and the owner or operator has not submitted an application for a title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a title V permit that addresses the emission limitation requirements of Section 112(g) of the Federal Clean Air Act. Within 30 days of issuance of that title V permit, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a revision to the existing title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which the Division would otherwise adopt pursuant to Section 112(j) of the Federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the Federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted Section 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.
- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Division shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements (including relevant compliance deadlines), shall apply to such sources.
- (4) If EPA establishes a lesser quantity emission rate under section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this

Rule, then the owner or operator of such a major source shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule on or before the date six month after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(f) Sources that have a title V permit addressing section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

(1) If the title V permit already provides the appropriate requirements that address the events that occur under this Paragraph subsequent to the section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the section 112(j) requirements are thus satisfied.

(2) If the title V permit does not contain the appropriate requirements that address the events that occur under this Paragraph subsequent to the section 112(j) deadline, then the owner operator shall submit an application for a revision to the existing title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this Rule shall apply to such sources.

(g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard under this 40 CFR Part 63 may, on or before an applicable section 112(j) deadline, request an applicability determination from the Division by submitting an application meeting the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

(h) Within 24 months after an owner or operator submits a Part 1 MACT application meeting the requirements of Paragraph (m)(1) of this Rule, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule.

~~(d) The owner or operator of an existing source required to apply MACT under 15A NCAC 2D .1109 that already has received a permit under this Section requiring compliance with a limit that would meet the requirements of 15A NCAC 2D .1109 shall submit an application for an administrative permit amendment.~~

~~(e)~~ The owner or operator of a new source required to apply MACT under 15A NCAC 2D .1109 that currently complies with a federally enforceable alternative emission limitation, or has received a permit under this Section that already contains emission limitations substantively meeting the requirements of 15A NCAC 2D .1109, shall submit an application for an administrative permit amendment confirming compliance with the requirements of 15A NCAC 2D .1109 within 30 days after the date construction or reconstruction is commenced.

~~(f)~~(i) If the Director disapproves a permit application submitted under this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.

~~(g)~~(j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit will not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

~~(h)~~(k) The permit shall ~~contain~~ contain the items specified in 40 CFR 63.52 including:

- (1) specification of the affected source and the new affected source;
- ~~(1)~~(2) an equivalent—emission limitation (or limitations) or emission standard equivalent to existing source MACT and an emission limitation (or limitations) equivalent to new source MACT to for control the of emissions of hazardous air pollutants for that category or subcategory determined by the Director on a case-by-case basis;
- ~~(2)~~(3) any emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal practicable enforceability of the MACT emission limitation;
- ~~(3)~~(4) any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and
- ~~(4)~~(5) a compliance date(s) by which the owner or operator of an existing source shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit not to exceed three years from the date of issuance of the permit (The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.) issuance of a permit under this Section).

~~(i)~~(l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

~~(j)~~(m) A permit application for a MACT determination shall consist of two parts.

(1) The Part 1 application shall contain the information required under 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule; and

(2) The Part 2 application shall contain the information required under 40 CFR 63.53(b) and shall be submitted within 24 months after an owner or operator submits a Part 1 application under Paragraph (m)(1) of this Rule. demonstrate how the source will obtain the degree of emission reduction that would have been obtained had the relevant emission standard been promulgated according to the source category schedule for standards for the source category of which the source is a member and all the other pertinent information required under 40 CFR 63.53.

~~(k)~~(n) Permit application review. The Director shall follow 40 CFR 63.55 ~~(b)~~(a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's title V permit according to the procedures established under this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division. Such time period is not to exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. The Director shall issue a title V permit meeting section 112(j) requirements after receipt of a complete Part 2 MACT application following the schedule in 15A NCAC 02Q .0525.

~~(l)~~(o) The following requirements apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit under this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued under this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. (Subparagraph (a)(1) of Rule .0517 of this Section does not apply to requirements established under this Rule.) The Director shall establish a compliance date in the revised

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permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director need not change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as substantially as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the Division is not required to incorporate any less stringent emission limitation of the promulgated standard and may consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Ferry Division intends to amend the rule cited as 19A NCAC 02D .0532. Notice of Rule-making Proceedings was published in the Register on May 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 20, 2002

Time: 3:00 p.m.

Location: Room 150, Transportation Bldg., 1 S. Wilmington St., Raleigh, NC

Reason for Proposed Action: In the past, the Ferry Division charged motorcycles the same ferry toll as regular passenger vehicles. That toll has been \$10. However, effective August 1, 2003 the toll for passenger vehicles will increase to \$15. The Department has received considerable input from motorcycle enthusiasts questioning this policy because of the difference in space required to transport motorcycles and other motor vehicles. The Ferry Division staff decided to leave the motorcycle toll at \$10 as it has been since 1983. This amended rule sets out the ferry toll for motorcycles. Note: Previous amendments which were approved February 21, 2001 by Rules Review Commission appear in bold print.

Comment Procedures: Any interested person may comment on these rules by submitting written comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by September 1, 2002.

Fiscal Impact

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

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .0500 – FERRY OPERATIONS

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0532 TOLL OPERATIONS

The Cedar Island-Ocracoke, Swan Quarter-Ocracoke and Southport-Ft. Fisher ferry operations are toll operations. Fares and rates applicable to each operation are as listed in this Rule:

- (1) Cedar Island-Ocracoke and Swan Quarter-Ocracoke
 - (a) pedestrian \$ 1.00
 - (b) bicycle and rider \$3.00
 - (c) motorcycle and rider \$10.00
 - ~~(e)~~(d) single vehicle or combination 20'; or less in length \$15.00
(minimum fare for licensed vehicle)
 - ~~(d)~~(e) vehicle or combination **over** 20' up to and including 40' \$30.00
 - ~~(e)~~(f) vehicle or combination ~~up to 65'~~ **over 40' to 65'** \$45.00
(maximum length)
 - ~~(f)~~(g) **vehicle or combination over 65'** Special Permit @ \$1.00 Per Foot
- (2) Southport-Ft. Fisher
 - (a) pedestrian \$1.00
 - (b) bicycle and rider \$2.00
 - (c) motorcycle and rider \$3.00

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	(e) (d) single vehicle or combination 20' or less in length (minimum fare for licensed vehicle)	\$5.00
	(d) (e) vehicle or combination over 20' up to and including 40'	\$10.00
	(e) (f) vehicle or combination over 40' to 65'	\$15.00
	(f) (g) vehicle or combination over 65'	Special Permit @ \$1.00 Per Foot
(3)	Commuter Passes are valid for one year from date of purchases. Passes are available to anyone.	
	Type	System-Wide Pass Site Specific Pass
	Vehicles up to 20'	\$150.00 \$100.00
	Vehicles over 20' to 40'	\$200.00 \$125.00
	Vehicles over 40' to 6	\$250.00 \$150.00

Authority G.S. 136-82; 143B-10(j).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Transportation – Division of Highways intends to adopt the rules cited as 19A NCAC 02D .0643-.0644. Notice of Rule-making Proceedings was published in the Register on April 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: August 20, 2002

Time: 2:00 p.m.

Location: Room 150, Transportation Bldg., 1 South Wilmington St., Raleigh, NC

Reason for Proposed Action: Pursuant to provisions in SL 2001-424, Ratified Senate Bill 1005, Section 27.17(b), the Department of Transportation adopted temporary rules to require certification of escort vehicle drivers. These permanent rules set conditions for the oversize-overweight vehicle escort driver certification program.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by September 3, 2002.

Fiscal Impact

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

CHAPTER 02 – DIVISION OF HIGHWAYS

SUBCHAPTER 02D – HIGHWAY OPERATIONS

SECTION .0600 - OVERSIZE-OVERWEIGHT PERMITS

19A NCAC 02D.0643 ESCORT VEHICLE DRIVER CERTIFICATION

(a) The Department of Transportation may, upon receipt of an application for an oversize-overweight movement permit, require escort vehicles to accompany permitted loads.
(b) On or after July 1, 2003, when an escort vehicle is required, escort vehicle drivers shall be certified in accordance with 19A NCAC 02D .0644. Certification credentials shall be carried in

the vehicle and shall be readily available for inspection by law enforcement officials with jurisdiction.

Authority G.S. 20-119.

19A NCAC 02D.0644 OVERSIZE-OVERWEIGHT ESCORT VEHICLE DRIVER CERTIFICATION PROGRAM

(a) The Secretary of Transportation or his designee shall administer an Oversize-Overweight escort vehicle driver certification program as required by G.S. 20-119.

(b) The escort vehicle driver certification program shall include the following:

- (1) Instruction on safe and effective escort skills;
- (2) Examination that documents course comprehension;
- (3) Recognition of escort vehicle operator certification; and
- (4) Recognition of escort vehicle operator certification from other states which have certification programs.

(c) The department shall issue a certificate which provides recognition of satisfactory completion of the instruction.

- (1) The certificate shall be effective for four years from issue date.
- (2) The certificate shall be reissued upon satisfactory completion of a current certification examination administered by NCDOT training providers.

(d) The training and certification program implemented as required by G.S. 20-119 shall be effective on or after July 1, 2003. On or after July 1, 2003, any driver authorized by the NCDOT to escort a permitted over-dimensional load in North Carolina shall be qualified as follows:

- (1) An escort certified by another state's approved program;
- (2) A North Carolina law enforcement officer; or
- (3) A person who meets the following requirements:
 - (A) Is at least 21 years of age;
 - (B) Possesses a valid driver's license without restrictions other than for use of corrective lens and has a driving history without conviction of driving while impaired or reckless driving in the previous 12 months; and
 - (C) Has successfully completed an NCDOT oversize-overweight load escort vehicle operator course with a

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certification exam score of at least 75% correct and has received escort certification by the Department.

(e) Certification shall be revoked during its effective period for the following:

- (1) Failure to maintain a valid driver's license without restrictions other than for corrective lens;
- (2) Conviction of driving while impaired;
- (3) Conviction of reckless driving; or
- (4) Evidence of unsatisfactory performance while performing the duties of escort.

If certificate is revoked under this Section, subsequent certification as an Escort Vehicle Operator shall require re-application, satisfaction of program prerequisites, and re-qualification through the certification program..

(f) The Secretary of Transportation or his designee may recognize certificates of other states whose programs meet the objectives of North Carolina's program.

(g) Escort Vehicle Operator certification shall be available in the escort vehicle for inspection whenever the operator is performing the role of escort.

(h) Failure to conform to the escort requirements of this Rule shall result in penalties imposed in G.S. 20-119(d).

Authority G.S. 20-119.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rule cited as 25 NCAC 01E .1607 and amend the rules cited as 25 NCAC 01D .1945, .1951; 01E .0805, .0809, .1305. Notice of Rule-making Proceedings was published in the Register on January 15, 2002 and April 15, 2002.

Proposed Effective Date: March 1, 2003

Public Hearing:

Date: September 4, 2002

Time: 9:30 a.m.

Location: Third Floor Conference Room, Administration Building, 116 West Jones St., Raleigh

Reason for Proposed Action:

25 NCAC 01D .1945, .1951 – Eric L. Tolbert, Director of Emergency, pointed out that Federal Emergency Management (FEMA) would approve disbursement of funds to eligible states during times of disaster response and recovery so long as they have a pre-existing statewide policy that provides for overtime compensation for FLSA – exempt employees during times of disaster. Providing overtime compensation only when a Presidential Major Disaster Declaration is issued is unacceptable. Tolbert requested that the Agency amend rules and policies to permit compensation to FLSA – exempt employee during major disasters.

25 NCAC 01E .0805, .0809, .1607 – House Bill 231, Section 23 (a) and (b) rewrote G.S. 127A-116 to provide that federal military duty or special emergency management service be included in the military leave provisions that provide for leave

without loss of pay, time or efficiency rating. This provision was effective retroactive to September 1, 2001.

25 NCAC 01E .1305 – This Rule is proposed to be amended in order to allow the sharing of leave for the same purposes that the vacation and sick leave policies now allow, i.e., an employee can use vacation leave for his/her own personal illness or to take care of a non-family member but sick leave can be used only to take care of a family member.

Comment Procedures: *Written comments may be submitted to Peggy Oliver, Hearing Officer, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than September 4, 2002.*

Fiscal Impact

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

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01D – COMPENSATION

SECTION 1900 - HOURS OF WORK AND OVERTIME COMPENSATION

25 NCAC 01D .1945 SPECIAL PROVISIONS

(a) Child Labor:

- (1) Sixteen years is the minimum age for most employment covered by the FLSA. This includes employment in agriculture during school hours or in any occupation in agriculture declared hazardous by the Secretary of Labor.
- (2) Eighteen years is the minimum age for employment in a nonagricultural occupation declared hazardous by the Secretary of Labor. Of particular interest to all agencies are Hazardous Orders of the Secretary, U.S. Department of Labor, prohibiting the employment of minors between 16 and 18 years of age such as motor vehicle drivers and helpers, operators of elevators and in occupations involving the operation of certain power driven woodworking and bakery machines.
- (3) The state's present policy on employment under age 18 will continue to be: "The minimum at which minors may be employed is 18 years of age. Exceptions are provided under the law if the employing department procures an Employment Certificate from the County Social Services Department." (Ref. G.S. 110, Article 1). A further determination is still necessary under Federal standards as to the suitability of the work being required of the minor. The Office of State Personnel will make available upon request an interpretive

bulletin explaining the child labor standards of employment.

- (4) Minors will be paid the same rate of pay as other employees doing similar type work, including overtime premium pay for hours worked in excess of 40 per week. The only exception is for agricultural workers (see Subparagraphs (b)(1) and (2) of this Rule).

(b) Agricultural Workers:

- (1) The FLSA exempts agricultural employees from overtime compensation; however, it is state policy that due to the highly variable nature of work of these employees during seasonal periods, the hours worked may be averaged over a 12-month period, but shall not exceed 2080 hours. Upon leaving state service, an agricultural employee shall be paid for any accumulated overtime balance remaining in the time records.
- (2) Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, engage in dairying, or who raise livestock, bees or poultry, or perform closely related research.

(c) Student Workers:

- (1) The employment of students by the institutions in which they are enrolled is designed primarily to constitute one type of student financial aid. Such employment usually is characterized by flexible accommodation of the student's primary involvement in educational pursuits. Thus, in terms of hours worked, scheduling of work and required skill and productivity, such student workers are materially distinguishable from regular career employees.
- (2) Any person who during any period of enrollment as a student in a public educational institution concurrently is employed by that institutions shall be considered an employee subject to the State Personnel Act and within the meaning of that Act only if the student-employee is employed by the institution on a full-time permanent basis (as defined by rules of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.

(d) In-Resident Employment:

- (1) This includes, but is not limited to, employees such as Cottage Parents and Dormitory Directors who reside at, or spend a substantial amount of time on the employer's premises, who are usually on duty or subject to call at all times except when the facility is closed. It is necessary that these employees be required to work irregular schedules on a five, six, or seven-day workweek. Where this type of employment arrangements are necessary, the hours of work and overtime procedures must

be established so as to accommodate work requirements.

- (2) While it will be difficult to determine the exact number of hours worked by such employees, it is permissible, under ruling of the U.S. Department of Labor, Wage and Hour Division, to arrive at an agreement with the employee as to what constitutes the normal number of hours worked during a given workweek, taking into consideration the time that the employee engages in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the facility for personal reasons. The following basis of pay may be adopted for employees in such categories:

(A) Salary - The annual salary and monthly salary rates of an employee are established under current personnel policy for each position to which the appointment is made. With the employee's agreement, this salary is to represent the employee's straight-time pay for the agreed upon normal number hours on duty per week. The hourly rate of pay is to be determined by dividing the stated annual salary by 52 to obtain the weekly salary and dividing this amount by 40 to obtain the hourly rate.

(B) Overtime Compensation - Under this plan it is anticipated that weekly schedules will fluctuate and workweek schedules will be provided on a 40-45, 55, etc. basis. The employee is to receive straight-time pay for the established workweek with the proviso that where the agreed upon workweek exceeds 40 hours and additional amount equal to one-half of the hourly rate times the number of hours in excess of 40 will be added to the base pay. When it is necessary to work in excess of the agreed upon workweek hours, the employees will be paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.

(e) Registered Nurses:

- (1) When it is necessary for an employee in a professional nursing class to work more than a regularly scheduled 40 hour workweek the excess hours shall be subject to hours of work and overtime compensation. When possible, the compensation should be in the form of time off. When the person in the position normally has 24 hours responsibility, (as in the case of some supervisors and most directors),

overtime compensation provisions shall not be applicable.

- (2) The overtime premium pay will be based on the employee's regular hourly rate of pay, except in cases where an employee may be assigned duties at a lower classification level; in such cases the base rate of pay may not exceed the maximum rate of the lower level assignment.

(f) Law Enforcement Activities:

- (1) The term law enforcement activities refers to any employee who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, or who has the power of arrest, or who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethnics.
- (2) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank or of their status as "trainee", "probationary", or "permanent" employee, and their assignment to duties incidental to the performance of their law enforcement activities.
- (3) The term "employees in law enforcement activities" also includes "security personnel in correctional institutions". This includes any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank. Law enforcement employees may include, for example, fish and game wardens or criminal investigative agents assigned to the attorney general's staff or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

(A) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include correctional program assistants, directors or supervisors or employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties, or may be required by statute or rule to be certified by the Criminal Justice Training and Standards Council.

(4) Because of the varied nature of law enforcement activities throughout the state, it may not be possible for all law enforcement classifications to be considered under the same plans for overtime. Under the Wage and Hour Law two options are permissible.

(A) For schedules requiring a 40-hour workweek, the policies on hours of work and overtime pay for a 40-hour workweek will apply.

(B) For schedules requiring more than 40 hours in a workweek the following is permissible. The "work period" will consist of 28 consecutive days. In the workweek period of 28 consecutive days the employee shall receive, for tours of duty which in the aggregate exceed 171 hours, compensation at a rate of one and one-half times the regular hourly rate at which employed. (The regular hourly rate is the rate computed on a 40-hour basis and published in the Salary Plan by the Office of State Personnel, plus shift premium pay, if any.)

(5) The exempt or non-exempt status of law enforcement personnel will be determined under the terms of the exemption for Executive, Professional and Administrative Employees as set out previously in this Section.

(g) Employees engaged in law enforcement activities may also engage in some non-law enforcement work as an incident to or in conjunction with their law enforcement activities. The performance of such work will not cause the employee to lose law enforcement status unless such work exceeds 20 percent of

the total hours worked by that employee during the workweek or the applicable work period. A person who spends more than 20 percent of his working time in non-law enforcement activities shall not be considered as being engaged in law enforcement activities for coverage under this portion of this Section.

(h) Overtime pay for exempt employees when the governor declares an emergency or a disaster:

(1) When the Governor declares a State emergency or disaster, agencies are authorized to pay overtime at straight-time rates to FLSA exempt employees when all of the following conditions occur:

(A) There is a gubernatorial declaration of a state of emergency/disaster;

(B) Employees are performing law enforcement activities or response/recovery activities during the emergency/disaster;

(C) There is a requirement by management for employees to work overtime during the emergency/disaster; and

(D) Funds are available. The agency shall determine if funds are available and obtain prior approval from the Office of State Budget and Management to use such funds to cover the overtime payments. The agency shall distribute any overtime pay consistently with a predefined standard that treats all employees equitably.

(2) The absence of any of these conditions will require the agency to follow:

(A) the Hours of Work and Overtime Policy for FLSA nonexempt employees; and

(B) The agency's compensatory leave policy for FLSA exempt employees.

Authority G.S. 126-4.

25 NCAC 01D .1951 OVERTIME COMPENSATION PROHIBITED: EXEMPT EMPLOYEES

No employee whose position is designated as exempt from overtime compensation provisions of this Section shall be paid in any way for hours worked in excess of 40 in a work week except as noted in 25 NCAC 01D .1945. This Rule Shall not be construed to prohibit any agency from adopting and using a compensatory leave ("comp time") policy for executive, administrative or professional employees in accordance with 25 NCAC 01E .1006.

Authority G.S. 126-4(5), (10).

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0800 - MILITARY LEAVE

25 NCAC 01E .0805 ADDITIONAL PERIODS OF ENTITLEMENT FOR RESERVE COMPONENTS OF

THE UNITED STATES ARMED FORCES

Periods of entitlement for military leave with pay for ~~the National Guard~~ only members of the uniformed services reserve components for each period of involuntary service are as follows:

(1) Members of the National Guard shall receive full pay for infrequent special activities in the interest of the State, ~~State usually not exceeding one day,~~ when so ordered by the Governor or his authorized representative;

(2) Members of the uniformed services reserve shall receive full pay for active state duty ~~(domestic disturbances, disasters, search and rescue, etc.)~~ or federal duty for periods not exceeding 30 consecutive calendar days. For periods in excess of 30 days, employees shall be entitled to military leave with differential pay between military basic pay and regular state pay for any period of involuntary service if military pay is the lesser. Military leave for active state duty is to be considered separate from and in addition to military leave which may be granted for other purposes.

Authority G.S. 126-4; 127A-116.

25 NCAC 01E .0809 RETENTION AND CONTINUATION OF BENEFITS

During the period of ~~military leave with pay, reserve active duty, whether receiving full State pay, differential pay, or no pay,~~ no employee shall incur any loss of state service or suffer any adverse service rating. The employee shall continue to accumulate sick and vacation leave, aggregate service credit, and receive any promotion or salary increase for which otherwise eligible. Prior to the 30 days of full pay and the differential, the employee may choose to retain their vacation, exhaust their vacation, or be paid in a lump sum up to a maximum of 240 hours. If the employee is FLSA non-exempt, any accumulated compensatory time may also be exhausted prior to exhausting leave or may be paid in a lump sum.

Authority G.S. 126-4; 127A-116.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

25 NCAC 01E .1305 DONOR GUIDELINES

(a) A non-family member donor may contribute ~~only~~ vacation leave to another employee within the ~~same department or university, parent agency or in any agency.~~ A non-family donor may not contribute leave outside the parent agency. A family member ~~who is a state employee~~ may contribute vacation or sick leave to another immediate family member ~~state employee~~ in any ~~department or university, agency or public school.~~ Immediate family is defined as spouse, parents, children, brother, sister, grandparents, grandchildren, great grandparents and great grandchildren. Also, included are the step, half, and in-law relationships. For detailed definitions of immediate family see 25 NCAC 01E .0317 DEFINITIONS.

(b) Minimum amount to be donated is four hours. An employee family member donating sick leave to a qualified family member

under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

(c) The maximum amount of vacation leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

(d) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating cannot receive remuneration for the leave donated.

Authority G.S. 126-4.

SECTION .1600 - COMMUNITY SERVICES LEAVE

25 NCAC 01E .1607 SPECIAL LEAVE PROVISIONS

(a) Agency heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head shall determine that a bonafide need for such services exists within a given area. A bonafide need is defined as real or eminent danger to life or property.

(b) Each policy shall require proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

Authority G.S. 126-4.

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 05B .1523*

Effective Date: *July 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 143-49(8)*

Reason for Proposed Action: *Legislative action 2001, first by SL 2001-424 (Section 15.6d), and then as modified by SL 2001-513 (Section 28.b), removed the 15 agency procurement card pilot program restrictions and empowered the Secretary of Administration to adopt rules for the implementation and operation of a statewide procurement card program.*

Comment Procedures: *Any interested person may submit written or verbal comments to Brooks Skinner, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003. Phone: (919) 807-2319.*

CHAPTER 05 – PURCHASE AND CONTRACT

SUBCHAPTER 05B – PURCHASE PROCEDURES

SECTION .1500 – REJECTION OF OFFERS

01 NCAC 05B .1523 PROCUREMENT CARDS

Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract. As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.

- (1) Each participating agency shall designate a procurement card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).
 - (a) All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
 - (b) Cards shall show the agency name, cardholder, the state seal and/or

agency logo, and clearly indicate they are for official use only.

- (2) The card program administrator, in consultation with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limit set by the State Purchasing Officer, after taking into consideration, current market trends, the economy, and recommendations received from the State Controller and the State Auditor), total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies and/or procedures are updated.
- (3) The card program administrator shall ensure compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.
- (4) Procurement card transactions processed through e-procurement, utilizing the card as a payment mechanism within electronic workflow and approval processes, may be in any amount consistent with agency fiscal policies.
- (5) For procurement card transactions processed outside the State's electronic procurement system, the per-transaction limit shall be \$2,500. This limit can be changed only under the following circumstances:
 - (a) In an emergency (as defined by 01 NCAC 05B .1602 or Governor's declaration), the agency card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the Division of Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.
 - (b) Agencies may apply to the SPO for higher limits on specific types of transactions, with justification required.
 - (c) The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis (See Subparagraph 2 of this Rule).

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- (6) Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for State departments) governing those agencies under their responsibility.
- (7) No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.

50 points from the good faith efforts listed in Rule .0102 of this Section in order for their bids to be considered responsive. Notwithstanding this Section, the public entity may require that additional good faith efforts be taken, as indicated in its bid specifications.

History Note: Authority G.S. 143-128.2(f), S.L. 2001-496, Sec.3.1, 14(b); Temporary Adoption Eff. August 1, 2002.

01 NCAC 30I .0102 POINT VALUES FOR GOOD FAITH EFFORTS UNDERTAKEN

Good faith efforts and their values include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = 10 points.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid meetings scheduled by the public owner. Value = 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = 15 points.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.

History Note: Authority G.S. 143-49(8); Temporary Adoption Eff. July 1, 2002.

Rule-making Agency: *Department of Administration*

Rule Citation: *01 NCAC 30I .0101-.0102*

Effective Date: *August 1, 2002*

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

Authority for the rulemaking: *G.S. 143-128.2(f); S.L. 2001-496, s. 3.1 & 14(b)*

Reason for Proposed Action: *As part of SB 914, which rewrote the state's constructions laws the Secretary of Administration was directed to assign point values to the various good faith efforts to be used by contractors in recruiting minority firms as subcontractors. The General Assembly required the Secretary to adopt these Rules by June 30, 2002. Having done so, the Secretary respectfully submits these Rules as temporary rules in order to meet the requirements of the General Assembly.*

Comment Procedures: *Any written comments on these temporary rules may be sent to T. Brooks Skinner, Jr., General Counsel, NC Dept. of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301. Written comments will be accepted until August 31, 2002.*

CHAPTER 30 – STATE CONSTRUCTION

SUBCHAPTER 30I – MINORITY BUSINESS PARTICIPATION GOAL

SECTION .0100 – GOOD FAITH EFFORTS

01 NCAC 30I .0101 POLICY

Each public entity which places a public construction project out for bid and which is subject to G.S. 143-128.2 shall require bidders to undertake good faith efforts to recruit minority business participation in the project. Bidders must earn at least

- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. Value = 20 points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

History Note: Authority G.S. 143-128.2(f), S.L. 2001-496, Sec.3.1, 14(b);
Temporary Adoption Eff. August 1, 2002.

develop procedures for applying for and reviewing applications for assistance from the Fund, the Commission may periodically set a list of funding priorities which it will follow in awarding grants for qualified agricultural programs and in granting compensatory programs. The Commission may also request proposals to address specific funding priorities or to encourage specific programs intended to alleviate or avoid unemployment and fiscal distress in the tobacco-related segment of the State's economy, stabilize local tobacco-dependent economies, stabilize and maintain local tax bases, and optimally use natural resources. The Commission may work cooperatively with other government agencies and agricultural and rural entities to develop Compensatory Programs and Qualified Agricultural Programs.

History Note: Authority G.S. 143-715; 143-718;
Temporary Adoption Eff. May 15, 2002;
Temporary Amendment Eff. June 29, 2002.

TITLE 02 - DEPARTMENT OF AGRICULTURE

Rule-making Agency: Tobacco Trust Fund Commission

Rule Citation: 02 NCAC 57 .0102-.0103, .0208, .0307

Effective Date: June 29, 2002

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: G.S. 143-715; 143-716; 143-718; 143-721

Reason for Proposed Action: *The Tobacco Trust Fund Commission was created by the General Assembly in 2000 to administer a portion of the funds received by the State from the National Tobacco Master Settlement Agreement. The Commission was authorized to adopt temporary rules at that time in order to expedite the distribution of the funds. The Commission was unable, for a variety of reasons, to adopt temporary rules before that authority expired, so the General Assembly in 2001 again authorized the Commission to adopt temporary rules in order to avoid further delays in distributing funds to the intended beneficiaries of the Tobacco Trust Fund. On April 16, 2002, the Commission adopted temporary rules to establish purposes and procedures for distribution of these funds. Following the adoption of these temporary rules, the Commission found it necessary to adopt these amendments to the temporary rules to address unforeseen circumstances.*

Comment Procedures: *Comments may be submitted to William Upchurch, Executive Director, Tobacco Trust Fund Commission, PO Box 27647, Raleigh, NC 27611.*

CHAPTER 57 - TOBACCO TRUST FUND COMMISSION

SECTION .0100 – GENERAL PROVISIONS

02 NCAC 57 .0102 AUTHORIZATION

- (a) The Tobacco Trust Fund Commission is authorized by G.S. 143, Article 75 to develop Compensatory Programs and Qualified Agricultural Programs to provide financial assistance from the Tobacco Trust Fund to eligible recipients.
- (b) As part of its authority to develop guidelines and criteria for eligibility for disbursement of funds, to determine forms of direct and indirect economic assistance to be awarded, and to

02 NCAC 57 .0103 DEFINITIONS

The following definitions are in effect throughout this Chapter:

- (1) Commission. The definition of the Tobacco Trust Fund Commission as contained in G.S. 143-716(1) or the Commission staff;
- (2) Compensatory Programs. The definition of Compensatory Programs contained in G.S. 143-716(2);
- (3) Fund. The Tobacco Trust Fund established by G.S. 143-719;
- (4) Lost Quota. The difference in total aggregate annual tobacco quota poundage between the year in question and 1997;
- (5) Master Settlement Agreement. The definition of Master Settlement Agreement as found in G.S. 143-716(4);
- (6) National Tobacco Grower Settlement Trust. Defined in G.S. 143-316(5);
- (7) Person. An individual human being;
- (8) Qualified Agricultural Programs. Defined in G.S. 143-716(6);
- (9) Tobacco allotment. An amount of tobacco allowed to be grown on a tract of land;
- (10) Tobacco allotment holder. A person who, at the time of the grant application, owns a certain amount of tobacco quota on a tract of land, as determined by the U.S. Farm Service Agency records for the county in which the quota is located;
- (11) Tobacco product component business. Defined in G.S. 143-716(7);
- (12) Tobacco grower. Tobacco producer;
- (13) Tobacco producer. A person or entity actively engaged in planting, growing, harvesting and marketing tobacco, or who shares in the expense of producing the crop, and for that reason is entitled to share in the revenues derived from marketing the crop;
- (14) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption;

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- (15) Tobacco-related business. Defined in G.S. 143-716(8);
- (16) Tobacco-related employment. Defined in G.S. 143-716(9); and
- (17) Tobacco-related segment of the State's agricultural economy. That part of the State's agricultural economy that includes tobacco producers, tobacco allotment holders, persons who work on tobacco farms and tobacco auction-related workers or ~~warehousemen~~ warehousemen and others in tobacco-dependent communities as determined by the Commission in a grant or contract approval.

History Note: Authority G.S. 143-716; 143-718;
Temporary Adoption Eff. May 15, 2002;
Temporary Amendment Eff. June 29, 2002.

SECTION .0200 - COMPENSATORY PROGRAM GRANTS

02 NCAC 57 .0208 AWARD OF GRANTS

- (a) The Commission will award grants if it determines that it has sufficient funds to do so. All applicants will be notified in writing whether they have received a grant or not.
- (b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be performance standards for the grant.
- (c) Funds will be conveyed to grantees through contracts with the Commission.
- (d) Of the total funds granted for each project, up to ~~50~~100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines that the initial request is necessary for start-up costs and initial administration. ~~administration of the grant program.~~
- (e) Of the total funds granted for each project, up to 25 percent shall ~~may~~ be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.
- (f) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.
- (g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the Compensatory Program.
- (h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding Compensatory Programs. The Commission shall not award money to an applicant whose past performance of a Commission grant or program has been unsatisfactory.
- (i) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings.

- (j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds.
- (k) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Temporary Amendment Eff. June 29, 2002.

SECTION .0300 - QUALIFIED AGRICULTURAL PROGRAM GRANTS

02 NCAC 57 .0307 AWARD OF GRANTS

- (a) The Commission will award grants to proposals which have the greatest impact on the long-term health of the State's tobacco-related agricultural economy. All applicants will be notified in writing whether they have received a grant or not. The Commission will award grants if it determines that it has sufficient funds to do so.
- (b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be performance standards for the grant.
- (c) Funds will be conveyed to grantees through contracts with the Commission.
- (d) Of the total funds granted for each project, up to ~~50~~100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines the request is necessary for start-up costs and initial administration. ~~the administration of the grant program.~~
- (e) Of the total funds granted for each project, up to 25 percent shall ~~may~~ be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.
- (f) Other payments to grantees shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.
- (g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the grant.
- (h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award a grant to an application whose past performance of Commission grants or programs has been unsatisfactory.
- (i) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant

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money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings. (j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds. (k) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

History Note: Authority G.S. 143-718; 143-721; Temporary Adoption Eff. May 15, 2002; Temporary Amendment Eff. June 29, 2002.

TITLE 09 – OFFICE OF THE GOVERNOR AND LIEUTENANT GOVERNOR

CHAPTER 5 – OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Editor's Note: This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking. Notice of Rule-making Proceedings was published in the Register on December 15, 2000.

Rule-making Agency: Department of Juvenile Justice and Delinquency Prevention

Rule Citation: 09 NCAC 05B .0101, .0103, .0201-.0204, .0301-.0306, .0401-.0402, .0501-.0519, .0601-.0602; 05C .0102, .0201-.0203, .0301-.0303, .0401-.0406, .0501-.0503, .0601, .0701-.0712, .0801-.0805, .0901-.0902, .1001-.1004, .1006, .1101-.1107, .1201-.1204, .1301-.1302, .1305-.1306, .1401-.1411, .1501-.1505, .1601-.1604; 05D .0101-.0108, .0201-.0207; 05E .0101-.0110; 05F .0201-.0204, .0301-.0303, .0401-.0403, .0501-.0504, .0601-.0609, .0701-.0703, .0801-.0803, .0901-.0902, .1001-.1009, .1101-.1104, .1201-.1208, .1301-.1308, .1401-.1403, .1501-.1509, .1601-.1604, .1701-.1707

Effective Date for Temporary Rule: July 15, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143B-511; 143B-512; 143B-516; 150B-4; 150B-20; 150B-21.2; 7B-3100

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Juvenile Justice and Delinquency Prevention intends to repeal the rules cited as 09 NCAC 05B .0101, .0103, .0201-.0204, .0301-.0306, .0401-.0402, .0501-.0519, .0601-.0602; 05C .0102, .0201-.0203, .0301-.0303, .0401-.0406, .0501-.0503, .0601, .0701-.0712, .0801-.0805, .0901-.0902, .1001-.1004, .1006, .1101-.1107, .1201-.1204, .1301-.1302, .1305-.1306, .1401-.1411, .1501-.1505, .1601-.1604; 05D .0101-.0108, .0201-.0207; 05E .0101-.0110; 05F .0201-.0204, .0301-.0303,

.0401-.0403, .0501-.0504, .0601-.0609, .0701-.0703, .0801-.0803, .0901-.0902, .1001-.1009, .1101-.1104, .1201-.1208, .1301-.1308, .1401-.1403, .1501-.1509, .1601-.1604, .1701-.1707.

Proposed Effective Date for Permanent Rules: April 1, 2003

Public Hearing:

Date: September 10, 2002

Time: 2:00 p.m.

Location: Department of Juvenile Justice and Delinquency Prevention, 410 S. Salisbury St., Raleigh, NC

Reason for Proposed Action: Repealing all rules. They are being replaced with rules adopted in 28 NCAC 1 – 4 effective July 15, 2002.

Comment Procedures: All written comments should be directed to the Rules Coordinator, Larry Dix, by mail at 410 S. Salisbury St., Raleigh, NC 27601 or by fax at (919) 733-0780. All comments must be received by September 10, 2002.

Fiscal Impact

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

CHAPTER 05 - JUVENILE JUSTICE

SUBCHAPTER 05B - NORTH CAROLINA MINIMUM STANDARDS FOR JUVENILE DETENTION FACILITIES

SECTION .0100 - CONCEPTS OF DETENTION

09 NCAC 05B .0101 DEFINITION OF DETENTION

(a) Detention is the confinement, authorized by an order for secure custody, of a juvenile in an approved, physically restricted local or regional facility. Juveniles may be confined in detention in accordance with the provisions of G.S. 7A-611 (transfer to superior court); G.S. 7A-649(7) (intermittent commitment); G.S. 7A-652(c) (commitment of 30 days or less); or pursuant to G.S. 7A-574 (criteria for secure or non-secure custody).

(b) A physically restricted facility is any secure facility with features designed to deter escape including locked outer doors; a high fence or wall; and screens, bars, or detention sash or windows designed to deter escape.

(c) The juvenile court may order that a juvenile be placed in secure custody pursuant to statutory criteria.

History Note: Authority G.S. 7A-573; 7A-574; 7A-611; 7A-652; 134A-39; 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0103 OBJECTIVES OF DETENTION CARE

A detention facility shall serve the juveniles in its care by providing the following:

- ~~(1) Secure custody in accordance with Rule .0101 of this Section.~~
- ~~(2) Programs or services which shall include, but need not be limited to:

 - ~~(a) An education program designed to meet the individual needs of the juvenile and which is consistent with the compulsory requirements of the North Carolina Department of Public Instruction and these Rules.~~
 - ~~(b) Access to health care services, including clinical, psychological, psychiatric, social, and medical, in accordance with the needs of the juveniles and these Rules.~~
 - ~~(c) Access to religious counseling and services in accordance with the needs of the juvenile and these Rules.~~
 - ~~(d) Indoor and outdoor recreation and leisure time activities provided in accordance with these Rules.~~~~

History Note: Authority G.S. 134A-20; 134A-37; 134A-39; 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

SECTION .0200 - STANDARDS FOR PHYSICAL FACILITIES

09 NCAC 05B .0201 DESIGN DEVELOPMENT AND APPROVAL

- ~~(a) New Facilities and Major Renovations. To assure compliance with applicable state and local regulations when planning construction or major modification of juvenile detention facilities, a licensed architect or registered engineer authorized to practice in this state shall be employed. A major modification shall be considered any construction on a facility that adds or subtracts square footage or exceeds five thousand dollars (\$5,000) in gross cost. Consultative and technical service in the preliminary development is available in the Department of Human Resources. When preparing plans for new facilities and renovations, security equipment so specified shall be used.~~
- ~~(b) Working Plans and Specifications. Working plans and specifications for construction or major modification shall be submitted in accordance with G.S. 131D-12 and G.S. 153A-220 to be reviewed by the Department of Human Resources for approval or disapproval. Approval or disapproval shall be rendered within 30 calendar days of receipt to the architect or engineer submitting officials. All new construction and major renovations shall comply fully with all pertinent requisites of the North Carolina State Building Code and no requirement in these standards shall supersede or alter laws and regulations published in the North Carolina State Building Code.~~
- ~~(c) All construction or major modification must be reviewed for approval by the city or county department of building inspections, the health department, and the Department of Insurance before final approval is rendered by the Department of Human Resources.~~

History Note: Authority G.S. 131D-12; 153A-217(5); 153A-220; 153A-221.1; Eff. July 1, 1977; Amended Eff. July 1, 1990; December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0202 DESIGN INTENT

~~Detention building shall be attractive, secure, non-jail like, fire resistive, and spacious enough for varied indoor and outdoor activities. A single unit home shall be designed for a maximum capacity of both sexes, with separate sleeping but common activity areas. Maximum visual control shall be aimed for in the design.~~

History Note: Authority G.S. 134A-37; 153A-220; 153A-221; 153A-221.1; Eff. July 1, 1977; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0203 CONSTRUCTION MATERIALS

~~Fire resistive construction materials must be used as required by the North Carolina State Building Code. The exterior walls and roof shall be reinforced concrete, masonry or other materials that meet requirements of the North Carolina State Building Code. The interior walls shall be reinforced concrete, cement masonry or brick that meet the requirements of the North Carolina State Building Code. The floors shall be concrete finished or smooth, terrazzo, quarry tile, or other approved material. The ceilings shall consist of reinforced concrete, finished smooth or approved steel or other approved material. Exterior doors must be security type doors and must be keyed to both sides. The number of exits, width and location of exit doors, and swing of exit doors shall be in accordance with the North Carolina State Building Code.~~

History Note: Authority G.S. 153A-220; 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0204 STRUCTURAL ARRANGEMENT AND ACCOMMODATIONS

- ~~(a) Administration and Intake. A public waiting-reception room, office space for staff members, and an area for admission of juveniles shall be provided, with sufficient space allocated for maximum workflow situations.~~
- ~~(b) Sleeping Areas

 - ~~(1) Individual sleeping rooms shall be provided of not less than 60 square feet finished dimensions.~~
 - ~~(2) Heating, cooling, and ventilation shall be maintained at a functional comfort level throughout the seasons.~~
 - ~~(3) Sufficient light, provided by institutional type fixtures of at least 30 foot candles, with consideration for ease of vision and with indestructible lenses or protective lens covers shall be provided to assure close supervision capabilities.~~~~

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- (4) ~~Night lighting shall be incorporated into the prime illuminating fixture or provided in separate installation, and control switch for both sources of illumination shall be located outside the sleeping rooms.~~
- (5) ~~Approved combination lavatory closet drinking fountain shall be provided for every eight juveniles in care.~~
- (6) ~~Sleeping rooms shall be equipped with securely fastened appropriate institutional-type beds.~~
- (7) ~~All fixtures provided, including ducts, diffusers, shelves, hooks, cabinets, shall be institutional-type hardware resistive to deformation or destruction by ordinary means.~~
- (8) ~~Doors to sleeping rooms shall be hollow metal with a sound deadening agent inside or solid wood core doors equipped with a viewing panel of wire glass, acrylic, or polycarbonate clear sheeting, and shall be equipped with a multiple tumbler lock, or if an electro-mechanical institutional lock is used, a multiple tumbler lock shall also be used without snap locking feature, keyed to corridor side, with hinges inaccessible to juveniles.~~
- (9) ~~Windows shall be designed to meet security needs and fire safety codes. Windows shall further be designed to insure student safety. Specifically, any and all protrusions, bars, railings, and other hardware shall be installed or modified to prevent student access.~~
- (10) ~~Intercom units shall be installed in all individual sleeping rooms and the station shall be located in the group worker's office or the control room.~~
- (c) ~~Bathrooms. Separate and adequate bathrooms shall be provided for both sexes, with not less than one shower for each eight children. Approved lavatories, commodes and urinals in an equal number shall be provided.~~
- (d) ~~Educational, Dining and Activity Areas~~
- (1) ~~A combination activity area shall be provided to include not less than 100 square feet of inside area for each child.~~
- (2) ~~No open and unprotected glass expanses shall be included in such construction.~~
- (e) ~~Professional Services~~
- (1) ~~Separate, secure rooms shall be available for medical examinations, interviewing, counseling, visiting and testing although one single room may be equipped as a multipurpose room to provide two or more of the above needs.~~
- (2) ~~The interview or visiting room should allow privacy, yet permit visual supervision by the staff.~~
- (f) ~~Service and Maintenance~~
- (1) ~~Separate areas for mechanical equipment shall be provided in a location inaccessible to the children.~~
- (2) ~~Areas for maintenance supplies shall be provided with adequate storage area for the activities of the facility.~~
- (3) ~~Shelf and hanger space for personal clothing and locked drawer space for money and other valuables are required.~~
- (4) ~~A minimum allowance of 96 cubic feet of space per child shall be planned for storage.~~
- (5) ~~All such areas shall be provided with locking devices and shall be inaccessible to the children.~~
- (g) ~~Outdoor Play Area~~
- (1) ~~A minimum of 1,000 square feet per rated bed capacity of enclosed or fenced outside play area shall be provided and shall be situated so that control and visual supervision can be maintained.~~
- (2) ~~There shall be adequate paved area for basketball, volleyball, and similar games; and a large grass area for softball, football, etc.~~
- (3) ~~Fence. A 12 foot chain link fence shall be used for perimeter security.~~
- (h) ~~The standards for physical facilities in this Section do not apply to juvenile detention facilities constructed and in operation prior to July 1, 1977. Any major modifications, as defined in Rule .0201 of these Rules, to facilities constructed and in operation prior to July 1, 1977, shall meet the standards as set forth in this Rule.~~

History Note: Authority G.S. 134A-39; 153A-220; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .0300 - STANDARDS FOR PERSONNEL

09 NCAC 05B .0301 STAFF QUALIFICATIONS

- (a) ~~Detention director is any person, meeting the criteria stated below, who is employed on a full time basis for the purpose of fulfilling the administrative responsibilities entailed by the facility's daily operations.~~
- (1) ~~This position shall be filled by a person having a minimum of a bachelor of arts degree or a bachelor of science degree from an accredited college or university.~~
- (2) ~~The detention director shall have not less than three years of related experience, two years of which must have been at the administrative or supervisory level. Related experience shall be defined as probation officer or court counselor, or as law enforcement, youth services, or other human services professional.~~
- (b) ~~A Youth Center Shift Supervisor or Youth Program Assistant III is any person who provides administrative responsibility in absence of the director. This position shall be filled by a person having a minimum of bachelor of arts degree or a bachelor of science degree from an accredited college or university. This person shall have a minimum of two years experience as a caseworker, supervisor or worker in a group institution or related experience as defined in (a) of this Rule.~~

~~(c) Counselor Technicians are all personnel whose full-time employment consists of providing daily programs and supervision of juveniles during program hours. The position shall be filled by persons having a minimum of:~~

- ~~(1) one year college supplemented by three or more years of experience working with juveniles or teen-age groups; or~~
- ~~(2) two or more years of college training; or~~
- ~~(3) any combination of (1) and (2) of this Paragraph equalling not less than three years of training; or~~
- ~~(4) completion of a two year certificate or associate degree from a community college, or other college.~~

~~(d) The Cottage Parent position shall be filled by persons having a minimum of high school education or equivalent and one year experience working with juveniles.~~

~~(e) All other staff shall have, experience and competency in job role being performed plus a demonstrated interest and ability to interact with juveniles and youth in a positive manner.~~

~~(f) None of the personnel standards in this Rule shall be interpreted to disqualify any person now employed on a full-time basis in any juvenile detention facility upon the effective date of ratification of these standards. Any new personnel hired or promotions given to presently employed personnel shall adhere to the standard set out in this Rule.~~

History Note: Authority G.S. 134A-39; 153A-220; 153-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0302 JOB DESCRIPTIONS

~~Supervisors will provide job descriptions in written form stating distinguishing features of the work, examples of the work, knowledge and skills, education and experience required.~~

History Note: Authority G.S. 134A-39; 153A-220; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0303 TRAINING AND STAFF DEVELOPMENT OF DETENTION PERSONNEL

~~A staff development program shall be provided to include orientation for new employees and in-service training. All local juvenile detention facility personnel must have completed a training program in accordance with applicable standards as promulgated by the North Carolina Criminal Justice Education and Training Standards Commission, as set forth in G.S. 17C-6 and 17C-10. A 12-month probationary period is granted for the completion of training for new employees. No person may serve on a temporary or probationary basis for longer than one year, unless approved by the North Carolina Criminal Justice Training Standards Division.~~

History Note: Authority G.S. 153A-220; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. September 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0304 APPLICANTS FOR DETENTION PERSONNEL WITH COURT RECORDS

~~Persons who have been convicted of a felony or misdemeanor which resulted in an active sentence of six months or more, provided that such sentence occurred within the preceding five years, shall not be employed in a juvenile detention facility.~~

History Note: Authority G.S. 153A-220; 153A-221.1;
Eff. July 1, 1977;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0305 STAFF-JUVENILE RATIO

~~Staff on duty shall be sufficient to provide for staff-juvenile ratio of no more than a maximum of 12 juveniles to each staff person during program hours.~~

History Note: Authority G.S. 134A-39; 153A-220; 153A-221; 153A-221.1; 153A-224;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0306 CONTINUOUS SUPERVISION OF CHILDREN

~~Male and female staff shall be present and available to the detention population at all times. No male or female juvenile shall be housed in the center unless there is at least one staff member of the same sex present, awake and actively supervising the juveniles detained.~~

History Note: Authority G.S. 134A-39; 153A-220; 153A-221; 153A-221.1; 153A-224;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .0400 - STANDARDS FOR ADMISSIONS

09 NCAC 05B .0401 ADMISSION CONTROL

~~Procedures for admission to any juvenile detention facility shall be conducted in accordance with G.S. 7A-575 and 7A-576. Juveniles shall be held in continued custody pursuant to G.S. 7A-577.~~

History Note: Authority G.S. 7A-573; 7A-574; 7A-575; 7A-576; 7A-577; 153A-221;
Eff. July 1, 1977;
Amended Eff. July 1, 1990; December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0402 ADMISSION PROCEDURES

~~Male staff shall supervise the admission of the male juveniles and the female staff shall supervise the admission of the female juveniles. The intake process during admission shall include but need not be limited to the following:~~

- ~~(1) The juvenile shall be searched and all his personal property removed, signed for and stored. Illegal drugs and weapons found on a~~

juvenile shall be given to the juvenile's court counselor or other appropriate authorities.

- (2) ~~An intake interview shall be conducted to obtain personal and medical data, discuss the detention program, and to explain the detention center's rules and regulations, a written copy of which shall be given to the juvenile to read and keep.~~
- (3) ~~A juvenile's body shall be examined for lice, bruises, abrasions, or unusual marks and symptoms of communicable disease. The findings shall be recorded and unusual findings brought to the attention of the appropriate medical personnel and the juvenile's court or social worker.~~
- (4) ~~Each juvenile shall take a shower and be given clean clothing and toiletries provided by the detention facility. Appropriate clothing shall be provided. The juvenile's clothes shall be washed and stored, ready for his court appearance or release.~~
- (5) ~~Staff shall make all reasonable efforts to notify a parent, guardian or custodian of the juvenile by telephone upon admission to the detention center and allow the juvenile to talk with the parent, guardian or custodian during this initial notification telephone call.~~
- (6) ~~Any person who has cause at any time during the juvenile's stay to suspect that a juvenile has been or is being abused or neglected shall report the case to the Director of the Department of Social Services in the county where the detention center is located or where the juvenile resides, in accord with G.S. 7A-543.~~

History Note: Authority G.S. 7A-543; 134A-39; 153A-220; 153A-221; 153A-221.1;

Eff. July 1, 1977;

Amended Eff. June 1, 1991; July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

SECTION .0500 - STANDARDS FOR DAILY PROGRAMS AND SERVICES

09 NCAC 05B .0501 PERSONAL HYGIENE

~~Personal hygiene and personal grooming shall be part of the program services. Provisions shall be made for clean and adequate bedding: mattresses, mattress covers, pillows and cases, sheets and blankets. Also clean underwear shall be issued daily and clean outerwear as needed. Each juvenile shall shower daily except for medical reasons and shall be provided necessary towels, wash cloths and other toiletries, including safety shaving equipment, if needed. Tempered water shall be available for bathing and shaving purposes.~~

History Note: Authority G.S. 134A-39; 153A-220; 153A-221; 153A-221.1;

Eff. July 1, 1977;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0502 FOOD SERVICES

- (a) ~~Food services of the detention facility shall provide a diet that meets the Recommended Dietary Allowances of the National Academy of Sciences, which is incorporated by reference into these Rules, in accordance with G.S. 150B-14(c).~~
- (b) ~~Menus shall be reviewed annually by a qualified dietitian. Menus, which shall be followed, shall be planned and available for review at least one week in advance.~~
- (c) ~~Three meals, of which two are hot meals shall be served at regular times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Meals shall be served three times a day.~~
- (d) ~~Foods shall be properly stored, cooked and served in compliance with sanitary rules adopted by the Commission for Health Services, pursuant to provisions of G.S. 153A-226. Menus shall take into account the cultural differences in food taste, religious beliefs and shall be home-cooked type meals.~~
- (e) ~~Provisions shall be made to provide special diets as prescribed by appropriate medical or dental personnel. Menus for special diets shall be reviewed and approved in a timely manner by a registered dietitian.~~
- (f) ~~Food shall never be withheld as a punishment. Denying a juvenile desserts or serving him smaller portions of any food shall not be used as punishment.~~
- (g) ~~Snacks which shall not replace meals, shall be provided at least once a day during the evening hours.~~
- (h) ~~Provisions shall be made for the feeding of juveniles who have been without food for five or more hours and who are admitted after the kitchen is closed for the day.~~
- (i) ~~Dated invoices or bills indicating all foods served to juveniles and dated menus showing meals as served shall be kept in accordance with the required fiscal and programmatic records retention schedule of the facility. Invoices shall show specific kinds and amounts of food purchased and identify the vendor. If it is necessary to purchase meals from an outside agency, a written agreement shall be drawn to meet standards of service, in order to assure conformity to the minimum standards.~~

History Note: Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1;

Eff. July 1, 1977;

Amended Eff. June 1, 1991; July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0503 SLEEP AND REST PERIODS

~~The daily program shall be designed to provide for a minimum of eight hours sleep for each juvenile, each night. Provisions shall be made for individual activity and rest periods during the day.~~

History Note: Authority G.S. 134A-39; 153A-221; 153A-221.1;

Eff. July 1, 1977;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 5, 2002.

09 NCAC 05B .0504 MEDICAL CARE

- (a) ~~Each detention facility shall develop a written plan for providing routine and emergency medical care.~~

~~(b) The plan shall be administered under the supervision and direction of a licensed physician. The plan shall be developed pursuant to the provisions of G.S. 153A-225 and shall comply with mandatory standards 2-8249, 2-8251, 2-8253, 2-8258, 2-8273, 2-8279, and 2-8290 of the American Correctional Association Standards for Juvenile Detention Facilities, Second Edition, January 1983, which standards are incorporated by reference into these Rules, pursuant to G.S. 150B-14(e). The plan shall also provide for psychological or psychiatric support services developed pursuant to G.S. 153A-225.~~

~~(c) Each detention facility shall have a written policy and procedure that requires medical screening to be performed by health trained or qualified health care personnel on all juveniles, including intra-system transfers, within 7 days of arrival at the facility; all findings shall be recorded on a printed screening form approved by the health authority.~~

~~(d) For the purposes of this Rule health trained personnel shall be defined as doctors, nurses, or other health-trained professionals certified by the state of North Carolina.~~

History Note: Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1; 153A-225; 153A-225.1;
Eff. July 1, 1977;
Amended Eff. November 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0505 DISCIPLINE

~~A written policy statement and procedures regarding discipline and control of juveniles in detention shall be developed and adhered to by staff members. Reports of disciplinary actions, including physical restraint, room restriction and confinement shall be placed in the juvenile's records and noted in the daily log. All reports of this nature shall be available to the court upon request.~~

History Note: Authority G.S. 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0506 ROOM RESTRICTION OR CONFINEMENT

~~(a) Removal of a juvenile from the group and restriction to his room or confinement shall be considered an extreme form of discipline. During any room restriction or confinement, locked or unlocked, for either major or minor violations of center rules, staff shall make visual contact with the juvenile at least every 15 minutes and shall, depending on his behavior, interact with the juvenile in an effort to solve problems and determine a release time. The staff member shall record in writing in every case of restriction or confinement, at each 15 minute interval, his observations as to the juvenile's behavior while restricted or confined. The record of room restriction or confinement shall be placed in the juvenile's file and referred to in the daily log.~~

~~(b) Policy and procedure shall require that employees prepare an incident report to be placed in the juvenile's file, where they have reasonable belief that a juvenile has committed a violation of facility rules and is confined under this Rule. Such reports must include, but are not limited to, the following information:~~

- ~~(1) specific rule violated;~~

- ~~(2) explanation of the event, including who was involved, what transpired, and the time and location of the occurrence;~~
- ~~(3) unusual juvenile behavior;~~
- ~~(4) staff witnesses;~~
- ~~(5) disposition of any physical evidence;~~
- ~~(6) any immediate action taken, including use of force;~~
- ~~(7) reporting staff member's signature;~~
- ~~(8) date and time report is made.~~

~~(c) When a juvenile has been charged with a rule violation requiring confinement for the safety of the juvenile or other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 consecutive hours. Any confinement of over 24 consecutive hours shall be at the direction of the detention center director or designee. Any confinement of over 24 consecutive hours shall be reported to the Manager of Detention Services, Deputy Director of the Division of Youth Services or to the Director of the Division of Youth Services within 24 hours of the completion of the first 24 hours of confinement by the juvenile.~~

~~(d) Written policy and procedure shall specify that any juvenile placed in room restriction or confinement shall be afforded living conditions approximating those available to the general population.~~

History Note: Authority G.S. 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. November 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0507 USE OF DEFENSIVE AND RESTRAINING FORCE

~~(a) The use of corporal punishment is prohibited. Restraining or reasonable defensive force may be used for self-protection, protection of juveniles, or enforcement of discipline. Corporal punishment or physical assault on a juvenile by a staff member shall be regarded as cause for immediate suspension pending dismissal.~~

~~(b) Corporal punishment is defined as slapping, pinching, kicking, arm twisting, hair pulling, or any other offensive act intended to result in physical pain to the juvenile. Personal debasement of a juvenile such as use of violent, profane or abusive language and any other action on the part of a staff member toward a juvenile which would be injurious is prohibited. This includes, but is not limited to deliberate neglect or deliberate failure to respond to the juvenile's needs; e.g., refusing to provide necessary medical care or withholding food for punishment. Any staff member who has reason to suspect abuse or neglect of a juvenile shall report directly to the Director of the Department of Social Services in either the county in which the detention center is located or the county in which the juvenile resides, in accord with G.S. 7A-543. There shall be no deviation from strict adherence to this policy. In a situation where there is doubt as to the applicability of this policy, it shall be reported as if a violation had occurred.~~

History Note: Authority G.S. 7A-543; 153A-221;
153A-221.1;
Eff. July 1, 1977;
Amended Eff. June 1, 1991; July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0508 RUNAWAYS

(a) ~~Written procedures for handling runaways shall be developed, reviewed annually, and updated as necessary. These procedures shall be available to all personnel.~~

(b) ~~The procedure shall include immediate reporting to law enforcement personnel, to the juvenile's parents or guardian, and to the juvenile's court counselor. Any person previously notified of a runaway must be promptly notified of the juvenile's apprehension.~~

(c) ~~Procedure shall specify that all written reports are entered into the juvenile's file and contain the following information: name, date, time and means of runaway; documentation of reporting; events leading to runaway; destination, if known; response to runaway behavior, upon return; any intervention designed to reduce likelihood of further incidents.~~

(d) ~~Upon return to the facility, the juvenile shall be confined for a period of up to 24 hours, during which time the confinement shall be documented as established in Rule .0506 of this Section, and in addition, the juvenile shall be counseled regarding the event. Confinement for periods of over 24 hours shall be reported to the Manager of Detention Services, within 24 hours of the completion of the first 24 hours of confinement of the juvenile, and reviewed every 24 hours thereafter by the Detention Manager or a designated administrator not involved in the incident. When any runaway from one of the training schools is apprehended and immediate transportation back to that school is not possible, detention care shall be provided. Detention care shall be provided where necessary for juveniles who have run away from other jurisdictional districts within the state or from other states and who require secure custody pending transportation.~~

History Note: Authority G.S. 7A-574; 134A-39; 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. June 1, 1991; September 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0509 ACCIDENTS, SERIOUS ILLNESSES AND INJURIES

~~Written policy and procedure shall provide for the prompt notification of a juvenile's parent or guardian in the case of death, or serious illness or injury, by telephone, telegram, or other immediate means of communication. In the event of death, the Director of the Division of Youth Services shall also be notified, along with the coroner and appropriate law enforcement officials.~~

History Note: Authority G.S. 134A-39; 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0510 VISITATION AND COMMUNICATION

(a) ~~Each detention facility shall develop written policies regarding visitation and communication with juveniles in detention addressing at least the following:~~

- (1) ~~Visitation by parents, guardians or custodians shall be approved by the committing agency in concurrence with the juvenile detention center director. Visits by the juvenile's court counselor, attorney, or social services worker shall be facilitated. The written visitation and communication regulations shall be available to juveniles and their parents. Visitation privileges may be revoked if misused or visitation regulations are violated.~~
 - (2) ~~All juveniles shall have the right to correspond in writing to their parents, guardians, court officials, attorneys and social services workers. No correspondence to or from juveniles shall be censored. However, mail may be checked for contraband. Writing materials and postage shall be made available to juveniles in quantities approved by each center's communication policy.~~
 - (3) ~~The juvenile may make telephone calls, with the approval of staff, at times designated by the center's communication policy. Calls shall be made only to family members, guardians, custodians, juvenile justice or social services professionals, or other individuals approved by the Detention Director. Juveniles shall be given access by phone and by visitation to their attorney.~~
- (b) ~~All the above regulations are subject to the limitations specifically ordered by the court.~~

History Note: Authority G.S. 153A-221; 153A-221.1; Eff. July 1, 1977; Amended Eff. June 1, 1991; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0511 HOUSEKEEPING CHORES

~~Children shall be required to perform normal housekeeping chores such as making their own beds, cleaning their respective rooms and keeping the group activities area in order. Under no circumstances shall children be required to clean or maintain areas away from the detention facility. Housekeeping chores performed by the children shall not preclude having janitorial staff.~~

History Note: Authority G.S. 153A-221; 153A-221.1; Eff. July 1, 1977; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0512 EDUCATION

~~An education program shall be provided and shall be designed to meet the specific needs of the juveniles. The school shall be operated on a 12-month basis. The classroom facility shall be equipped for academic and remedial work, math, science, language arts, social studies and health education. All detention centers educational programs shall be conducted in a designated area that is well lighted and conducive to learning. The curriculum shall be adapted to the age, capacity and interests of the individual and the group, and it shall aim for an educational experience realistic to the limits of the relatively brief length of stay. A wide variety of individualized learning materials, visual~~

~~aids, and audio shall be used. All centers shall have up-to-date academically appropriate books and materials. All teachers employed in a detention facility shall have a North Carolina Teacher's Certificate as required by the State Board of Education. Full-time detention teachers shall be allotted a minimum of five hours planning time per week, without student activity. The teacher shall be considered as part of the detention staff, and shall be included in staff meetings and staff development programs. Each juvenile shall be required to participate in the educational program of the detention facility. Participation in the education program shall not be restricted without the approval of the Manager of Detention Services, except for approved absences for illness, and shall be restricted only in a manner consistent with G.S. 115C-112.~~

History Note: Authority G.S. 115C-112; 134A-20; 134A-39; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0513 LIBRARY FACILITIES

~~Library facilities shall be part of the educational program activities and shall at all times be stocked with appropriate, contemporary books and periodicals of interest to the age group of the detention population.~~

History Note: Authority G.S. 134A-20; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0514 ARTS AND CRAFTS

~~Activities that encourage individual activity, such as painting, drawing, and various handicrafts shall be available and used as a part of the daily program.~~

History Note: Authority G.S. 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0515 RECREATION

~~All detention facilities shall provide recreational programs appropriate to the different interests and needs of juveniles. The schedule for the juveniles shall include at least one hour per day of physical activity and one hour of structured, leisure time activity. The activities program shall be geared to specific goals for individuals as well as for the group as a whole. It shall also provide as many opportunities as possible for achievement and success for the juveniles. The program shall be well balanced and well supervised. Except those restricted for health or security reasons, all juveniles shall engage in supervised vigorous outdoor recreation each day unless inclement weather conditions do not permit.~~

History Note: Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0516 COUNSELING SERVICES

~~Counseling services shall be provided by the detention staff and be a part of the detention program. On-going training in counseling shall be provided for detention staff.~~

History Note: Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0517 RELIGIOUS COUNSELING

~~Upon request, of the juvenile, his parents, guardian or attorney, religious counseling shall be available to any juvenile at appropriate times.~~

History Note: Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0518 CLINICAL EVALUATIONS

~~When psychological testing is ordered by the juvenile court judge, the detention facility shall make the juvenile available for the testing at the center.~~

History Note: Authority G.S. 7A-574(b); 134A-20; 134A-39; 153A-221; 153A-221.1;
Eff. July 1, 1977;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05B .0519 RECORDS AND REPORTS

~~Each detention facility shall maintain records on the activities of each juvenile to include:~~

- ~~(1) detention and release orders;~~
- ~~(2) admission and release dates;~~
- ~~(3) clothing and personal property inventory;~~
- ~~(4) medical, educational, psychological, psychiatric, etc., information;~~
- ~~(5) staff observation reports;~~
- ~~(6) isolation reports;~~
- ~~(7) room check reports;~~
- ~~(8) runaway reports;~~
- ~~(9) accident or injury reports;~~
- ~~(10) group workers' log—important observations on individual juveniles: their relationships to others, their attitude and behavior, and their activities as they affect the state of the group;~~
- ~~(11) monthly statistical report to the Division of Youth Services;~~
- ~~(12) report of a juvenile's death in the detention facility, to be filed within five days to the local or district health director and to the Division of Youth Services.~~

History Note: Authority G.S. 153A-220; 153A-221; 153A-221.1;
Eff. July 1, 1977;

*Amended Eff. June 1, 1991; July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

**SECTION .0600 - SOCIAL SERVICES BLO CK GRANT
(TITLE XX)**

**09 NCAC 05B .0601 TWELVE MONTH ELIGIBILITY
REDETERMINATION**

Redetermination of eligibility for services under Title XX shall be made no less frequently than every 12 months.

*History Note: Authority G.S. 143B-153; 143B-157;
Eff. May 1, 1978;
Amended Eff. July 1, 1982;
Transferred from 10 NCAC 43F .0002 Eff. July 1, 1983;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05B .0602 YOUTH SERVICES

(a) Definition.

- (1) ~~Primary Service.~~ Youth services refers to alternative treatment programs in the Division of Youth Services which are structured to guide youth toward self-respect, self-control, and behavioral responsibility. ~~Undergirding treatment strategies are maintenance of a habilitative environment, facilitation of meaningful interactions and communications, exploration of life and behavior alternatives and provision of good role models;~~
- (2) ~~Components:~~
 - (A) ~~Therapeutic residential program for emotionally disturbed juvenile delinquents provides residential treatment services for adjudicated juvenile offenders who are emotionally disturbed and resistive to socially accepted modes of behavior by providing basic custodial care, security, and individualized treatment schedules in a therapeutic environment designed to activate and support behavioral changes in desirable, adaptive, and productive directions. Modalities include group therapeutic methods, behavioral contracting, psychiatric counseling, drug therapy specifically related to the treatment of emotional disturbance, student advocacy, and individual counseling;~~
 - (B) ~~Therapeutic wilderness program for unsocialized juvenile delinquents provides residential treatment services in a wilderness setting for juvenile offenders whose behaviors are characterized as generally unsocialized. Services focus on positive success experiences through creative socialization programming in a challenging wilderness setting. The milieu is designed to develop positive~~

~~social values, life adjustment skills and positive interpersonal relationships through experiences of cooperation, teamwork, sharing of work, courage, loyalty, dependability. Modalities that shape and support the acquisition of socialization skills are therapeutic group experiences, individual counseling, reality therapy, healthy interpersonal interactions, specific survival, wilderness and social skills training, and individual contracting in highly problematic areas;~~

- (3) ~~Resource Items.~~ None;
- (4) ~~Target Population.~~ Emotionally disturbed, unsocialized, adjudicated delinquent children.
 - (A) ~~"Emotionally Disturbed" means that the individual shows serious impairment in the capacity expected for age and endowment for:~~
 - (i) ~~reasonably accurate perception of the surrounding environment,~~
 - (ii) ~~impulse control,~~
 - (iii) ~~satisfying and satisfactory relations with others,~~
 - (iv) ~~learning,~~
 - (v) ~~occupational capability, or~~
 - (vi) ~~any combination of these;~~
 - (B) ~~"Unsocialized" refers to experientially impoverished youth who have had few successful life experiences; have difficulty establishing meaningful relationships with peers and adults; cannot deal effectively with responsibility; are overly resentful of authority; have failed in traditional settings; and who suffer from "learned helplessness";~~
 - (C) ~~"Adjudicated" refers to children committed to the Division of Youth Services' training school system after due process;~~
 - (D) ~~"Delinquent" includes "any child who has committed any criminal offense under state law or under an ordinance of local government including violations of the motor vehicle laws, or a child who has violated the conditions of his probation under this article": G.S. 7A-278;~~
 - (E) ~~"Child" refers to children inclusively between the ages of 10 and 16.~~
- (b) ~~This service may be directed toward the goals of:~~
 - (1) ~~personal self-sufficiency;~~
 - (2) ~~preventing or remedying abuse, neglect or exploitation of children or adults unable to protect their own interests;~~
 - (3) ~~preventing or reducing inappropriate institutional care.~~

History Note: Authority G.S. 143B-10; 143B-153; Eff. March 1, 1983; Transferred from 10 NCAC 43D .0247 Eff. July 1, 1983; Temporary Repeal Eff. July 15, 2002.

SUBCHAPTER 05C - CBA PROGRAM STANDARDS

SECTION .0100 - GENERAL INFORMATION AND DEFINITIONS FOR CBA STANDARDS

09 NCAC 05C .0102 DEFINITION OF TERMS

The following terms shall have the following meanings unless the context clearly requires a different interpretation:

- (1) ~~Adult Volunteer Programs: Any program or activity involving individuals donating time or resources on behalf of 10-17 year old youth with the potential for or actual involvement with the juvenile justice system.~~
- (2) ~~Counseling: A process by which a professional helps a youth and his family solve problems through goal-directed planning.~~
- (3) ~~Counseling Programs: Those CBA programs or components thereof whose primary purpose is to provide counseling services to court-involved or at-risk youth.~~
- (4) ~~Non-Residential Programs: Any CBA program that provides services to court-involved or at-risk youth in a non-residential setting. Non-residential programs are counseling, adult volunteer, wilderness adventure, NYPUM, high-risk community, psychological services to juvenile court, restitution, home-based services, prevention and any other non-residential programs not enumerated.~~
- (5) ~~Critical Program Rules: Those standards which affect the health, safety or well-being of the client population and are defined as such in their respective section of these Rules.~~
- (6) ~~Emergency Shelter: A non-secure CBA residential program that maintains a 24-hour a day admission policy and an average length of stay of 15 days or less, and provides housing and support services to court-involved or at-risk youth.~~
- (7) ~~Group Homes: CBA group homes are those residential programs that provide 24-hour care and counseling for youth whose behavioral and social histories indicate that they are at risk of becoming involved with the juvenile justice system or youth who have been adjudicated undisciplined or delinquent. The program implemented for each group home resident shall be based on an assessment of each juvenile's needs and documented in an individual treatment plan, as defined in Rules .0102 and .1204 of these Rules, and shall be designed to facilitate the youth's movement to a less structured setting or his return home.~~

- (8) ~~High-Risk Community: Any geographic area within a county, which area's boundaries are specified in the CBA Program Agreement, as defined in 10 NCAC 44D .0105(1), and which has, for three consecutive years, maintained a juvenile or adult arrest rate that is higher than the county-wide arrest rate for the same three-year period.~~
- (9) ~~High-Risk Community Programs: CBA programs designed to provide enrichment skills for youth who live in a high-risk community, as defined in Rule .0102 of these Rules.~~
- (10) ~~High-Risk Youth: Any youth who presently resides in a high-risk community or in a family characterized by violence, stress, or instability.~~
- (11) ~~National Youth Project Using Minibikes (NYPUM): A program sponsored jointly by the Young Men's Christian Association (YMCA) and the International Honda Corporation. Entry into the NYPUM program requires that an at-risk or delinquent youth comply with, as a condition of his participation in the program, certain behavioral objectives stated in a written contract or stated as conditions of juvenile probation.~~
- (12) ~~Program Standards: Those standards codified in 10 NCAC 44C .0200 through .1200.~~
- (13) ~~Client Identification Standards: Those standards codified in 10 NCAC 44C .1300.~~
- (14) ~~Performance Indicators: Those standards codified in 10 NCAC 44C .1400.~~
- (15) ~~Specialized Foster Care: A CBA program in which specially trained foster parents are provided for court-involved youth. Emergency back-up services, as needed, shall be provided by professional social workers. Foster parents in this program shall receive a stipend over and above the normal foster care payment.~~
- (16) ~~Wilderness Adventure Programs: CBA programs that combine counseling with outdoor adventures and activities, with the goals of increasing self-esteem and interpersonal skills and promoting more appropriate behavior among at-risk and court-involved juveniles.~~
- (17) ~~Youth-at-Risk: Youth who have not been adjudicated delinquent or undisciplined, but who have demonstrated significant inappropriate or anti-social behaviors that reasonably enhance the likelihood of their involvement with the juvenile justice system.~~
- (18) ~~Client Tracking Form (DYS 9505): Form which shall be used by all CBA funded programs not excepted by Rule .0102(20), to record, on a quarterly basis, demographic data and program performance data for each child served in a CBA program. The information is collected upon admission and termination from the program and is used to monitor the~~

- program's compliance with standards included in Sections .1300 and .1400 of this Subchapter. Client Tracking Forms are available for inspection and are distributed to programs by the CBA Section of the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603, during office hours.
- (19) ~~Quarterly Batch Control Report (DYS 9504): A report, submitted on a quarterly basis to the CBA Regional Office, by each program that uses the Client Tracking Form (DYS 9505), which summarizes information obtained through Client Tracking Forms. Quarterly Batch Control Report forms are available for inspection and are distributed to programs by the CBA Section of the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603, during office hours.~~
- (20) ~~Annual Program Review (CBA 11/12/82): Form which shall be used by the Division of Youth Services (DYS) to obtain, on an annual basis, demographic data on all youth served by CBA programs during the fiscal year. This form shall be submitted each July by all CBA programs, other than those required to submit, pursuant to Rule .0102(18), the Client Tracking Form. The Annual Program Review form is available for inspection and is distributed to programs by the CBA Section of the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603, during office hours.~~
- (21) ~~Quarterly Program Review Form: This form shall be submitted on a quarterly basis to the CBA Regional Office by all CBA programs not required to utilize the Client Tracking Form (DYS 9505), for the purpose of providing composite information on youth served. Quarterly Program Review Forms are available for inspection and are distributed to programs by the CBA Section of the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603, during office hours.~~
- (22) ~~Psychological Services to Juvenile Court: Any CBA program, under contract with the juvenile court, that provides psychological services, including testing, treatment, or consultation, to children referred to that program by the juvenile court.~~
- (23) ~~Residential Program: A CBA program which provides residence, for at least 24 hours to juveniles. Residential programs are group homes, specialized foster care, and emergency shelter care.~~
- (24) ~~Restitution: A court ordered dispositional alternative for a delinquent juvenile, consistent with the requirements of G.S. 7A-649, and entailing, on the juvenile's part, for purposes of this definition, either community service or a monetary payment to redress an injury to any person or entity that has suffered loss or damage as a result of the offense committed by the juvenile.~~
- (25) ~~Restitution Programs: Restitution programs shall consist of:~~
- (a) ~~Community Service Restitution: Reparation by a juvenile to the community through public service work, consistent with the juvenile's age and ability. The nature of the work and the number of hours required shall be specified in writing for each juvenile enrolled and shall otherwise be consistent with the requirements of G.S. 7A-649.~~
- (b) ~~Victim Restitution: Work by a juvenile directed toward repayment of a loss or damage suffered by an individual. The nature of the work and the number of hours required shall be specified in writing for each juvenile enrolled and shall otherwise be consistent with the requirements of G.S. 7A-649.~~
- (26) ~~Alternative School Program (ASP): Any CBA-funded, school-based program operating during normal school hours in a middle school or high school and having as its target group for intervention those students demonstrating behavior or attendance problems.~~
- (27) ~~Prevention Program: Any CBA program with the primary purpose of offering services to those who have demonstrated inappropriate or anti-social behavior or whose home or community environment places them at significant risk of entry into or further involvement with the juvenile justice system.~~
- (28) ~~Child Serving Program: Any CBA program, activity, or service working with one or more children. Governor's One-On-One Volunteer Program: An adult volunteer program, as defined in Rule .0102(1) of these Rules, primarily serving court involved youth and using funds identified for that purpose.~~
- (29) ~~Home-Based Services: Those CBA services whose primary target of intervention is the juvenile's family. For purposes of these Rules, a family shall be defined as those persons regularly residing in one living unit or that group of persons who play a significant role within the child's domestic circle. Home-Based Services Program shall:~~
- (a) ~~develop and support interventions or treatment plans which encourage permanency in the child's relationship to the family or primary caretaker;~~
- (b) ~~strengthen and maintain client families by supporting the placement of children within the family, whenever feasible;~~

(c) — encourage social services programs to make every reasonable effort to effect these goals.

(30) — ~~Individual Treatment or Education Plan: A written plan designed to implement, as determined by these Rules, a treatment or education program that addresses the behavioral or academic needs, respectively, of a specific client within a CBA program.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

SECTION .0200 - BEHAVIOR MANAGEMENT AND DISCIPLINE

09 NCAC 05C .0201 RIGHT TO APPROPRIATE CARE AND TREATMENT

(a) ~~Children and youth have the right to fair and consistent treatment and care which recognizes the basic dignity of all people. Programs employing or condoning discipline or treatment policies which violate this right shall not be eligible for CBA funding.~~

(b) ~~Procedures or philosophies that encourage or promote consistent patterns of humiliation, verbal abuse, manhandling, use of fear tactics, intimidation, and the threat or the infliction of physical pain shall not be allowed.~~

(c) ~~This shall apply to staff, residents, and contracted services supported by CBA funds. CBA funded programs shall make no referrals to programs or service providers who are known to violate this standard.~~

(d) ~~The provisions of this Rule are critical for and apply to all programs.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0202 BEHAVIOR MANAGEMENT AND DISCIPLINE

(a) ~~In determining appropriate discipline, the child's age, intelligence, emotional makeup, and past experience shall be considered. Each program shall develop and adhere to a written policy regarding consistency in behavior management and discipline which includes the following minimum stipulations:~~

- (1) ~~Physical or corporal punishment shall not be permitted.~~
- (2) ~~Physical or mechanical restraint shall be used only when necessary to protect a child from physical injury to self or others.~~
- (3) ~~Seclusion, herein defined as placement of a child in a locked room or place, shall not be used.~~
- (4) ~~Meals shall not be denied.~~

(b) ~~These provisions are critical for and apply to group homes, emergency shelter programs, and non-residential programs.~~

(c) ~~Program specific standards for specialized foster care are set forth in Rule .0203 of these Rules.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0203 DISCIPLINE POLICY FOR SPECIALIZED FOSTER CARE

(a) ~~In determining appropriate discipline, the child's age, intelligence, emotional makeup, and past experience shall be considered. Each specialized foster care program must develop and adhere to a written policy that promotes consistent behavior management and discipline and which restricts and discourages the use of:~~

- (1) ~~physical or corporal punishment;~~
- (2) ~~physical or mechanical restraint when used other than to protect a child from physical injury to self or others; and~~
- (3) ~~seclusion, placement of a child in a locked room or place.~~

(b) ~~Denial of meals for punishment or discipline is prohibited.~~

(c) ~~The provisions of this Rule are critical for all specialized foster care programs.~~

(d) ~~Where local departments have adopted more restrictive policy guidelines, the local policy shall take precedence.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

SECTION .0300 - CLIENT EXPLOITATION

09 NCAC 05C .0301 SOLICITATION OF FUNDS

(a) ~~Clients and their families shall not be expected to raise or solicit funds for the agency. They may, however, organize or participate in fund raising activities on a voluntary basis with individual clients participating with parental permission.~~

(b) ~~The provisions of this Rule apply to all programs.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0302 PERMISSION REQUIRED BEFORE PUBLICITY

(a) ~~Before pictures or any other means of identifying children may be used in publicity or public relations efforts for the program, a written statement of permission shall be obtained, signed by the child and any legal guardian (including either parent).~~

(b) ~~A separate written statement of permission must be obtained for each and every time that public relations efforts are undertaken.~~

(c) ~~Written statements of permission must be maintained in agency files.~~

(d) ~~The provisions of this Rule apply to all programs.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;*

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0303 NO ACKNOWLEDGMENT

- (a) ~~No client shall be coerced or pressured into acknowledging in public his treatment at the agency or his gratitude for the treatment.~~
- (b) ~~The provisions of this Rule apply to all programs.~~

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .0400 - FIREARMS REGULATION

09 NCAC 05C .0401 REGISTRATION OF FIREARMS

- (a) ~~All firearms owned by group home or emergency shelter employees who reside in the group home or emergency shelter facility shall be registered with the governing body of the program, giving a description of the firearm along with its serial number.~~
- (b) ~~The provisions of this Rule apply to all group homes and emergency shelter facilities.~~

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0402 CARE AND STORAGE OF FIREARMS

- (a) ~~Each firearm must be rendered inoperable by removing parts necessary for firing and storing them in a separate place.~~
- (b) ~~The provisions of this Rule apply to all group homes and emergency shelter facilities.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0403 STORAGE OF AMMUNITION

- (a) ~~Any ammunition for firearms kept in any residential facility must be stored in a locked container separate from the firearms.~~
- (b) ~~The provisions of this Rule apply to all residential programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0404 STAFF USE OF FIREARMS

- (a) ~~Staff who live outside the group home shall never carry or store firearms within the confines of the group home property.~~
- (b) ~~The provisions of this Rule apply to all group homes and emergency shelter facilities.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0405 POSSESSION OF FIREARMS PROHIBITED

- (a) ~~Youth who live at the group home or specialized foster home shall not possess or store firearms within the confines of the home.~~
- (b) ~~The provisions of this Rule apply to all residential programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0406 AUTHORITY TO ESTABLISH MORE RESTRICTIVE POLICIES

- (a) ~~Any policy of the governing body that places higher restriction on firearms shall supersede this policy, but in no case shall a less restrictive policy be permissible in a CBA program.~~
- (b) ~~Any hunting or recreational use of firearms by youth requires appropriate adult supervision and shall be in compliance with recognized safety practices.~~
- (c) ~~The provisions of this Rule apply to all residential programs.~~

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .0500 - ALCOHOLIC BEVERAGES AND DRUGS

09 NCAC 05C .0501 NO USE WHILE PARTICIPATING WITH CLIENTS

- (a) ~~No employee or volunteer will offer any alcoholic beverages or controlled substances to any youth under their supervision while participating in any CBA funded program.~~
- (b) ~~No employee or volunteer shall consume or use any alcoholic beverage or any controlled substance while participating in any activity with clients of any CBA funded program.~~
- (c) ~~No employee or volunteer will be intoxicated or under the influence of alcohol or any controlled substance while participating in any activity with clients of any CBA funded program.~~
- (d) ~~The provisions of this Rule are critical for and apply to all CBA funded programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0502 GROUP HOME STAFF WHO MAINTAIN A SEPARATE RESIDENCE

- (a) ~~Group home staff who live outside the group home or who maintain a separate residence for use when off duty, shall not use or possess alcoholic beverages or controlled substances on the premises of the group home.~~
- (b) ~~The provisions of this Rule apply to all group homes and emergency shelter facilities.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0503 STAFF WHO LIVE IN GROUP

HOME

- (a) ~~Group home staff whose only residence is the group home, shall keep alcoholic beverages secured in their personal quarters and shall not use alcohol in the presence of residents or while on duty.~~
- (b) ~~The provisions of this Rule apply to all group homes and emergency shelter facilities.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

SECTION .0600 - RELIGION

09 NCAC 05C .0601 OPPORTUNITIES SHALL BE PROVIDED

- (a) ~~At the parents' or child's request, opportunities shall be provided for individual children to participate in religious services and other religious activities within the framework of their individual and family interest and clinical status. The option to celebrate holidays in the child's traditional manner shall be provided.~~
- (b) ~~The provisions of this Rule apply to all CBA funded programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

SECTION .0700 - ORIENTATION AND TRAINING

09 NCAC 05C .0701 ORIENTATION FOR STAFF AND VOLUNTEERS

- (a) ~~All CBA funded programs must provide for orientation training that will prepare staff and volunteers to carry out their service roles in accordance with agency policy. Written documentation of agency policy must be available upon request at the central or home office of the agency during office hours.~~
- (b) ~~All CBA funded programs and agencies must provide training that will lead to the continued personal and professional development of the staff and volunteers.~~
- (c) ~~The provisions of this Rule shall apply to all CBA funded programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0702 TRAINING REQUIRED FOR ADVENTURE ACTIVITIES

- (a) ~~All Wilderness Adventure and NYPUM staff, whether professional or volunteer, who participate in the supervision of any adventure or riding activities must be trained in the skills for each activity.~~
- (b) ~~The provisions of this Rule shall apply to all NYPUM and wilderness adventure programs.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0703 WILDERNESS ADVENTURE PROGRAM COMMITTEE

- (a) ~~Prior to the final approval of any new (first time funding by CBA) wilderness adventure program, or any other program engaging in activities which present significant risk, the CBA regional consultant will appoint a special program committee to review the request.~~
- (b) ~~The committee will include:

 - (1) ~~the CBA regional consultant;~~
 - (2) ~~at least one task force member from the applying county;~~
 - (3) ~~at least one person with recognized expertise in water safety (YMCA or Red Cross life saving certification);~~
 - (4) ~~at least one person with recognized expertise in first aid (Red Cross certification, M.D., paramedic, or registered nurse);~~
 - (5) ~~at least one person with two years full-time experience in a wilderness camping program;~~
 - (6) ~~at least one person with specific expertise in each of the high risk activities being proposed by the applicant agency; and~~
 - (7) ~~others as may be deemed appropriate by the regional consultant.~~~~

~~(c) Any individual appointed to the review committee may serve as expert in no more than two of the functions listed in this Rule.~~

~~(d) The provisions of this Rule shall apply to all wilderness/adventure programs.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0704 STAFF REQUIREMENTS FOR HIGH RISK ACTIVITIES

- (a) ~~The High Risk Activities Committee, based on its review of the program agreement, shall negotiate what it considers to be professionally acceptable procedures, guidelines, and training requirements for staff that will ensure, to the degree possible, the physical safety and well-being of the youth served.~~
- (b) ~~The provisions of this Rule shall apply to all wilderness/adventure programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0705 COUNSELING SKILLS TRAINING

~~Professional staff and adult volunteers in wilderness adventure programs must have training in basic counseling skills appropriate to the program.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0706 CERTIFICATION FOR NYPUM

DIRECTIONS

~~NYPUM program directors must be certified by attending training sessions as required by NYPUM international within the first six months of employment.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0707 OTHER NYPUM STAFF AND ADULT VOLUNTEERS

~~All NYPUM volunteers and part-time or full-time employees other than the Director must receive NYPUM certification training or a minimum of six hours of on-site training by a certified program director.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0708 SKILLS TRAINING FOR ADVENTURE ACTIVITIES STAFF

~~(a) All professional and volunteer staff who participate in conducting adventure activities in wilderness adventure programs must be appropriately trained in the necessary skills involved for each particular activity.~~

~~(b) The provisions of this Rule shall apply to all CBA funded programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0709 TRAINING FOR SPECIALIZED FOSTER CARE PARENTS

~~Specialized foster care programs must offer a formal, structured basic training program to participating parents. This training program must consist of a minimum of 16 hours and cover the following areas:~~

- ~~(1) normative child development;~~
- ~~(2) separation anxiety;~~
- ~~(3) how to deal with natural parents;~~
- ~~(4) impact of a foster child's placement on the foster family particularly their children;~~
- ~~(5) behavior management skills; and~~
- ~~(6) communication skills training.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0710 CONTINUING TRAINING FOR SPECIALIZED FOSTER CARE PARENTS

~~(a) Specialized Foster Care Programs must submit an annual schedule for continuing training for specialized foster parents as part of their yearly application for CBA funds.~~

- ~~(b) The annual training schedule must include:~~
 - ~~(1) Name of the trainer or trainers that will be used to provide the training;~~
 - ~~(2) The dates on which the training will occur;~~
 - ~~(3) Names of those who will participate; and~~

- ~~(4) The specific knowledge and skills to be emphasized at each scheduled event.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0711 STAFF REQUIREMENTS FOR COUNSELING PROGRAMS

~~All direct service staff in CBA funded counseling programs must have at least a BA degree in a human service related field or a four year degree in any field plus at least two years experience as a direct service professional in a child serving program.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0712 REQUIRED TRAINING FOR COUNSELING PROGRAM STAFF

~~Direct service staff in all CBA funded counseling programs shall participate annually in at least 12 hours of job related in-service training.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

SECTION .0800 - SUPPORT: CRISIS BACKUP

09 NCAC 05C .0801 AFTER HOURS BACKUP TO SPECIALIZED FOSTER CARE PARENTS

~~Specialized foster care programs shall provide after hours access to a specified social worker or mental health worker for the benefit of the foster parents and foster children.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0802 INCENTIVE PAYMENTS

~~Because of the additional amount of time and additional treatment services needed by children in specialized foster care, incentive payments shall be provided to specialized foster care parents.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .0803 INCENTIVE PAY FOR CHILDREN IN CARE

~~(a) Incentive payments for specialized foster care placements shall be calculated based upon the number of child care days times the locally approved rate.~~

~~(b) Retainer agreements may be executed upon the request of the local DSS director to the Chief of Community Services Section.~~

TEMPORARY RULES

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0804 RECRUITING SPECIALIZED FOSTER PARENTS

~~A specific person shall be identified who will have the ongoing responsibility of recruiting parents to become specialized foster care parents.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0805 EMERGENCY PLAN FOR VOLUNTEERS

~~Each adult volunteer program shall develop and distribute to each volunteer and emergency contingency plan which must include contact persons and phone numbers of individuals to be notified in emergency situations that might occur while the volunteer is supervising an assigned youth.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

SECTION .0900 - ADMISSION CRITERIA

09 NCAC 05C .0901 DETERMINING APPROPRIATENESS OF FOSTER CARE REFERRALS

~~Specialized foster care placements supported by community-based funding shall be limited to children who have been adjudicated delinquent, who are status offenders, or who can be categorized as pre-delinquent. Pre-delinquent is defined as a child who:~~

- ~~(1) is in imminent danger of entanglement with the legal system; or~~
- ~~(2) has such needs or is exhibiting such behaviors that can best be served in a more structured environment than provided by regular foster care.~~

~~These determinations shall be the joint responsibility of involved agencies such as social services, mental health, and juvenile court.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .0902 PRIORITY OF ADMISSION TO SPECIALIZED FOSTER CARE

~~Children served by specialized foster care programs shall be served in the following priority order:~~

- ~~(1) status offenders;~~
- ~~(2) delinquents;~~
- ~~(3) children who have been brought to the attention of the court, schools, or law enforcement officers for disciplinary problems; and~~

- ~~(4) those children whose behavior or environment indicate a greater probability of future court involvement.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

SECTION .1000 - ADMINISTRATIVE AND FINANCIAL MANAGEMENT

09 NCAC 05C .1001 LINE ITEM BUDGET FOR ALL PROGRAMS

- ~~(a) Each program must maintain a line item budget for the full operating year.~~
- ~~(b) Copies of the line item budget for each program must be available for inspection in the program files, the appropriate CBA regional office and the central office of the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .1002 FINANCIAL PLAN FOR ALL PROGRAMS

~~Each program shall develop an annual financial plan showing each funding source and the amount of anticipated revenues.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .1003 FINAL ACCOUNTING FORM FOR ALL PROGRAMS EXCEPT GOVERNOR'S ONE-ON-ONE

- ~~(a) Counties receiving CBA funds for any program, except the Governor's One On One, must submit an annual Final Accounting Form to CBA documenting total expenditures for each program within 60 days of the end of each fiscal year. Governor's One On One Programs are required to submit Final Accounting Forms at the end of the first six months of the first year of operation and at no time subsequent to this.~~
- ~~(b) Final Accounting Forms are available for inspection in the Division of Youth Services office, CBA Section, 705 Palmer Drive, Raleigh, N.C. 27603, during office hours.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05C .1004 STARTUP FUNDS REQUIRED FOR ALL PROGRAMS

~~Each program must secure 75 percent of its operating budget prior to the first year startup.~~

*History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.*

**09 NCAC 05C .1006 EMPLOYMENT POLICIES
REQUIRED FOR ALL PROGRAMS**

~~CBA funded program directors shall be employees in good standing with a public agency or duly constituted non-profit organization, and shall comply with all local employment policies to which the parent agency or organization is subject.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .1100 - ADULT TO YOUTH RATIO

**09 NCAC 05C .1101 ADVENTURE ACTIVITIES OF
WILDERNESS ADVENTURE PROGRAMS**

~~There may be no more than four youth to one appropriately trained adult in any supervised wilderness adventure activity.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1102 RIDING ACTIVITIES OF
NYPUM**

~~Not more than 10 youth per each adult supervisor shall participate in NYPUM riding activities at any one time.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1103 PROFESSIONAL TO
VOLUNTEER RATIO**

~~There shall be one professional staff in a supervisory role and not more than four volunteers to one professional staff for any wilderness, adventure, or NYPUM riding activity.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1104 CHILDREN IN SPECIALIZED
FOSTER CARE**

~~No more than two specialized foster care children can be placed in a specialized foster home.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1105 CLIENT CONTACT TIME IN
COUNSELING PROGRAMS**

~~At least 20 percent of all direct service staff time shall be spent in direct contact with clients and at least 60 percent shall be spent in collateral contacts on behalf of clients.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1106 MONTHLY CONTACT IN
COUNSELING PROGRAMS**

~~Ninety percent of the clients served by a CBA funded counseling program must be seen by a direct service staff member at least once every 30 days.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1107 CASE LOAD IN COUNSELING
PROGRAMS**

~~The minimum active case load for a full time direct service worker in a CBA funded counseling program shall be 10. The maximum active case load shall be 50. Minimum and maximum case loads for less than full time direct service workers shall be adjusted proportionally.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

SECTION .1200 - EVALUATION

09 NCAC 05C .1201 RESIDENTIAL PROGRAMS

~~All CBA funded residential programs must utilize the Individual Client Tracking Form and submit Quarterly Batch Control Reports to provide necessary client information for on-going program documentation. However, residential programs with an average length of stay of less than 15 days must instead submit an Annual Program Review and provide a quarterly breakdown of youth served by age, race and sex.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1202 NON-RESIDENTIAL
PROGRAMS**

~~All CBA funded non-residential programs must provide regular documentation on youth served by either:~~

- ~~(1) utilizing the Individual Client Tracking Form and submitting a Quarterly Batch Control Report; or~~
- ~~(2) submitting an Annual Program Review and providing a quarterly breakdown of youth served by age, race and sex.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

**09 NCAC 05C .1203 RECORD OF CLIENT
COUNSELING CONTACTS REQUIRED**

~~All CBA counseling programs will maintain a written record of contact with clients in addition to the CBA Client Tracking~~

~~Form. This written record must contain the following information:~~

- ~~(1) the reason that the client was referred and a summary of the problems the client was experiencing at that time;~~
- ~~(2) a record of the number of times and the dates that the client was seen; and~~
- ~~(3) the reason for termination of the counseling relationship.~~

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1204 INDIVIDUAL TREATMENT PLAN REQUIRED FOR COUNSELING PROGRAM

~~Each child admitted to a CBA counseling program must have an individual needs based treatment plan developed within the first 30 days of admission addressing at least the following elements:~~

- ~~(1) the type of counseling service or services that will be provided by the program staff;~~
- ~~(2) the frequency of the counseling services to be provided;~~
- ~~(3) the anticipated length of stay in the program;~~
- ~~(4) other counseling services needed by the client with recommendations on how to best have those services provided;~~
- ~~(5) other support services recommended as part of the overall treatment plan;~~
- ~~(6) specific measurable behavior change that will result from the effective implementation of the treatment plan;~~
- ~~(7) provision for periodically (at least every six months) reviewing and amending all aspects of the treatment plan;~~
- ~~(8) specific mention of all family members and other professionals who participated in the development of the individual treatment plan.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

SECTION .1300 - CLIENT IDENTIFICATION

09 NCAC 05C .1301 CLIENT AGE REQUIREMENTS

- ~~(a) At least 90 percent of all youth served by any CBA funded residential program during any 12-month period must be between the ages of 10 and 17.~~
- ~~(b) At least 90 percent of all youth served by any CBA funded non-residential program during any 12-month period shall be between the ages of 7 and 17, except that in CBA funded restitution programs 90 percent of all youth served shall be between the ages of 10 and 17.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1302 REQUIREMENT FOR

JUVENILE JUSTICE INVOLVEMENT

~~Each CBA funded program, except Emergency Shelter Programs, governed by Rule .1305 of this Section, and High-Risk Community Programs, governed by Rule .1306 of this Section, shall comply with at least one of the following requirements:~~

- ~~(1) At least 50 percent of all youth served during any 12-month period shall have, during the 12-month period immediately prior to admission to the CBA funded program, been referred to juvenile court, run away, been suspended or expelled from school, or been detained in secure custody, as documented by Question 15 on the Individual Client Tracking Form.~~
- ~~(2) At least 35 percent of all youth served during any 12-month period shall have been referred to the CBA Program by the juvenile court, law enforcement, a secure detention facility, or an Eckerd Camp, as documented in Question 6 of the Individual Client Tracking Form.~~
- ~~(3) At least 80 percent of all youth served during any 12-month period shall have been referred for at least one of the behaviors listed in items 1 through 6 in Question 16 of the Individual Client Tracking Form.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1305 EMERGENCY PLACEMENT POLICY FOR EMERGENCY SHELTER PROGRAMS

~~Emergency Shelter Programs shall comply with minimum client identification standards by maintaining a policy of emergency placement on a 24-hour a day basis. A written policy statement filed with the CBA field consultant will document programs which meet this standard.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1306 REQUIREMENTS FOR HIGH-RISK NEIGHBORHOOD PROGRAMS

~~High-risk community programs receiving CBA funding are required to provide:~~

- ~~(1) Statements from at least three community experts in crime, delinquency and youth problems which describe specific youth problems within the identified neighborhood that contribute to its classification as a high risk community. These experts may include the sheriff, chief of police, court counselors, juvenile judges or school principals. Statements must be in writing and included in the CBA annual program agreement. Note: Additional documentation in support of a program request for high-risk~~

community status, although not required, may include the number and percent of one parent families, the number and percent of low income households and the rates of community and school vandalism, school dropouts and truancy.

- (2) Documentation by the program of a demonstrated willingness to serve all youth under 18 years of age who reside in the high-risk community. Appropriate documentation must be contained in the program's written policy statements, available for inspection in the central office of the program during office hours.

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

SECTION .1400 - PERFORMANCE INDICATORS

09 NCAC 05C .1401 REQUIRED REDUCTION IN COURT REFERRALS

- (a) Youth served by CBA funded programs will, upon termination from the program, show a reduction in juvenile court referrals as compared to the 12-month period immediately prior to participation in the program.
- (b) This standard will be measured by totaling the number of youth terminated from an individual program during any 12-month period and comparing the number of court referrals in Item 40 of Question 15 with the number of court referrals in Item 71 of Question 25 on the Individual Client Tracking Form.
- (c) This standard applies only if, for all youth terminated from the program during any 12-month period, a total of 10 or more court referrals have been reported on Question 15 of the Individual Client Tracking Form.
- (d) This standard does not apply to high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1402 REQUIRED REDUCTION IN RUNAWAYS

- (a) Youth served by CBA funded programs will, upon termination from the program, show a reduction in runaways as compared to the 12-month period immediately prior to participation in the program.
- (b) This standard will be measured by totaling the number of youth terminated from an individual program during any 12-month period and comparing the number of runaways in Item 41 of Question 15 with the number of runaways in Item 73 of Question 25 on the Individual Client Tracking Form.
- (c) This standard applies only if, for all youth terminated from the program during any 12-month period, a total of 10 or more runs have been reported on Question 15 of the Individual Client Tracking Form.

(d) This standard does not apply to high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1403 REQUIRED REDUCTION IN SCHOOL SUSPENSIONS AND EXPULSIONS

- (a) Youth served by CBA funded programs will, upon termination from the program, show a reduction in suspensions and expulsions as compared to the 12-month period immediately prior to participation in the program.
- (b) This standard will be measured by totaling the number of youth terminated from an individual program during any 12-month period and comparing the number of suspensions and expulsions in Item 42 of Question 15 with the number of suspensions and expulsions in Item 74 of Question 25 on the Individual Client Tracking Form.
- (c) This standard applies only if, for all youth terminated from the program during any 12-month period, a total of 10 or more suspensions and expulsions have been reported on Question 15 of the Individual Client Tracking Form.
- (d) This standard does not apply to high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1404 TRAINING SCHOOL COMMITMENTS

- (a) Commitments to training school or adult corrections from CBA funded programs during any 12-month period must not exceed 20 percent of the youth served for severity level one programs, 30 percent of the youth served for severity level two programs or 40 percent of the youth served for severity level three programs.
- (b) This standard will be measured by the percent of youth terminated from any CBA funded program during any 12-month period having a code of six in Question 19 of the Individual Client Tracking Form. The formula for program severity level is stated in Rule .1411 of this Section.
- (c) This standard applies to all programs except high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1405 REQUIRED PROGRESS WITH THE COURT

- (a) During any 12-month period, the percent of youth with no new convictions while participating in CBA funded programs must not be less than 30 percent for severity level one programs,

less than 20 percent for severity level two programs or less than 10 percent for severity level three programs.

(b) This standard will be measured by the percent of youth receiving codes of one through three on Question 20 of the Individual Client Tracking Form. The formula for program severity level is stated in Rule .1411 of this Section.

(c) This standard applies to all programs except high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1406 REQUIRED PROGRESS IN SCHOOL

(a) During any 12-month period, the percent of youth terminated from CBA-funded programs which show progress in the school setting must be at least 40 percent for severity level one programs, 30 percent for severity level two programs or 20 percent for severity level three programs. The formula for program severity level is stated in Rule .1411 of this Section.

(b) This standard applies to all programs except high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1407 REQUIRED PROGRESS AT HOME

(a) During any 12-month period, the percent of youth terminated from CBA-funded programs which show a reduction in problems within the home must be at least 30 percent for severity level one programs, 20 percent for severity level two programs and 10 percent for severity level three programs. The formula for program severity level is stated in Rule .1411 of this Section.

(b) This standard will be measured by the percent of youth which received codes of either one, two or three for Question 22 on the Individual Client Tracking Form.

(c) This standard applies to all programs except high-risk community, psychological services to juvenile court, emergency shelter programs, or prevention programs.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1408 EVALUATION OF IMPACT OF HIGH-RISK COMMUNITY PROGRAMS

(a) At the end of each program year, written statements from three community experts specifically addressing the perceived impact of the program on community problems that were used to justify the program's designation as high-risk community must be submitted to the CBA regional office.

(b) The three community experts must be the same individuals who provided statements required in Rule .1306 of this Subchapter.

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1409 SERVICE REFERRALS FROM EMERGENCY SHELTER PROGRAMS

(a) At least 50 percent of the youth served under Rule .1305 of this Subchapter will be referred to some other community service.

(b) Compliance will be documented by the program provider and reported with the Annual Program Review at the end of each fiscal year.

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1410 PROPORTIONAL COMPLIANCE TO MINIMUM STANDARDS

Programs funded in part by CBA funds are responsible for serving juveniles described in client identification rules in Section .1300 of this Subchapter and performance indicator rules in Section .1400 of this Subchapter. Programs shall operate in a manner to assure that they shall serve, at a minimum, a percentage of CBA eligible juveniles equal to the percentage of CBA funds supporting the program.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. September 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1411 SEVERITY LEVEL OF CBA PROGRAMS

(a) To comply with Rules .1404 through .1407 in this Subchapter, program severity level must be determined. This is done based on legal status data from Question 7 on the Individual Client Tracking Form. The response codes of one through eight for Question 7 are ranked from the least severe to the most severe type of legal involvement.

(b) For a 12-month period, any program which has an average of 2.9 or less on Question 7 of the Individual Client Tracking Form will be classified as a severity level one program for that 12-month period.

(c) Any program which has a 12-month average between 3 and 5.4 on Question 7 of the Individual Client Tracking Form will be classified as a severity level two program for that 12-month period.

(d) Any program which has a 12-month average of 5.5 or more on Question 7 of the Individual Client Tracking Form will be classified as a severity level three program for that 12-month period.

(e) This Rule applies to all programs except high-risk community, psychological services to juvenile court, and emergency shelter care.

History Note: Authority G.S. 7A-289.14;

Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .1500 - STANDARDS COMPLIANCE

09 NCAC 05C .1501 DIVISION POLICY FOR NON-COMPLIANCE WITH STANDARDS

(a) ~~Where program weaknesses are identified through the monitoring and evaluation of minimum standards, it will be the policy of the CBA Section to provide or arrange for the necessary technical assistance to remediate those weaknesses.~~
 (b) ~~There shall be only two exceptions to CBA's non-punitive policy of standards enforcement. They are: violation of a "Critical Program Standard," and a program's refusal to make a good faith effort to comply with the minimum standards. The primary enforcement mechanism will be the sharing of program and administrative expertise between knowledgeable professionals for the benefit of new and struggling programs. Minimum Standards for CBA programs include two general types: Program Standards and Performance Standards.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1502 CRITICAL PROGRAM STANDARDS

(a) ~~Information regarding the violation of a Critical Program Standard shall be followed up by the CBA Section which shall determine within two working days if the information warrants an investigation. If the need for further investigation is indicated, the Chief of the Community Services Section of the Division of Youth Services shall direct the CBA Regional Consultant assigned to the county in which the violation is alleged to have occurred to conduct an investigation of the allegation within ten calendar days. The CBA Regional Consultant shall file a written preliminary report to the Community Services Section Chief. The Chief of the Community Services Section shall upon initiation of an investigation immediately attempt to notify by phone the Chairman of the Board of County Commissioners in the county where the alleged violation occurred and shall within 48 hours mail a written notification of the investigation to the Chairman of the Board of County Commissioners. In cases where child abuse or neglect is alleged or suspected, the Director of the county DSS shall be immediately notified as provided in G.S. 7A-543. Written notice of the DSS investigation, as provided in G.S. 7A-543, shall be included in the preliminary CBA report.~~
 (b) ~~The reported allegations shall be clearly stipulated within the preliminary report. Also included shall be a detailed review of the actions taken by the CBA Section to verify the accuracy of the allegations. The report shall be shared with appropriate county government officials as designated by the Chairperson of the Board of County Commissioners.~~
 (c) ~~The report shall conclude with formal recommendations as follows:~~

- (1) ~~Preliminary investigation concludes allegations to be false.~~

~~Recommendation: No further action.~~

- (2) ~~Preliminary investigation inconclusive. Recommendations:~~
 - (A) ~~continue investigation,~~
 - (B) ~~appoint special investigating committee to take charge of investigation,~~

- (3) ~~Preliminary investigation concludes that allegations are true.~~

~~Recommendations may include:~~

- (A) ~~immediate suspensions of CBA funds,~~
- (B) ~~suspension of CBA funds until such time as the violation or the conditions which led to the violation are satisfactorily eliminated.~~

(d) ~~Upon receipt of the preliminary report, Chief of Community Services Section of the Division of Youth Services shall render a decision within five working days. That decision shall be transmitted in writing to the program director and Chairman of the Board of County Commissioners, either of whom may appeal the decision by initiating a contested case hearing as provided in 10 NCAC 1B .0200 and according to G.S. 150B.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1503 MONITORING OF PROGRAM STANDARDS

(a) ~~Program standards will be monitored through an annual on-site visit by the CBA field consultant and a written report of the on-site visit will be left with the program director. Except for violations of "critical" standards which are provided for in Rule .1502 of these Rules, all other violations of program standards require that within 30 days, the program director shall develop a formal written response to any condition of non-compliance, including the program's immediate or long-range plan for correcting the violation. The CBA field consultant must respond within 30 days either accepting the program's response or rejecting the program's response. If the program's response is rejected the CBA Consultant shall specify what changes are required to correct the violation. The program shall be given an additional 30 days from receipt of the CBA Consultant's response to resubmit their plan for corrective action or reject the consultant's specifications for change. If the CBA consultant and program director cannot agree to an acceptable plan for resolving the program standards violation within 90 days, the CBA consultant shall notify the Division of Youth Services Chief of Community Services declaring the program to be out of compliance. The Chief of Community Services shall proceed as provided in Paragraph (c) of this Rule.~~

(b) ~~When, in the judgement of the CBA consultant, no good faith effort is being made to resolve the violation and the continued violation of Minimum Program Standards is adversely affecting the quality of services, the field consultant may, after giving a 30 day written notice to the task force and the Chairperson of the Board of County Commissioners, recommend that CBA funding be terminated.~~

(c) ~~Upon receipt of the field consultant's recommendations which must include a detailed account of the actions taken and~~

the assistance offered or provided by the CBA Section to correct the violation, the Chief of Community Services Section of the Division of Youth Services shall within 10 days:

- (1) notify, by Certified Mail, the Chairperson of the Board of County Commissioners that all future CBA funds are to be withheld from the program until such time as the standards violation is corrected; or
- (2) appoint a special investigation committee to explore all aspects of the situation and attempt to negotiate a suitable resolution. This committee must include, but need not be limited to:
 - (A) at least two local representatives as may be designated by the Board of County Commissioners,
 - (B) the CBA field consultant for the affected program,
 - (C) one other CBA field consultant,
 - (D) the program director of the affected program,
 - (E) one CBA Central Office representative; and
 - (F) one member of the local CBA task force as selected by the task force chairperson.

(d) The program director or the Chairman of the Board of County Commissioners may appeal the decision by initiating a contested case hearing as provided in 10 NCAC 1B .0200 and according to G.S. 150B. Upon receipt of notification of appeal, CBA funding will be resumed until the appeal is resolved.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1504 PERFORMANCE STANDARDS

(a) Data submitted on the Client Tracking Forms and reported on the CBA Quarterly Batch Control Reports shall be used to monitor compliance with client identification standards given in 10 NCAC 44C .1300, and key performance indicators given in 10 NCAC 44C .1400.

(b) When a program fails to meet one or more of the CBA Minimum Performance Standards, the CBA field consultant shall notify the program director and the chairperson of the CBA task force. Additional actions which may be taken at the discretion of the field consultant include:

- (1) making an on-site visit to discuss the situation in more detail;
- (2) with the concurrence of the program director, arranging expert consultation from other community-based programs;
- (3) working with the program director and other experts in developing a systematic plan for improving the problem area;
- (4) where a systematic plan for improving the problem area has been arrived at, granting one-quarter exemption to the minimum standard in question;

(5) contacting the Board of County Commissioners detailing the nature of the problem:

- (A) this must be done after three consecutive quarters of non-compliance;
- (B) this contact must include a warning that funds will be withdrawn from the program after a fourth consecutive quarter of non-compliance;

(6) after four consecutive quarters of non-compliance and where no good faith effort is being made to correct the violation, the CBA field consultant shall recommend the immediate withdrawal of CBA funding.

(c) The Chief of Community Services Section of the Division of Youth Services upon determining that all appropriate procedures as outlined herein have been followed, shall give notice by Certified Mail to the Chairpersons of the Board of County Commissioners that CBA funding has been withdrawn from the affected program.

(d) The Board of County Commissioners in the affected county may appeal this decision as provided in 10 NCAC 1B .0200. Upon formal notification of the appeal CBA funding will be resumed until the appeal is resolved.

(e) Nothing included in these procedures for enforcing compliance with standards is intended to control, restrict, or in any way alter the authority of the CBA Task Force with the concurrence of the county commissioners, to adopt more restrictive measures for CBA programs or to make CBA funding contingent upon compliance with additional measures or measures more stringent than the Performance Standards set forth in these Rules.

(f) This Rule applies to all CBA programs except high-risk community, emergency shelter, and school programs. Performance standards for school alternative programs shall be monitored and enforced under the provision of Rule .1505 of this Section. Performance standards for high-risk community programs and emergency shelter programs shall be monitored and enforced as Program Standards under the provisions of Rule .1503 of this Section.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1505 PERFORMANCE STANDARDS FOR SCHOOL PROGRAMS

(a) Data submitted on the Quarterly School Program Review and the Annual Program Review will be used to monitor compliance with CBA Minimum School Performance Standards.

(b) At the close of each school year, alternative school programs which are not in compliance with the CBA Minimum Performance Standards shall be placed on a provisional status for the following school year.

(c) The following individuals will be notified of the provisional status:

- (1) the school principal of the affected school;
- (2) the school superintendent;
- (3) the chairperson of the CBA Task Force;

~~(4) — the Chairperson of the Board of County Commissioners.~~

~~(d) The CBA field consultant will make at least three on-site visits to provisional programs during the school year and with the concurrence of the local school officials, attempt to work out a systematic plan for assisting the program to meet the minimum standards.~~

~~(e) After each on-site visit, the field consultant will prepare a brief written report detailing the efforts being made to improve the program. If in the opinion of the CBA field consultant no good faith effort is being made by the program to address the problem of non-compliance, that fact will be noted in the on-site visit report. This report will be submitted to the chairperson of the CBA Task Force, the school superintendent and the Chairperson of the Board of County Commissioners.~~

~~(f) The CBA field consultant, at the close of each school year, will review the performance standards for all provisional programs. Where non-compliance with CBA Minimum Performance Standards has continued for two consecutive school years and where in the judgement of the CBA field consultant, no good faith effort has been made to achieve compliance, a recommendation shall be made that no further CBA funding be provided for the program.~~

~~(g) The Chief of Community Services Section of the Division of Youth Services, upon determining that all appropriate procedures as outlined herein have been followed, shall give notice by Certified Mail to the Chairperson of the Board of County Commissioners that CBA funding has been withdrawn from the affected program.~~

~~(h) The Board of County Commissioners in the affected county may appeal this decision as provided in 10 NCAC 1B .0200. Upon formal notification of the appeal, CBA funding will be resumed until the appeal is resolved.~~

~~(i) Nothing included in these procedures for enforcing compliance with the minimum standards for CBA funded programs is intended to control, restrict, or in any way alter the authority of the CBA Task Force, with the concurrence of the county commissioners, to adopt more restrictive measures in determining local priorities for CBA alternative school programs or to make CBA funding contingent upon compliance with additional measures or measures more stringent than the Performance Standards for School Programs set forth in these Rules.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

SECTION .1600 - MINIMUM PERFORMANCE STANDARDS FOR CBA FUNDED SCHOOL RELATED PROGRAMS

09 NCAC 05C .1601 STAFFING

~~(a) Requirements for Alternative School Program (ASP) Teacher Counselor. Alternative School Programs may include: In-School Suspension, and Alternative Learning Centers. The ASP teacher counselor must be a teacher certified by the North Carolina Department of Public Instruction or human service related professional with, at minimum, a bachelor's degree and experience or training in counseling.~~

~~(b) Provisional Standards for Teacher-Counselor. Those teachers-counselors hired prior to the beginning of 1985-86 school year who do not meet the requirements of Paragraph (a) of this Rule must comply with the following provisions:~~

- ~~(1) — that during the first year of employment, five hours of supervision and classroom training by a certified teacher or human service professional be provided on a weekly basis;~~
- ~~(2) — that in each subsequent year of employment, two hours of supervision and classroom training by a certified teacher or human service professional be provided on a weekly basis;~~
- ~~(3) — the training and supervision required in Subparagraphs (1) and (2) of this Rule shall include, but are not limited to: maintaining discipline, overall classroom supervision, orientation to other faculty members, individual counseling, and one-to-one tutoring skills development, etc.;~~
- ~~(4) — not more than four para-professionals may be supervised by a full-time professional;~~
- ~~(5) — para-professionals must meet all local school board requirements for employment; and~~
- ~~(6) — youth assigned to programs supervised by para-professional personnel may not be assigned for more than 10 days and may not spend more than 20 days in the ASP during any single school year.~~

~~(c) Staff/Student Ratio. Programs must maintain a weekly average of not more than 12 pupils per class for the first certified teacher or other human service professional. The weekly average per class may be increased by six pupils for each additional certified teacher or human service professional assigned to the ASP and by four pupils per day for each para-professional or teacher's aide.~~

~~(d) Provisional Standard for Staff/Student Ratio. Programs qualifying under the provisional standard for staffing must maintain a weekly average of not more than six pupils per class period.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; January 1, 1987; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1602 ADMISSION CRITERIA

~~(a) Age Limits for Students Served by ASP. All youth served by CBA funded ASP programs must be actively enrolled in school and above the age of nine.~~

~~(b) Identification and Length of Stay.~~

- ~~(1) — Disciplinary actions must be taken in compliance with minimum due process as defined herein as:

 - ~~(A) — there must be a fair and reasonable rule which is broken or disobeyed;~~
 - ~~(B) — the rule must apply equally to all; and~~
 - ~~(C) — if punishment is meted out for violation of a reasonable and fair rule, that procedure by which the punishment is assessed must be fair,~~~~

reasonable and impartial. ("Some Consideration for Establishing Policies Relative to Student Rights and Responsibilities," Division of Human Relations and Student Affairs, North Carolina Department of Public Instructions, August 1, 1977, p. 19.)

- (2) For all violations which could result in out-of-school suspension, the In-School Suspension (ISS) programs shall be used before a child may be suspended out of school, except in the case where the child or the child's parent or guardian refuses to accept placement in the I.S.S. program.
- (3) Use of ISS for the violation of school rules that cannot result in out-of-school suspension shall not be permitted.
- (4) A copy of the school rules governing student behavior and stipulating approved sanctions must be included in the annual program agreement which is submitted to CBA for funding approval.
- (5) An Individual Education Plan (IEP), as provided in Subparagraph (7) and (8) of this Rule, shall be required for any child assigned to In-School Suspension (ISS) in excess of 20 non-consecutive days per school year. The IEP for ISS referrals shall include:
 - (A) a list of other resources that have been considered or tried or a statement that no appropriate resource is available;
 - (B) documentation of the program's and the school's efforts to initiate a parental conference or the date and time such conference took place;
 - (C) a finding by the ASP and responsible school officials that continuing involvement in the ISS is in the best interest of the youth.
- (6) Admission to Alternative Learning Centers programs requires the development of an Individual Education Plan (IEP) outlining the treatment, counseling and teaching strategies to be used to stimulate student motivation and self-confidence and to improve study habits and classroom behavior. Length of stay to be determined based on the individual needs as documented in the IEP.
- (7) The Individual Education Plan must:
 - (A) not be used as a punitive tool to control behavior;
 - (B) attempt to specifically detail in writing the educational and behavioral problems in need of remediation;
 - (C) be negotiated with and signed by the student and the student's parents or guardian. To implement the IEP without parental approval, the

program must follow the procedures outlined under the policies for exceptional children, which can be obtained through any regional office (LEA) of the Department of Public Instruction;

- (D) include time specific educational and behavioral objectives designed to reintegrate the student into the regular class upon fulfillment of the specified goals.
- (e) Placement into ASP. Only the school principal or his designee may authorize placement in the ASP.
- (d) Parental or Guardian Involvement.
 - (1) In addition to the required parental involvement included in Subparagraph (b) (8) of this Rule, parents or guardians must be notified of their child's placement into ASP and the notification must include a specific request for a conference between the parent or guardian and appropriate school personnel. Included in the notification must be an explanation of the policies, procedures, and rules governing the ASP.
 - (2) Efforts to initiate a parental or guardian conference must be documented by copy of a letter and a note placed in the child's file showing the time and date of telephone contact.
- (e) Exit Criteria. When the principal or his designee feels evidence warrants leaving the program, re-assignment to the regular program will be made.

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; January 1, 1987; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1603 EVALUATION AND PERFORMANCE STANDARDS

- (a) Reduce Suspensions. Out of school suspensions by any school operating a CBA funded ISS program shall not exceed 15 percent of the school's average daily enrollment.
- (b) Reduce expulsions. Expulsions (suspension or exclusion from school for more than 10 consecutive days) during any school year by any school operating a CBA funded ISS program shall not exceed 1 percent of the school's average daily enrollment.
- (c) Improve Student Behavior.
 - (1) Twenty-five percent of students completing the ISS will show improved classroom behavior as documented by follow up evaluation one week after returning to the regular class.
 - (2) A follow up evaluation must be submitted by the referring teacher or school administrator as documentation for this standard. A follow up evaluation must include the student's name, date of referral to the alternative school program, reason for referral, evaluation of the student's classroom behavior upon return to the

regular school program, the teacher's name, and date on which the evaluation was completed.

- (d) ~~Reduce Absences.~~ Youth served by CBA funded programs which require Individual Education Plans (IEP) will show a 25 percent reduction in school absences while participating in the CBA funded programs as compared with their school absences during the 12 month period prior to participation in the program.
- (e) ~~Reduce Dropouts.~~ Not more than 25 percent of the youth 16 years old or older will drop out of school while participating in CBA funded programs which require the IEP. This standard will apply only to those programs where 10 or more youth 16 years or older participate during a school year.
- (f) ~~Documentation.~~ All school related CBA funded programs must utilize the Quarterly School Program Review for school related programs and must submit an Annual Program Review to provide client information for on going program documentation.

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
 Amended Eff. January 1, 1987;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05C .1604 ORIENTATION AND REPORTING REQUIREMENTS

- (a) ~~The Annual Program Review must be submitted at the close of each school year to the CBA Regional Office.~~
- (b) ~~An annual on-site monitoring visit shall be conducted by the CBA regional consultant. The Monitoring Report signed by the regional consultant shall document compliance.~~
- (c) ~~Copies of the Annual Program Review and the On site Monitoring Report shall be provided to the local CBA Task Force, the school principal and the superintendent of the local school system.~~
- (d) ~~The ASP program director shall attend at least one CBA Task Force meeting for the purpose of briefing the task force on the ASP program.~~
- (e) ~~The ASP program director or the school principal shall be responsible for a faculty orientation prior to the start up of any new CBA funded ASP program.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
 Amended Eff. January 1, 1987;
Temporary Repeal Eff. July 15, 2002.

SUBCHAPTER 05D - COMMUNITY-BASED FUND

SECTION .0100 - COMMUNITY-BASED FUND

09 NCAC 05D .0101 PURPOSE OF THE FUND

- (a) ~~The purpose of the Community Based Fund is to provide state funding to counties to assist in the development of community based alternatives, both residential and non-residential, for the status offender, the delinquent, and youth at risk.~~
- (b) ~~The Community Based Fund shall be administered by the Community Based Alternatives Section of the Division of Youth Services.~~

(c) ~~The Secretary of the Department of Human Resources is responsible for divising a formula to disburse funds allocated by the General Assembly for community-based programs.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0102 PROCESS FOR COUNTY ELIGIBILITY

- (a) ~~Every non-participating county shall be forwarded annual written notification of the amount of Community Based Funds available to them and the cash match required to be able to utilize these state appropriated dollars.~~
- (b) ~~Counties shall indicate their desire to participate by means of a letter from the chairperson of the county commissioners.~~
- (c) ~~The first year of program eligibility for participation in the Community Based Fund shall begin on July 1 of the same year in which a Letter of Intent is received by the Division of Youth Services. The Letter of Intent shall be received by the Division of Youth Services not later than March 15.~~
- (d) ~~Counties shall be required to submit notification of their intent to participate only once. Each subsequent year they shall be automatically included in the allocation of available state resources.~~
- (e) ~~Counties may withdraw from the CBA program at any time by giving 30 days written notice. Any funds designated for a county choosing to withdraw will be placed in the CBA Discretionary Fund. Notice of withdrawal must be signed by the Chairperson of the Board of County commissioners.~~
- (f) ~~Except for those Alternative Class Programs that were funded by CBA during fiscal year 1987-88, effective July 1, 1988 CBA funds may not be used for any portion of a teaching position in any public school system in North Carolina.~~
- (g) ~~Effective July 1, 1988 CBA funds may not be used to pay for any of the operating costs of any school based program that is mandated as part of the normal school curriculum within any public school system in North Carolina.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1988;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0103 FUNDING FORMULA

- (a) ~~Every county that notifies the Division of Youth Services of its intention to participate shall receive a base grant of six thousand dollars (\$6,000).~~
- (b) ~~The remainder of the Community Based Alternatives Fund shall be allocated to each county based upon the proportion of the county's population which is between 10 and 17 years old in comparison to the proportion for every other county in the State.~~
- (c) ~~Each participating county shall be required to match the state dollars with local dollars based upon the county's relative ability to pay.~~
 - (1) ~~Relative ability to pay shall be determined by the Social Services Equalization Formula which takes into consideration the following factors:~~
 - (A) ~~Sales and tax collection per capita;~~
 - (B) ~~Property tax per capita;~~

- (C) ~~— Average monthly number of Aid to Families with Dependent Children (AFDC) recipients per capita;~~
- (D) ~~— County share of AFDC expenditures per capita.~~
- (2) ~~— Using the equalization formulas, counties shall be divided into three categories with the following matching ratios:~~
 - (A) ~~— In the 33 counties with the highest relative ability to fund programs, local share must equal 30 percent of the state allocation;~~
 - (B) ~~— In the 33 counties with median relative ability to fund programs, local share must equal 20 percent of the state allocation;~~
 - (C) ~~— In the 33 counties with the lowest relative ability to fund programs, local share must equal 10 percent of the state allocation.~~
- (B) ~~— Assessing the contribution to be necessary to accomplish the program's objectives;~~
- (C) ~~— Maintaining records to identify and document the receipt and use of these contributions.~~
- (3) ~~— Examples of acceptable in-kind contributions include but are not limited to volunteer services furnished by professional or technical personnel which are an integral part of the program and necessary to accomplish the objectives of the program, and the use of real or tangible personal property that has been donated or purchased through third-party funding sources. If uncertainty exists as to whether use of a particular contribution qualifies as an in-kind expenditure, counties may consult the Community Based Alternatives Section of the Division of Youth Services.~~
- (4) ~~— The recommended method of determining the reasonable and just value of an in-kind contribution is through independent appraisal.~~
 - (A) ~~— The value of volunteer services shall be consistent with the regular rates of pay for non-volunteer services in the local labor market.~~
 - (B) ~~— The value of professional or technical services provided by an employee of the agency shall equal the employee's regular rate of pay times the number of hours of service provided.~~
 - (C) ~~— The value of real or tangible personal property shall equal the fair market value of that property including lease or rental value when appropriate. If the total market value of property is used within one year, that same property shall not be used in the following year. This Rule does not prohibit the use of the fair market value of a lease or rental in succeeding years.~~

*History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05D .0104 LOCAL MATCH

- (a) ~~Local match required for the expenditure of state funds allocated for each county during any fiscal year may include either cash or in-kind contributions.~~
- (b) ~~Cash match may include any general revenue funds collected by the local government and included in the current fiscal year budget.~~
 - (1) ~~For purpose of this Rule, cash match may not include any federal monies; however, Community Based Alternatives funds may be used as match for federal grants.~~
 - (2) ~~Cash match may also include any private foundation grant or individual contribution so long as such grant or contribution is made a part of the operating budget of the local program and is administered and dispensed by the county finance officer.~~
- (c) ~~In-kind match may include any non-cash resource within a county's current operating budget that may be used to support the operation of any new or continuing program for which Community Based Alternatives Funds are requested.~~
 - (1) ~~For purposes of this Rule, an in-kind match is a non-cash contribution provided to meet the objectives of the program whether contributed by the program or by third parties.~~
 - (2) ~~The following practices may serve as a guide to determine whether a county may classify a contribution as in-kind:~~
 - (A) ~~Using the value of goods or services that directly benefit and are specifically identifiable to the Community Based Alternative program's activities;~~
 - (B) ~~Assessing the contribution to be necessary to accomplish the program's objectives;~~
 - (C) ~~Maintaining records to identify and document the receipt and use of these contributions.~~
 - (3) ~~Examples of acceptable in-kind contributions include but are not limited to volunteer services furnished by professional or technical personnel which are an integral part of the program and necessary to accomplish the objectives of the program, and the use of real or tangible personal property that has been donated or purchased through third-party funding sources. If uncertainty exists as to whether use of a particular contribution qualifies as an in-kind expenditure, counties may consult the Community Based Alternatives Section of the Division of Youth Services.~~
 - (4) ~~The recommended method of determining the reasonable and just value of an in-kind contribution is through independent appraisal.~~
 - (A) ~~The value of volunteer services shall be consistent with the regular rates of pay for non-volunteer services in the local labor market.~~
 - (B) ~~The value of professional or technical services provided by an employee of the agency shall equal the employee's regular rate of pay times the number of hours of service provided.~~
 - (C) ~~The value of real or tangible personal property shall equal the fair market value of that property including lease or rental value when appropriate. If the total market value of property is used within one year, that same property shall not be used in the following year. This Rule does not prohibit the use of the fair market value of a lease or rental in succeeding years.~~
 - (5) ~~Each county shall ensure that the following restrictions are enforced:~~
 - (A) ~~All items used as in-kind contributions have been acquired with local revenues;~~
 - (B) ~~Title to any property or equipment classified as in-kind is vested legally with the county or the program;~~
 - (C) ~~If time of a staff member is being used as an in-kind contribution, only that percentage paid for with local revenues and the percentage of time actually spent in support of the program's activities would be allowable in-kind;~~
 - (D) ~~All relevant records which would tend to document the fulfillment of the terms of the CBA Program~~

Agreement shall be maintained by the program for five years or until all audit exceptions have resolved, whichever is longer.

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0105 FORMS DEFINITIONS

Many of the remaining rules in 10 NCAC 44D .0100 refer to forms for fiscal control and monitoring. These forms are available from the CBA Section, Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603, during office hours. These forms are distributed to the eight CBA regional offices, and may be obtained from these offices. These forms include:

- (1) Program Agreement Form consists of a line item budget for anticipated expenditures and total amounts, and clauses to assure compliance with civil rights and with 10 NCAC 44C and 10 NCAC 44D, procedures for termination, and a formal statement by the program manager to indemnify and hold harmless the Department of Human Resources. The form requires signatures of the Director, Division of Youth Services, and chairperson of the county commissioners. This form is required of each program on an annual basis.
- (2) Program Agreement Revision Form consists of program identification, reason for requested change, a breakout of original and new budgets, and requires signatures of the Director, Division of Youth Services, chairperson of county commissioners, and the manager of the program.
- (3) CBA Final Accounting Form is required of each CBA program on an annual basis and consists of a line item breakout of amounts budgeted and actually spent. It requires signature of the manager of the program and the finance officer of the county.

History Note: Authority G.S. 7A-289.14; 143B-10; Eff. December 1, 1985; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0106 BUDGET AND BUDGET AMENDMENTS

- (a) A Program Agreement Form including a proposed line item budget is required for each program receiving Community Based Alternative funding.
- (b) County Administration of all CBA funds shall be in accordance with the provisions of G.S. 159-15.
- (c) All programs receiving CBA funds through contracts for services with local government shall submit an annual independent audit to the county finance officer.
- (d) CBA funded programs may amend their approved line item budget so long as they comply with the provisions of G.S. 159-15 and amendments are presented to the governing board.

(e) Notification and prior approval by the Community Based Alternatives Section of the Division of Youth Services shall be required when a budget change within a program will result in a substantial change in the overall impact of service delivery capability. Examples of such substantial changes include but are not limited to:

- (1) eliminating a staff member or function in the program,
 - (2) assigning a staff member to a service delivery function not included in the approved Program Agreement,
 - (3) shifting Community Based Alternatives Funds from one currently funded program to another within the same county,
 - (4) any request for CBA Discretionary Funds.
- (f) When notification and prior approval by the Community Based Alternatives Section of the Division of Youth Services is required, the following procedures shall apply:
- (1) Four signed copies of the Program Agreement Revision Form submitted to the Community Based regional consultant shall serve as notification, and initiate the approval process.
 - (2) The regional consultant shall review and, if appropriate, approve the signed Program Agreement Revision Forms.
 - (3) Three copies of the Program Agreement Revision Form shall be forwarded to the Director of the Division of Youth Services for signature.
 - (4) Two of the three copies shall be returned to the regional field consultant for forwarding to the recipient county; the third copy shall be attached to the original Program Agreement Form maintained in the Community Based Alternatives Section of the Division of Youth Services and shall be considered an amendment to the original agreement.
- (g) When a county proposes shifting money from a currently funded Community Based Alternatives program to one not currently funded, the recipient shall submit a Program Agreement Form to the regional field consultant.
- (h) Locally approved line item adjustments in a program's operating budget shall be reported to the CBA Section annually on the CBA Final Accounting Form. The signature of the county finance officer will verify that such adjustments were done in compliance with Paragraph (d) of this Rule and were not in violation of Paragraph (e) of this Rule.

(i) The process for determining county payback from CBA-funded programs which violate the provisions of this Rule shall be:

- (1) compare actual expenditures to budgeted expenditures on the CBA Final Accounting Form as described by Paragraph (d), Rule .0108 of this Subchapter;
- (2) add up the total of all actual expenditures on each line item that exceed the budgeted amount;
- (3) reduce the total amount of cash expenditures by the amount arrived at in Subparagraph (i)(2) of this Rule;

- (4) — calculate the CBA payback using the revised cash expenditure.

History Note: Authority G.S. 7A-289.14;
 Eff. December 1, 1985;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0107 DISCRETIONARY FUNDS

(a) ~~Regional discretionary funds shall be treated as additional state funds over and above the annual allotment to a county and shall not be available for more than one year. Discretionary Funds may not be expended on routine operations of a local program unless other funds can be identified to replace them in the next budget cycle.~~

(b) ~~In addition to complying with all other requirements for Community Based Alternatives Funds, a program requesting assistance through the Discretionary Fund must also qualify under one of the conditions in this Paragraph:~~

(1) ~~A currently operating Community Based program which is in danger of closing or reducing its level of service under this condition, the program shall submit a statement of projected future funding sources documenting how the program plans to continue in operation during the next year.~~

(2) ~~A currently operating Community Based program in need of special equipment, materials, renovations, or staff development which will expand or enhance the service capability of the program on a continuing basis. To qualify under this condition, a program shall be required to show a measurable expansion of services which includes but is not limited to evidence of the following:~~

- (A) ~~More youth may be physically housed in the renovated facility,~~
- (B) ~~Additional staff training will add a new treatment dimension to the ongoing program,~~
- (C) ~~Special equipment or materials will directly relate to improved treatment.~~

(3) ~~For emergency placement of specific youth for whom all local resources have been exhausted but where training school placement would be inappropriate or illegal. Requests for discretionary funds under this condition shall come from the Director of the county Department of Social Services to the Community Based Alternative regional field consultant.~~

(A) ~~To expedite these emergency situations, a special contract form shall be used by the Department of Social Services which requires as local match the Department's foster care payment.~~

(B) ~~The special contract form must be signed by the Director of the local Department of Social Services and~~

~~must be accompanied by a statement signed by the Juvenile Court Judge verifying the lack of appropriate alternatives and acknowledging the court's approval of special placement.~~

(C) ~~Under this condition, discretionary funds may be utilized up to the maximum allocated to any Community Based Alternative region to pay for the direct service charges over and above the foster care payment for out-of-state placement of any youth for whom locally available resources are inadequate.~~

(c) ~~Direct service expenses incurred under emergency placement contracts shall be reimbursed by the Community Based Alternatives Section of the Division of Youth Services on a monthly basis upon receipt of an itemized statement from the county finance officer.~~

(d) ~~Aid to counties funds which remain uncommitted for six consecutive months shall be automatically transferred to the Discretionary Fund and made available to other participating counties on a competitive basis.~~

History Note: Authority G.S. 7A-289.14; 143B-10;
 Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0108 DISBURSEMENTS: REVERSIONS: FINAL ACCOUNTING

(a) ~~Funds approved for Community Based programs shall be disbursed monthly, except for seasonal programs, which funds shall be disbursed as determined by the Chief of Community Services Section.~~

(b) ~~A statement of projected unexpended funds shall be filed with the regional field consultant at the end of the ninth month of the fiscal year. This statement shall be prepared jointly by the program director and the county finance officer.~~

(1) ~~Projected unexpended funds of the remaining three months of the fiscal year may be redistributed to other programs within the county based on documented need within the county.~~

(2) ~~Projected unexpended funds of the remaining three months of the fiscal year not requested by the county may be reallocated to the Community Based Alternative Discretionary fund for use by other participating counties.~~

(c) ~~Failure to utilize all of a year's Community Based Alternatives allocation shall not affect a county's allocation for the following year.~~

(d) ~~A CBA Final Accounting Form must be submitted not later than July 31 of each year to the regional field consultant.~~

(1) ~~If a reversion is indicated from the CBA Final Accounting Form, a statement to that effect shall be sent to the county finance officer.~~

(2) ~~Refund checks are requested within forty five days of receipt of the statement from the Division of Youth Services. These checks shall be forwarded to the Controller of the Division of Youth Services.~~

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990; September 1, 1986;
Temporary Repeal Eff. July 15, 2002.

SECTION .0200 - DIVISION OF RESPONSIBILITIES

09 NCAC 05D .0201 RESPONSIBILITIES OF DIVISION AND/OR DEPARTMENT

The responsibilities of the Secretary of the Department of Human Resources or the Director of the Division of Youth Services are:

- (1) to establish an equitable funding formula and fund allocation process;
- (2) to account to the Governor and the General Assembly on the effective use of the state appropriations for Community Based Alternatives;
- (3) to provide technical assistance to county officials, county juvenile planning task forces and program operators in regard to Community Based Alternatives;
- (4) to work in consort with the Governor's Crime Commission for the effective utilization of federal funding for Community Based Alternatives;
- (5) to ensure that programs receiving state funds comply with civil rights and equal employment guidelines;
- (6) to otherwise implement the responsibilities enumerated in G.S. 7A-289.13 to G.S.7A-289.15.

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0202 COUNTY'S RESPONSIBILITIES

It is the responsibility of each county:

- (1) to notify the Community Based Alternative Section of the Division of Youth Services of their intention to participate in the funding program;
- (2) to examine the need for establishing a planning body composed of private citizens and human services professionals to advise the county commissioners on the most effective utilization of resources to address their juvenile justice needs;
- (3) to ensure that Community Based Alternative dollars are used exclusively for programs that provide direct services to children who have either been adjudicated delinquents or status offenders, or are at risk of being formally involved in the juvenile justice system;
- (4) to determine whether or not it is in their best interests to cooperate with other counties for the development of programs to address their juvenile needs;

- (5) to utilize generally accepted accounting procedures that guarantee the integrity of the expenditure of Community Based Alternative funds in local programs;
- (6) to report to the Community Based Alternative Section of the Division of Youth Services at the end of the third quarter of each year the anticipated balance of unexpended Community Based Alternatives funds;

Note: The Division of Youth Services may reallocate any reported balance to the Discretionary Fund described in Rule .0107 of this Subchapter.

- (7) to provide the Community Based Alternatives Section of the Division of Youth Services with an annual plan for the provision of services to address their juvenile justice needs;
- (8) to ensure that programs receiving state funds are appropriately licensed;
- (9) to further ensure that any purchase of service contract entered into using Community Based Alternatives funds is with a program that by its nature would be eligible for these funds.

History Note: Authority G.S. 7A-289.14; 143B-10;
Eff. December 1, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0203 COUNTY TASK FORCE'S RESPONSIBILITIES

Counties establishing a county task force under the guidelines of this Rule and Rule .0204 of this Section shall be eligible for an administrative grant from the Community Based Alternatives Section of the Division of Youth Services. The following shall be responsibilities of the task force:

- (1) to maintain a current assessment of the needs of children involved or potentially involved in the juvenile justice system;
- (2) to submit to the county commissioners an annual plan for the provision of services based upon the needs identified.
- (3) to recommend within that plan a prioritized list of programs eligible for Community Based Alternatives funding. In order to carry out this responsibility, the task force shall review all proposals for Community Based Alternatives funding prior to submission to the county commissioners.
- (4) to explore alternative funding sources, including private corporations and foundations.

History Note: Authority G.S. 7A-289.14;
Eff. December 1, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0204 COUNTY TASK FORCES CERTIFICATION

(a) Effective at the beginning of fiscal year 1981-82, the Community Based Alternatives Section of the Division of Youth Services shall allow administrative grants of two hundred and

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~~fifty dollars (\$250.00) per year for each county task force certified under this Rule to help offset miscellaneous expenses.~~

~~(b) This administrative grant shall be deducted from the regular Community Based Alternatives allocation set forth in Rule .0103 of this Subchapter.~~

~~(c) To qualify for the administrative grant, each county task force shall satisfy the certification standards established by the Community Based Alternatives Section of the Division of Youth Services. Certification standards include:~~

- ~~(1) Written bylaws;~~
- ~~(2) Internal communication requirements as follows:~~

- ~~(A) Meetings shall be open to the public;~~
- ~~(B) Minutes shall be taken at all meetings;~~
- ~~(C) Minutes shall be distributed prior to or during subsequent meetings;~~
- ~~(D) Minutes shall be provided for and meeting notices sent to the regional field consultant;~~

- ~~(3) External communication requirements as follows:~~

- ~~(A) The task force shall communicate the availability of CBA funding to all public and private agencies which serve children, their families and other interested community members;~~
- ~~(B) The task force shall make annual needs assessment information available to all agencies who serve children, their families and other interested community members; and~~
- ~~(C) The task force shall inform its members and other interested members of the community about full task force meetings;~~

- ~~(4) Task force requirements as follows:~~

- ~~(A) Task forces shall provide a complete list of members;~~
- ~~(B) Task forces shall indicate the agency or segment of the community which their members represent;~~
- ~~(C) Task forces shall indicate youth members and minority members.~~

~~(d) To apply for certification, each county task force shall complete an Application for Certification which is available through its Community Based Alternatives regional office.~~

~~(e) The completed Application for Certification shall be signed by the Task Force Chairperson, the Chairperson of the Board of County Commissioners or county manager and forwarded to the Community Based Alternatives regional office not later than June 30 of each year.~~

~~(f) The following stipulations shall apply to use of administrative grants:~~

- ~~(1) They shall be used only for reasonable expenses incurred by or in support of the CBA county task force, including but not necessarily limited to:
 - ~~(A) postage;~~
 - ~~(B) reproduction expenses;~~~~

~~(C) out of county travel relating to specific CBA and task force business;~~

~~(D) stationery.~~

~~(2) Administrative grants shall be one time payments in the total amount of two hundred and fifty dollars (\$250.00) per year.~~

~~(3) No local cash match is required for administrative grants.~~

~~(4) The CBA Final Accounting Form must be submitted and must describe the actual expenditures of administrative grant funds.~~

History Note: Authority G.S. 7A-289.14;

Eff. December 1, 1985;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0205 PROGRAM MANAGER'S RESPONSIBILITIES

~~It is the responsibility of each manager of a program receiving Community Based funds through its county:~~

- ~~(1) to ensure that the program meets all appropriate standards and licensing requirements;~~
- ~~(2) to maintain sufficient information to allow for the determination of program effectiveness;~~
- ~~(3) to cooperate with Community Based Alternative field consultants during monitoring and evaluation activities;~~
- ~~(4) to complete a program agreement form that provides basic program information, a line item budget and a statement of civil rights compliance.~~

History Note: Authority G.S. 7A-289.14; 143B-10;

Eff. December 1, 1985;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0206 CBA POLICY AND CAPITAL EXPENDITURES

~~(a) Capital expenditures include equipment valued in excess of three hundred dollars (\$300.00) with a useful life of more than one year. Equipment expenses incurred by programs where CBA constitutes the major funding source shall be subject to the following:~~

- ~~(1) Inventory control shall be maintained by placing all equipment purchased by CBA funded programs on the local equipment inventory.~~
- ~~(2) It shall be the responsibility of county government to ensure that equipment purchased by such programs shall, for the life of that equipment, be used solely for the purpose stipulated in the CBA Program Agreement.~~
- ~~(3) The disposal of such equipment shall be in accordance with the county's surplus equipment policy and any revenue realized by the county shall be returned to the program for which the equipment was purchased.~~

- (4) ~~Should the program for any reason be discontinued during the useful life of the equipment, the county may, with the approval of the Division of Youth Services, transfer the equipment to another youth serving program within the county.~~
- (5) ~~If no youth serving program can make use of the equipment, the county may reimburse any program designated by the Division of Youth Services at the current fair market value and transfer that equipment to any other county program it may choose.~~
- (6) ~~The county may also sell the equipment and transfer the revenue to any youth serving program approved by the Division of Youth Services.~~

~~(b) Capital expenditures also include those facility renovations, structural improvements, and alterations or additions to building or property, where such renovation, improvement, alteration or addition is necessary to comply with minimum facility standards, local building codes, or state or local health, fire or safety regulations or where such renovation, improvement, alteration or addition will expand the program's operating capacity. Capital expenditures shall be managed on a case by case basis with the state's interest protected by the terms of the contract between CBA and the county commissioners.~~

~~(c) All other CBA funded programs shall abide by the Capital Expenditure Guidelines set forth by the primary funding agency. If the primary funding agency has no such policy, then it shall be the responsibility of county government to establish a policy.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05D .0207 GRIEVANCE RESOLUTION

~~(a) At the request of any county finance officer, the Community Based Alternatives Section of the Division of Youth Services shall schedule an informal hearing at the county's convenience to work out any disagreements that exist.~~

~~(b) Unresolved disputes shall be referred to the Department of Human Resources Audit Division and may be appealed pursuant to 10 NCAC 1B .0200 and according to G.S. 150B.~~

History Note: Authority G.S. 7A-289.14; Eff. December 1, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

SUBCHAPTER 05E - MINIMUM STANDARDS FOR ECKERD FOUNDATION THERAPEUTIC CAMPS IN NORTH CAROLINA

SECTION .0100 - MINIMUM STANDARDS FOR ECKERD FOUNDATION THERAPEUTIC CAMPS

09 NCAC 05E .0101 SCOPE

~~(a) A therapeutic camp for children with behavioral problems or in conflict with the law is a residential treatment facility that~~

~~utilizes a camping environment as a significant part of its treatment or educational program.~~

~~(b) The purpose of these standards is twofold: First, to assure, to the extent possible, that the clients served in the camps will receive quality care; and second, to allow the maximum amount of flexibility for individual programs to exist with different program designs, treatment philosophies and client populations.~~

~~(c) The standards contained herein are minimum standards for any camp operated in North Carolina by the Eckerd Foundation of Florida under contract with the Department of Human Resources.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; Eff. March 1, 1979; Amended Eff. March 3, 1981; Transferred from T10.011 .0501; Eff. October 31, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0102 ADMISSION

~~(a) A therapeutic camp shall accept only those clients who meet the conditions outlined in the therapeutic camp's admission policies, and for whom the therapeutic camp has an operational program. No client under seven years of age or over 18 years of age shall be cared for in a therapeutic camp.~~

~~(b) No client shall be admitted to the camping program without having had a complete diagnostic study.~~

~~(1) The diagnostic study shall include clinical consideration of each of the following areas: psychological, _____ chronological age, developmental level, family, educational, social, and environmental.~~

~~(2) The diagnostic study shall be supplemented by the client's development and health history, behavior and interests, history of previous placements outside the natural home, reasons for placement, parent's or custodian's expectations of placement, and client's understanding of placement.~~

~~(c) A therapeutic camp shall not accept a client for care until an intake study has been made by the therapeutic camp staff and it has been determined that the placement meets the needs and best interests of the client and their family or custodian. If additional information is needed to complete the diagnostic study and to formulate a comprehensive treatment plan, additional assessments shall be begun within 24 hours after admission by the camp staff.~~

~~(1) A client shall not be accepted into the camp unless the client has had a medical and dental examination within 30 days prior to admission.~~

~~(2) The intake process shall include a discussion with the client and their family or custodian about placement and a visit to the therapeutic campsite.~~

~~(d) During the intake process, the therapeutic camp shall document the following in writing for each client: the individual(s) who shall have responsibility for financial support and for medical and dental care, including consents for medical or surgical care and treatment; arrangements for appropriate family or custodian participation in the program, phone calls and visits when indicated; arrangements for clothing, allowances and~~

gifts; and arrangements regarding the client's leaving the camp with or without the Director's consent. The rights and responsibilities of the client and their family or custodian shall be explained to them and documented in the client's record.

(e) Staff members who will be working with the client, but who did not participate in the initial assessment, shall be oriented regarding the client and the anticipated admission prior to meeting the client.

(f) Prior to accepting a client, the therapeutic camp shall have a written agreement with the referring source which specifies who will be responsible for planning for the client in the event placement must be terminated.

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-10; 143B-137;

Eff. March 1, 1979;

Amended Eff. March 3, 1981; April 30, 1980;

Transferred from T10.011 .0502; Eff. October 31, 1985;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0103 RECORDS AND REPORTS

A therapeutic camp shall maintain complete, accurate and current records on each client.

(1) A therapeutic camp shall maintain an organized record system for the collection and dissemination of information regarding clients admitted to the program, including:

- (a) a numbered unit record for each client which contains all information pertaining to their evaluation, treatment, progress and discharge;
- (b) a number control register for all case numbers issued;
- (c) a periodic review of records to assure that they are current and complete, each report identified as to client and case number, dated and authenticated, and that they meet therapeutic camp standards and requirements;
- (d) a master index of all clients served by a therapeutic camp; and
- (e) secondary records and indices as needed to meet the needs of camp administration and staff, i.e., diagnostic index, county index, referral index, etc.

(2) All information in the client's record shall be considered privileged and confidential and may be released only in accordance with guidelines established by the North Carolina General Statutes.

(3) Pre admission evaluations, examinations and referral diagnosis shall be documented and filed in the record.

(4) As soon as possible, but no longer than 30 days following admission, an individualized comprehensive treatment plan and goals which take into account the client's strengths and deficits, and an individualized education plan must be filed in the client's records.

(5) Entries during the period of service for the client shall include treatment and educational experiences provided and the client's response, specifically:

- (a) observations of response to individualized treatment goals and plans and individualized educational plan recorded with sufficient frequency to enable evaluation of their efficiency;
- (b) reports in the review, evaluation and possible change in the individualized treatment plan and individualized educational plan at least quarterly;
- (c) parent conferences;
- (d) record of services received, i.e., medication administration, medical or dental service, educational, etc.;
- (e) record of significant behavior incidents;
- (f) record of time away from camp;
- (g) update of any changing admission data;
- (h) appropriate authorization or consents;
- (i) correspondence; and
- (j) discharge planning.

(6) On discharge, a summary of total service shall be documented and filed in the record within 15 days. The summary shall include at least the following:

- (a) dates of admission and discharge;
- (b) diagnosis;
- (c) a brief recapitulation of pre admission evaluations and findings, treatment, and client's behavior at discharge;
- (d) specific arrangements and recommendations for future care and follow-up services.

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; Eff. March 1, 1979;

Amended Eff. March 3, 1981; April 30, 1980;

Transferred from T10.011 .0503; Eff. October 31, 1985;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0104 CLIENT TREATMENT AND DEVELOPMENT

(a) Intervention goals and plans for implementing the treatment and educational plans will be specified for each client and included in each client's record.

(1) The goals shall be stated in specific concrete, and measurable terms and will have time-framed limits regarding the date by which the goals will be met.

(2) The plan will be action oriented including who on the staff is to be responsible for the client to reach their goals and how the staff will act in order for the goals to be met.

TEMPORARY RULES

- (3) ~~Goals and plans will be written in cooperation with the client, their primary custodian, and the referral source.~~
- (b) ~~Intervention goals and plans will be reviewed at least every four months by the client's primary counselor and at least two other professional staff members, and the review will be documented in the record.~~
- (c) ~~A structured daily schedule of events will be established for client care.~~
- (1) ~~Each client will have available a daily change of clothing, including:~~
- (A) ~~clothing made available to be sufficient to keep the client warm in cold weather; and~~
- (B) ~~a change of clothing which shall include socks, underwear, and outer clothing.~~
- (2) ~~Each client shall be able to bathe once per day if they choose and shall be required to bathe every other day.~~
- (3) ~~Each client shall be required to brush their teeth once a day.~~
- (d) ~~A therapeutic camp shall comply with the rights of clients as determined by the North Carolina Department of Human Resources, United States Department of Health, Education, and Welfare and the North Carolina General Statutes.~~
- (1) ~~No physical punishment shall be permitted; other punishment shall not be used when positive reinforcement is an alternative.~~
- (2) ~~Meals shall not be denied as punishment.~~
- (3) ~~Physical or mechanical restraint shall be used only when necessary to protect clients from physical injury to self or others.~~
- (4) ~~Physical restraint shall not be employed as punishment.~~
- (5) ~~Seclusion, defined as the placement of a client in a locked room, shall not be employed.~~
- (6) ~~There shall be clearly written policies regarding visitation, mail, telephone calls, and other contacts between clients and their parents or custodian.~~
- (7) ~~Clients shall not be required to make public statements to acknowledge gratitude to the program or to perform at public gatherings for the sole purposes of raising funds.~~
- (8) ~~The camp shall forbid the transportation of clients in open bed trucks.~~
- (e) ~~All clients shall be able to receive emergency medical care by a physician, nurse, emergency medical technician, or a person who is otherwise duly certified, and all clients shall be within one hour of emergency medical treatment.~~
- (1) ~~A therapeutic camp shall have written policies and procedures for obtaining diagnosis and treatment of medical and dental care including emergencies.~~
- (2) ~~All clients shall have a medical and dental examination prior to admission to the program and at graduation from the program.~~
- (3) ~~A place for medical isolation shall be available at the program site.~~

- (4) ~~First aid supplies shall be immediately available to the camp group.~~
- (5) ~~Medication records shall include the medication given, the method used, the time, the dosage, and the name of the person administering the medication.~~
- (f) ~~All menus shall be approved by a dietician or shall comply with "Food for Fitness - A Daily Food Guide" developed by the U.S. Department of Agriculture.~~
- (g) ~~All clients shall have available a minimum of three meals per day.~~
- (h) ~~No client shall be discharged except to their parent or custodian or to a person who presents written authority from the parent or custodian or to an agency having legal authority for the client.~~
- (i) ~~All discharges shall include a written plan for action, including follow up by the program.~~
- (j) ~~A therapeutic camp shall meet all applicable federal, state, and local laws pertaining to the operation of the program.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; Eff. March 1, 1979;
Amended Eff. August 1, 1983; March 3, 1981; April 30, 1980;
Transferred from T10.011.0504; Eff. October 31, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0105 MONITORING AND EVALUATION

~~The funding agency for client service costs shall be the appropriate authority in all matters pertaining to these minimum standards and shall have the responsibility for collecting statistical information required by that agency and monitoring and evaluating the program and its respective clients.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; 143B-10(j); Eff. March 1, 1979;
Amended Eff. March 3, 1981;
Transferred from T10.011.0505; Eff. October 31, 1985;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0106 PERSONNEL

- (a) ~~A therapeutic camp shall have written personnel policies which shall be made available to all employees.~~
- (1) ~~Written job descriptions shall be available to employees specifying the person to whom they are responsible and what duties they are expected to perform.~~
- (2) ~~Clients in care shall not be used as employees. Clients in care are permitted to perform tasks for which they are paid if the tasks teach them responsibility and they are supervised.~~
- (b) ~~A designated, responsible person or persons shall be at a therapeutic camp at all times. The person so designated shall not be the only staff member assigned to, or responsible for, a camp group, but may be included in the staff-client ratio. This shall be clear in the written plans for staffing. The Director shall make available organizational charts and written plans for staffing to all camp staff.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; Eff. March 1, 1979; Amended Eff. March 3, 1981; Transferred from T10.011 .0506; Eff. October 31, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0107 STAFFING

~~(a) A therapeutic camp shall provide staff necessary to ensure the health and safety of the clients in its care. Camp staff shall meet the qualifications outlined in these standards:~~

- ~~(1) There shall be at least one counseling staff member on duty for every eight clients (ratio 1:8). Only counseling staff, counselor supervisor, and administrators may be counted in the staff client ratio. Volunteers and employees such as cooks, family workers, teachers, and secretaries shall not be included in the staff client ratio.~~
- ~~(2) If volunteers are used as counseling staff, they shall meet the same requirements as the regular counseling staff, but shall not be included in the staff client ratio.~~
- ~~(3) Staff shall be located so that at no time during waking hours will clients be out of sight and hearing of staff.~~
- ~~(4) During sleeping hours, staff shall be located so that no client will be out of voice range of staff.~~
- ~~(5) Tasks which conflict or interfere with counseling responsibilities shall not be assigned to counseling staff. Job descriptions and staff assignments shall show no conflicts in assignments to counseling staff.~~

~~(b) The hiring practices shall be in accordance with established guidelines as set forth by federal and state laws.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137; Eff. March 1, 1979; Amended Eff. March 3, 1981; Transferred from T10.011 .0507; Eff. October 31, 1985; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05E .0108 TRAINING

~~(a) The program shall provide training for all staff.~~

- ~~(1) A therapeutic camp shall provide orientation for all new staff, including:

 - ~~(A) the orientation for new counseling staff be presented in a structured program, the content of which shall be included in the written plans for staffing; and~~
 - ~~(B) the orientation for new counseling staff providing emergency and disaster procedures, job descriptions, and lines of authority and responsibility.~~~~
- ~~(2) At least 15 hours of inservice training shall be provided annually for all staff working with~~

~~clients. Specifically, the program shall ensure that:~~

- ~~(A) inservice training for camp directors, assistant camp directors, group work supervisors, group counselors, family workers, teachers, and educational coordinators be documented in the camp files. This shall include the date, the subject, method of training, and the name of the person who conducted the training. The content of training shall include helping staff understand the individual needs of clients, children's growth and development, and the meaning of separation to the client and the family or custodian; and~~
- ~~(B) A therapeutic camp offers conferences and special opportunities for training, with staff attendance documented in the camp files.~~
- ~~(3) A therapeutic camp shall provide supervision to the counseling staff enabling them to provide day to day guidance to the clients.~~
- ~~(4) First aid training is required for all counseling staff, specifically that:

 - ~~(A) first aid training received shall be documented in the camp files for all group counselors and their supervisors;~~
 - ~~(B) training shall be conducted by a certified instructor or a licensed health professional; and~~
 - ~~(C) first aid training shall be current. Certificates or statements of training shall document in the camp files that first aid training is updated every three years.~~~~
- ~~(5) Water activities training for staff shall include:

 - ~~(A) all group counseling staff and their immediate supervisors shall have successfully completed the basic rescue and water safety course, with certification documented in the camp files; and~~
 - ~~(B) a minimum of one adult certified in (a)(5)(A) of this Subsection shall be present at all times at all water activities.~~~~
- ~~(b) Written plans and procedures for meeting disasters and emergencies such as fires and severe weather shall be on file at a camp and available upon request. All staff members shall review these procedures for meeting disasters and emergencies, with documentation in each staff members personnel file.~~
- ~~(c) Written plans and procedures for water safety shall be on file at a camp and available upon request. All group counselors and their supervisors shall review these procedures for meeting all water activity emergencies, with documentation in their personnel file.~~

History Note: Authority G.S. 7A-289.13; 134A-8; 143B-10;

*S.L. 1981, c.1050, p. 1573;
Eff. March 1, 1979;
Amended Eff. August 1, 1983; March 3, 1981;
Transferred from T10.011 .0508 Eff. October 31, 1985;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05E .0109 ORGANIZATION AND ADMINISTRATION

- ~~(a) There shall be a governing body that is responsible for and has authority over a policies and activities of a therapeutic camp.~~
- ~~(b) The corporation shall state its purpose in the Articles of Incorporation.~~
- ~~(c) The corporation shall make available a copy of the Articles of Incorporation or Certificate of Incorporation for review by the appropriate funding agency. The appropriate funding agency shall be notified of any changes in the Articles of Incorporation or Certificate of Incorporation.~~
- ~~(d) The corporation shall provide the appropriate funding agency with a list of names, addresses, telephone numbers, and title of members of the governing body.~~
- ~~(e) Where lease of nonowned camp property is involved, there shall be a written agreement with the site owner regarding use and responsibilities for use of that site.~~
- ~~(f) The governing body shall be responsible for the program and standard of service of a therapeutic camp.~~
- ~~(g) The governing body shall review and approve all policies. Approval shall be recorded in the official minutes of the governing body.~~
- ~~(h) The governing body is responsible for ensuring that the program maintains compliance with the Department's "Minimum Standards for Eckerd Foundation Therapeutic Camps in North Carolina."~~
- ~~(i) The governing body shall meet as often as is necessary to ensure proper operation of the therapeutic camp and care of the clients.~~
- ~~(j) Minutes of each meeting of the governing body that relate to the operation of a therapeutic camp shall be filed with the funding agency.~~
- ~~(k) The governing body shall ensure availability of funds for the operation of the program and camp.~~
- ~~(l) The policies of a therapeutic camp shall be current and clearly written. Copies shall be made available to staff and shall include policies concerned with personnel, admission, child care, development, and training.~~
 - ~~(1) Copies of these policies shall be submitted to the appropriate funding agency.~~
 - ~~(2) Legal counsel shall be employed by the organization for the purpose of advising the governing body and the camp directors with regard to contracts, insurance, rules, policies, practices, and other legal matters.~~
 - ~~(3) When there are approved changes, copies of revised policies shall be submitted to the appropriate funding agency.~~
- ~~(m) The corporation shall maintain complete financial records. Books shall be audited annually by a certified public accountant. A copy of the accountant's statement of income and disbursements shall be available to the appropriate funding agency.~~
- ~~(n) Sufficient funds shall be available to ensure adequate care of clients and promote financial stability.~~

*History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137;
Eff. March 1, 1979;
Amended Eff. March 3, 1981;
Transferred from T10.011 .0509; Eff. October 31, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05E .0110 BUILDINGS: GROUNDS AND EQUIPMENT

- ~~(a) There shall be comprehensive liability insurance, in an amount agreed upon and specified in the contract between the Eckerd Foundation of Florida and the Department of Human Resources, that provides coverage to protect a therapeutic camp against suits brought as a result of alleged negligence including bodily injury liability and property damage liability.~~
- ~~(b) A therapeutic camp shall comply with state and local fire, health and safety laws, ordinances, and regulations.~~
 - ~~(1) A therapeutic camp shall request inspections and comply with the recommendations made to remedy any notices of violations issued by the agencies in this Rule. If there is a discrepancy between local and state regulations, the more stringent regulation will be followed.~~
 - ~~(2) The health inspection shall meet or exceed regulations set by local health ordinances where applicable.~~
- ~~(c) There shall be fire and extended coverage insurance, in an amount agreed upon and specified in the contract between the Eckerd Foundation of Florida and the Department of Human Resources.~~
- ~~(d) All sleeping units shall provide the following: cross ventilation; (space) 36 square feet per person; at least six feet between heads of sleepers; and at least 30 inches between sides of beds.~~
- ~~(e) A therapeutic camp shall provide bathing facilities with enough warm water for all in camp with a ratio of one shower head per 20 persons.~~
- ~~(f) Laundry services or equipment shall be available on site or nearby for all staff and clients.~~
- ~~(g) Gasoline, kerosene and flammable materials shall be stored in covered safe containers plainly labeled as to contents.~~
- ~~(h) Power tools shall have necessary safety devices and used according to manufacturer's instructions, maintained in good repair, and used only by those persons trained and experienced in their safe use.~~

*History Note: Authority G.S. 7A-289.13; 134A-8; 143B-137;
Eff. March 1, 1979;
Amended Eff. March 3, 1981;
Transferred from T10.011 .0510; Eff. October 31, 1985;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

SUBCHAPTER 05F - INSTITUTIONAL SERVICES POLICIES AND PROCEDURES

SECTION .0200 - SCHOOL ACCESSIBILITY

09 NCAC 05F .0201 STATE AND LOCAL AGENCIES

TEMPORARY RULES

~~(a) State or local agencies wishing to question or interview individual staff or students at a specific school shall obtain clearance for such inquiries with the school director or his/her designee. Such inquiries shall be reported to the Deputy Director for Institutional Services.~~

~~(b) The following persons may enter a training school campus without obtaining clearance required by this policy:~~

- ~~(1) Members of the North Carolina Congressional Delegation;~~
- ~~(2) Members of the General Assembly;~~
- ~~(3) Members of the Council of State;~~
- ~~(4) Members of Youth Services Advisory Committees;~~
- ~~(5) Secretary of Human Resources and his/her staff;~~
- ~~(6) Director of Youth Services and his/her staff;~~
- ~~(7) Members of the State and Federal Judiciary;~~
- ~~(8) Representatives of any agency granted an exemption from this policy by the Director of the Division of Youth Services or his/her designee.~~

~~(c) Upon arrival, all such persons shall notify the school director of their presence on campus.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0202 RESEARCH

~~(a) The staff of the Division of Youth Services shall engage in such projects as are deemed necessary for the evaluation of programs, and to find causes and new methods of identification, prevention, and rehabilitation of crime and delinquency.~~

~~(b) Surveys, questionnaires, or research projects shall not be initiated without the submission of a written statement of intent and purpose to the Division director for approval.~~

~~(c) Division policies and procedures with regard to the confidentiality of case material, described in Rule .0605 of this Subchapter, must be followed.~~

~~(d) All agencies or individuals wishing to conduct research in Division of Youth Services programs shall sign an "agreement to do research with the Division of Youth Services."~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0203 COMMUNITY INVOLVEMENT

~~(a) It is the policy of training schools to encourage the use of community volunteers in all programs to complement the staff. It is the responsibility of the school director to encourage the staff to identify and design roles for volunteer involvement.~~

~~(b) Volunteers are unpaid staff and are entitled to appropriate orientation and training. Staff shall be held accountable for imparting to volunteers the knowledge and skills they need to effectively carry out the tasks to which they are assigned.~~

~~(c) Volunteer Supervision. Supervision of volunteers shall be the responsibility of the training school staff to whom the volunteers are assigned. Volunteers working directly with students shall be closely supervised.~~

~~(d) Screening. Individual volunteers shall be carefully interviewed, references checked, and the name submitted to local law enforcement officials for clearance prior to being assigned responsibilities within the training schools.~~

~~(e) Pre service orientation training shall be provided by designated institution managers and required for all volunteers seeking work within a Division of Youth Services training school.~~

~~(f) The purpose of secondary screening is to provide the training school staff with an opportunity to determine whether or not the volunteer is suitable for the responsibilities to which he/she has been assigned.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0204 TOURS

~~(a) All persons or groups wishing to tour a Division of Youth Services' facility shall make appropriate arrangements with the school director or his/her designee.~~

~~(b) Tours of Division of Youth Services' facilities shall be arranged only for adult groups. No person under 18 shall be allowed to tour the facilities unless prior approval is given by the Deputy Director for Institutional Services.~~

~~(c) The number of visitors in a tour group shall be limited. All visitors shall be treated courteously. They shall be required to abide by all institutional rules and the instructions of the employee conducting the tour.~~

~~(d) The tour shall be conducted in a manner designated to protect the privacy and dignity of the students at the school.~~

~~(e) One or more employees designated by the school director shall be oriented for the purpose of escorting visiting groups through the school so that they may answer questions factually and intelligently.~~

~~(f) Visitors shall be taken on an official tour route approved by the school director in order to best explain the purpose and programs of the school.~~

~~(g) The school director shall keep a written record of all tours indicating the names of persons and groups, and the dates of the tours.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

SECTION .0300 - ADMINISTRATIVE POLICY

09 NCAC 05F .0301 ADMISSIONS

~~(a) Functions performed at Central Office:~~

- ~~(1) Prior to transporting a child to any training school, the admission must be approved by the Division of Youth Services admissions officer, located at the central office in Raleigh. The admissions officer shall discuss the admission with an Administrative Office of the Courts (AOC) counselor, to ensure that the following conditions exist:~~

~~(A) The admission is appropriate in that the child has been adjudicated delinquent, and that the correct statute~~

- number for each committing offense is noted on the commitment papers.
- (B) ~~The juvenile commitment order contains the required information that is listed on the Juvenile Commitment Order (AOC L Form 97C), which is available at the Juvenile Services Office of the AOC.~~
- (C) ~~The AOC counselor is aware that the following documents shall accompany the child to the training school:~~
- (i) ~~One copy of the commitment order, which must specify all specific statutes under which the child was committed and the "finding of fact";~~
- (ii) ~~One copy of the social history; and~~
- (iii) ~~One copy of the medical history, including a list of any currently prescribed drugs.~~
- (2) ~~If available, additional documents and materials shall be sent to the training school with the child at the time of admission. These include:~~
- (A) ~~Immunization records;~~
- (B) ~~School records, including school transcript, and individualized education plan and documentation of exceptionality, if present;~~
- (C) ~~DYS Insurance Authorization Form, which when duly signed by the child's parent or legal guardian authorizes the Division to release information for medical insurance payments;~~
- (D) ~~DYS Authorization for Medical or Surgical Treatment, which when duly signed by the child's parent or legal guardian authorizes the administration of medical and surgical procedures that are needed for diagnosis and treatment;~~
- (E) ~~DYS Certified Visitors for Youth Services Students, with which the court counselor certifies a list of members of the child's immediate family who are approved visitors; and~~
- (F) ~~Miscellaneous information, including family medical data, psychological reports, social security number, and a copy of the birth certificate, which is preferred for potential Vocational Rehabilitation clients:~~
- (i) ~~The three forms referenced in Subparagraphs (2)(C), (2)(D), and (2)(E) of this Rule are supplied to court~~
- counselors and AOC staff by training schools; and
- (ii) ~~Insofar as possible, court counselors shall send these forms to the training school along with the child at the time of admission.~~
- (3) ~~If the conditions stipulated in Subparagraph (a)(1) of this Rule are met, then the DYS admissions officer shall make a tentative assignment and the child may be transported to the appropriate training school.~~
- (4) ~~Upon making the tentative assignment, the admissions officer shall forward in writing the following information to the appropriate institution:~~
- (A) ~~The type of commitment under which the child is placed (i.e., definite or indefinite);~~
- (B) ~~The exact statute or statutes under which the child is committed;~~
- (C) ~~The maximum term for which the child may be committed;~~
- (D) ~~The date on which the commitment term begins (i.e., the date the court ordered the child to be committed).~~
- (5) ~~If the requested admission is a revocation of conditional release, the admissions officer shall initiate the following procedures:~~
- (A) ~~Determine the exact statute under which the child was originally committed;~~
- (B) ~~Insure that the original committing offense is a crime if committed by an adult so that the child may be legally committed to an institution;~~
- (C) ~~Determine the maximum term allowable under the statute for which the child was originally committed;~~
- (D) ~~Check the child's central office record to determine the amount of time which the child spent on the original commitment;~~
- (E) ~~Time spent on run status in determining this previous length of stay; and~~
- (F) ~~Length of stay shall be based upon the commitment data.~~
- (6) ~~A child's conditional release shall not be revoked and the child placed in an institution for a period longer than the difference between the maximum term allowed under the original commitment and the child's length of stay for that commitment unless the child is found to have committed a subsequent delinquent act by the court.~~
- (b) ~~Functions performed at training school:~~
- (1) ~~Each school's admissions officer shall thoroughly review the student's admission package in order to ensure that the following conditions exist:~~

TEMPORARY RULES

- (A) ~~That each commitment order contains the appropriate "finding of fact," and if the appropriate "finding of fact" is not present in the commitment order, then the student shall not be accepted for admission. Prior to refusing admission to a student for this reason, the institutional admissions officer shall contact the Division's central office admissions officer.~~
- (B) ~~That the child's admission package contains documents listed in Subparagraph (a)(1), Rule .0301 of this Subchapter, although only a complete commitment order is essential for the student's admission.~~
- (2) ~~Upon accepting a child for admission, the admissions officer shall complete a DYS Receipt of Custody Form, which is supplied by the training school. This form serves to document that the child is now in the custody of DYS, as well as indicating which documents, if any, are missing from the commitment package. The completed form is sent to the DYS Central Office Admissions Officer.~~
- (3) ~~Each institution is required to establish a file on each child that is admitted. This file must contain the following information:~~
- (A) ~~The exact statute or statutes under which the student is committed;~~
- (B) ~~The type of commitment (i.e., definite or indefinite);~~
- (C) ~~The maximum allowable time which the student can be held in an institution for the current commitment or revocation of conditional release;~~
- (D) ~~The commitment date;~~
- (E) ~~Run time, which must be logged in on a regular basis; and~~
- (F) ~~The maximum release date, updated as necessary.~~
- (4) ~~Other than run data, required information for the student file described in Subparagraph (b)(3) of this Rule is provided by the Admissions Confirmation form, which is completed by the Division's admission officer and mailed to the training school. This form is available at the Division's central office.~~

History Note: Authority G.S. 7A-652; 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0302 TRANSFER OF STUDENTS

~~(a) A request for a student transfer may be initiated by the student, the parent(s) or guardian(s), the court, the training school, or the DYS central office. A request may be made when~~

~~a student exhibits one or more of the following characteristics, behaviors, or problems:~~

- ~~(1) continually physically aggressive to staff and/or other students;~~
- ~~(2) exhibits suicidal tendencies or seems likely to inflict physical injury on himself;~~
- ~~(3) is a chronic runner;~~
- ~~(4) causes excessive property damage on or off the school grounds;~~
- ~~(5) commits offenses that generate negative reactions in the surrounding community.~~

~~(b) A request for transfer must be initiated at the originating training school through completion of the Transfer Summary Request form, available from the Deputy Director of Institutional Services' office.~~

~~(c) A hearing shall be held by the school director or his/her designee, to allow the student an opportunity to be heard and present evidence before being transferred. The student's reaction to the transfer will be documented and the minutes of the hearing will be placed in the student's record file.~~

~~(d) The Transfer Summary Request form along with the minutes of the hearing must be forwarded to the Deputy Director for Institutional Services.~~

~~(e) The Deputy Director for Institutional Services will either approve or disapprove the transfer request based upon a review of the minutes of the hearing and the Transfer Summary Request.~~

~~(f) If the requested transfer is approved, it shall be effected.~~

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0303 ORIENTATION

~~(a) Orientation shall serve to introduce incoming students to the training school system. Objectives include:~~

- ~~(1) Providing students with necessary knowledge for effective involvement in the treatment program;~~
- ~~(2) Familiarize students with the campus layout, rules, policies, and procedures;~~
- ~~(3) Introducing students to staff members and staff responsibilities and functions.~~

~~(b) During the day formal, recurring classes shall explain the operation of the behavioral treatment program(s), provide for campus tours and introductions to staff members, and teach information on hygiene, cottage life rules, and student rights and privileges, especially due process rights.~~

~~(c) Less formal orientation activities shall provide students with group counseling experiences, recreational opportunities, and peer group relationships.~~

~~(d) Interviews/Assessments shall be scheduled and begun with the social worker, psychologist, nurse, educational staff and others as deemed appropriate by the designated cottage parent.~~

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

SECTION .0400 - ASSESSMENT AND SERVICES

09 NCAC 05F .0401 GENERAL PROVISIONS

~~(a) Assessment is designed to thoroughly evaluate the needs and capabilities of each incoming student. Evaluations begin upon admission to the training school and must be completed within two weeks. Their purpose is to provide information essential for the development of the student's Individualized Treatment Plan and Individualized Education Plan.~~

~~(b) During this two week period, educational, general health and medical, vocational, behavioral, and psychological assessments shall be conducted by the appropriate personnel.~~

~~(c) Exceptions will be made for students who have received adequate assessments within one year of their commitment date to DYS.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0402 ASSESSMENTS

~~(a) General Health and Medical.~~

~~(1) A complete assessment of each student's physical health shall be done within one week of admission. This physical examination shall be performed by the school physician and shall include a clinical evaluation.~~

~~(2) Upon the student's admission, the school nurse shall perform an intake physical which will include the following:~~

- ~~(A) Visual screening, audiometric, height, weight;~~
- ~~(B) Student and family medical history;~~
- ~~(C) Urinalysis;~~
- ~~(D) Hematocrit;~~
- ~~(E) Tuberculosis screening;~~
- ~~(F) Mantoux Test (Intermediate PPD);~~
- ~~(G) Chest x ray at local health department if skin test is positive;~~
- ~~(H) VDRL;~~
- ~~(I) Vaginal smears for all female students; and~~
- ~~(J) Routine adult TB vaccine.~~

~~(3) Each student shall be immunized according to North Carolina state law and in accordance with the recommended schedule from the Division of Health Services:~~

- ~~(A) A search of medical records available from the child's family or guardian shall be conducted to determine each student's immunization needs. Local physicians and health departments and parents may be consulted. The immunization program within the Division of Health Services may also provide assistance; and~~
- ~~(B) If no immunization record is available after the records search, the student shall be immunized. All females shall receive a HI Test for German Measles antibodies.~~

~~(4) Upon each student's admission, the nurse shall assess the student's dental health and refer him~~

~~to the school dentist for routine maintenance and repair, cleaning and replacement where necessary.~~

~~(b) Vocational. A Vocational Counselor shall administer a vocational interest test and conduct an informal interview with each student to determine his vocational interests.~~

~~(c) Behavioral:~~

~~(1) Cottage parents shall carefully observe the new student's behavior. One day shift and one night shift parent shall complete the Behavior Rating Scale based on his observations.~~

~~(2) The social worker shall determine the student's delinquency index and in conjunction with the treatment team conduct an adoptive behavior evaluation.~~

~~(d) Psychological. Psychodiagnostic screening shall be conducted by a psychologist. Psychological services provided to the students in the orientation or assessment phase shall include:~~

- ~~(1) Administering psychological tests;~~
- ~~(2) Interpreting and organizing assessment results;~~
- ~~(3) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;~~
- ~~(4) Consulting with other staff members in planning individualized treatment plans and individualized educational plans to meet the individual or special needs of students;~~
- ~~(5) Screening and identification of students with special needs.~~

~~(e) Psychiatric. The contracting psychiatrists are available for consultation and essential medical prescriptions for students with special needs.~~

~~(f) Educational. The educational staff shall administer an intellectual achievement test, conduct speech, visual, reading, and auditory screening and give a dictation exercise.~~

~~(g) Special Needs Identification.~~

~~(1) A basic screening battery of tests shall be given in order to observe and identify students who have potential need for special educational services. Identification of students in each special needs category shall be done pursuant to criteria established by the Department of Public Instruction in 16 NCAC 2E .1500; and~~

~~(2) Students with special needs shall be provided with appropriate special education.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0403 SERVICES

~~(a) Behavior Program. In order to develop desirable behaviors so that students behaviors after release will be appropriate for society and the community to which he/she returns, each school will develop behavioral programs that have the following attributes:~~

~~(1) Students will be rewarded in a specifiable manner for appropriate institutional behaviors and for meeting personal objectives;~~

- (2) A code of conduct, clearly communicated to students, will identify infractions and specific consequences;
- (3) Relationships, behaviors, and interactions among students and staff that have habilitative significance will be modeled by staff and reinforced in students;
- (4) Attitudes, expectations, and behaviors that positive self-concepts of students will be reinforced and supported by staff.

(b) Treatment Implementation.

(1) Treatment Team

(A) Upon completion of the orientation assessment phase, each student shall be assigned to a treatment team responsible for monitoring and coordinating the student's progress through the behavioral treatment program and for developing and implementing his individualized treatment plan.

(B) The treatment team shall be responsible for the following:

- (i) Establishing specific behavioral objectives or special projects and criteria for measuring satisfactory performance;
- (ii) Determining the appropriate level or mode of counseling and other therapeutic services; and
- (iii) Monitoring progress through the program for each student on an individualized basis.

(C) At a minimum, the treatment team shall be composed of a social worker, the appropriate cottage counselor(s), and teachers.

(D) Social workers shall function as team leaders and may be assigned to a number of teams within their cottage or unit. If resources permit, cottage counselors and teachers shall serve on only one team.

(E) The number of students assigned to any one team shall not exceed 20 persons.

(F) All treatment planning and specific goal setting shall be done with full participation and input of the student for whom the plan is developed.

(G) Each student shall have an individualized treatment plan developed and written by his/her treatment team and maintained by the team's coordinating social worker.

(2) Individualized Treatment Plan

(A) The treatment plan shall address treatment needs in behavioral,

emotional, physical, and any other area indicated by the results of the assessment completed during orientation. The plan shall be complementary to and consistent with the student's academic and vocational needs as reflected in his/her individualized education plan.

(B) The treatment plan shall include but is not limited to the following:

- (i) A statement of the student's strengths and weaknesses;
- (ii) An explanatory statement of what is considered satisfactory behavior for each behavioral objective;
- (iii) Specific, measurable behavioral objectives for long and short term goals in the treatment plans;
- (iv) A statement of all therapeutic intervention strategies to be utilized, what they are expected to accomplish, and the person(s) responsible for carrying them out; and
- (v) Progress notes that reflect the effectiveness of the plan.

(C) The treatment plan shall be subject to periodic review by the treatment team and change if the team determines that such is indicated by ongoing assessment of and progress by the student.

(c) Counseling Services.

(1) Diagnostic, clinical, individual and group counseling services shall be provided to each student in need of such services by professional or trained staff with professional supervision and consultation;

(2) Counseling services shall begin during orientation and continue until the student is released. Such services shall be integrated into all phases of the treatment program; and

(3) Counseling services shall include but not be limited to the following areas: medical, educational and vocational, psychological, and social services:

(A) Students with special needs shall receive individual or group psychotherapy upon referral in addition to all other services legally mandated; and

(B) Students assigned to alternative therapeutic intervention programs shall continue to receive all necessary and appropriate counseling services during their assignment.

(d) Individualized Educational Plan.

- (1) During the student's first week of enrollment after orientation, the school's designated examiner shall administer a battery of educational screening tests which identify the student's present level of educational functioning. The designated examiner shall describe in writing the results of the tests.
- (2) Based on the results of the educational screening tests, the treatment team shall develop an Individualized Education Plan which includes the following:
 - (A) Identification of those educational services required to meet the student's needs;
 - (B) Assignment of responsibilities for provision of the educational services; and
 - (C) Preparation of a timeline for delivery of these services.
- (3) The developed Individualized Education Plan must be approved by the treatment team.
- (4) The Individualized Education Plan must be kept in the school principal's office and held available for inspection and review by authorized persons.
- (5) Prior to beginning instruction, each teacher shall thoroughly review and Individualized Education Plan for each student assigned to him/her. Based on this review, the teacher shall:
 - (A) Develop an inventory of the students' skills; and
 - (B) Prepare a written plan of action that is individualized for the student.
- (6) Individualized instruction provided by the teacher shall be based on the individualized plan of action.
- (7) Every two months, the treatment team shall review and update if necessary, the individualized education plan of each student assigned to it.
- (8) Any changes in the Individualized Education Plan must be incorporated by the individualized plan of action by the student's teacher.
- (9) The steps described in Subparagraphs (d)(7) and (d)(8) of this Rule must be continued until release of the student from institutional care is recommended.
- (10) Any student 14.8 years of age or older who, in the professional judgment of the training school staff, would benefit from vocational rehabilitation services shall be referred to the vocational rehabilitation counselor for diagnosis, evaluation and counseling, training and placement, so as to receive prevocational or vocational instruction necessary for growth toward employable adulthood.

(e) Socialization.

- (1) The primary treatment goal shall be to educate or train students to function better in society. Socialization objectives include:
 - (A) Providing viable role models for students;
 - (B) Increasing student self esteem;
 - (C) Improving student problem-solving and decision-making skills;
 - (D) Helping student develop appropriate interpersonal skills; and
 - (E) Providing appropriate values and general moral guidance.
- (2) To further reinforce the socialization process and encourage a sense of community, treatment services shall be delivered in an environment that is socially, psychologically, and physically supportive of treatment goals.
 - (A) Students shall be entitled to a room with an attractive decor that reflects ownership to the extent that fire and safety codes permit;
 - (B) Each staff member shall provide positive social models with firm, fair, and consistent behavior;
 - (C) Overall community social reinforcements shall be introduced to the campus by having students and staff greet each other when meeting as a means of increasing self esteem and strengthening self identity and practicing courteous communications to visitors.
- (f) Treatment of "Special Needs". Students identified as children with special needs shall receive treatment and placement in accordance with the definitions and procedures defined in the Department of Public Instruction Code 16 NCAC 2E .1500, Rules Governing Programs and Services for Children with Special Needs. Special emphasis shall be placed upon those practices that shall ensure non-differential treatment and placement for students with special needs.

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

SECTION .0500 - CUSTODY TREATMENT GOALS AND OBJECTIVES

09 NCAC 05F .0501 GENERAL PROVISIONS

Students shall be humanely contained in the training school system in the least restrictive but most effective manner in order to achieve the following custodial objectives:

- (1) To minimize runaways;
- (2) To maintain the safety and security of buildings and grounds;
- (3) To protect the physical safety and well-being of staff and students;
- (4) To maintain appropriate and effective discipline and control; and

- (5) ~~To provide a sense of structure and predictability for students.~~

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0502 SUPERVISION

- (a) ~~Students shall be supervised 24 hours per day whether on or off campus. Each staff member shall be accountable for the location and behavior of all the students in his charge.~~
- (b) ~~Students shall remain in groups when being moved across campus. Exceptions to this policy may be made at the discretion of the school director or his designee.~~
- (c) ~~All staff members shall confront any student they see without staff supervision to determine if that student has permission to be unsupervised.~~
- (d) ~~Staff sending students to other areas or buildings shall be responsible for assuring that those students reach their assigned destinations. The staff that the student has permission to see shall be called before the student is released for the appointment.~~
- (e) ~~Staff releasing students from cottage, class, work assignment, or other activities, shall notify receiving staff of the whereabouts of any student normally with the group, but having an excused absence.~~
- (f) ~~Under no circumstances shall students be left in an unsupervised cottage.~~
- (g) ~~Cottage counselors shall be responsible for insuring for all students under their supervision, that they are appropriately dressed.~~
- (h) ~~Cottage staff shall be responsible for staying in their assigned area during their entire duty period. Appropriate time shall be spent on inspecting all sections of their duty station.~~
- (i) ~~The use of profanity or vulgar language to or in the presence of students is prohibited.~~
- (j) ~~Students, either in groups or individually, shall not be taken off campus without the permission of the school director or his designee.~~
- (k) ~~Students taken off campus shall be given adequate supervision. The number of staff required to assure adequate supervision for any given instance shall be determined by the school director or his designee. A staff member shall be with students at all times to insure that their conduct is acceptable.~~
- (l) ~~Night checks must meet the following criteria:~~
- (1) ~~Night checks include but are not limited to insuring that each student is in his own bed and that all exterior doors are locked;~~
 - (2) ~~Staff on duty during student's sleeping hours shall check on sleeping students every 30 minutes, or more often as per procedures of the institutional services policy manual; and~~
 - (3) ~~Night checks shall be conducted in the least disruptive manner. Night staff shall use flashlights so that ceiling lights will not be necessary and the student's sleep will not be disturbed.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 5, 2002.

09 NCAC 05F .0503 STAFF AND STUDENT RELATIONS

- (a) ~~Staff members shall not accept gifts or gratuities from any student, relative or friend of a student, or any person who has or expects to have business dealing with a school, the Division of Youth Services, or the Department of Human Resources.~~
- (b) ~~Employees shall immediately report any offers of gifts to the school director or his designee.~~
- (1) ~~An offer of such a gift, tip, or gratuity shall be declined and reported to the school director or his designee.~~
 - (2) ~~Acceptance of a bribe, gift or gratuity by a staff member shall be grounds for dismissal as well as prosecution.~~
- (c) ~~No staff member shall take a student into his/her home for any reason or for any amount of time without receiving prior written approval from the school director or his/her designee. A volunteer who is not an employee of Youth Services may take a student into his/her home or to off-campus activities only with prior written approval from the school director or his/her designee.~~
- (d) ~~Staff members shall not socialize with students on an off duty basis unless that staff member is participating in an approved volunteer activity. Any staff member who learns of unauthorized off-campus socializing between other staff and students shall immediately notify the school director or his/her designee of such conduct.~~
- (e) ~~Staff members shall not solicit any type of personal services from students. However, students in vocational shops shall be permitted to perform certain services for employees as a part of their vocational training provided such projects are compatible with the vocational curriculum of the students and meet the following criteria:~~
- (1) ~~All projects shall be approved by the vocational instructor and school principal;~~
 - (2) ~~All materials or parts shall be provided by the employee;~~
 - (3) ~~Employees who avail themselves of such services do so at their own risk. The Division and the school disclaim any responsibility for the quality of the work or damages to the property involved;~~
 - (4) ~~Fifty percent of the project fee shall be paid to the student or students and 50 percent shall be placed in the student welfare fund. In formulating the fee, consideration shall be given to the prevailing rates in the community for such services so that the charge can in no way be construed as exploitative of students.~~
- (f) ~~Employees shall not give, sell or otherwise provide any controlled substance, alcoholic beverage to students. The purchase of any controlled substance or alcoholic beverage for students is also prohibited.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0504 DISCIPLINE

~~(a) Appropriate and effective discipline and control are essential to rehabilitation. Consequences for violations of proper conduct must be humane, reasonable, graduated and predetermined. All consequences must be communicated to all students during orientation.~~

~~(b) Violations which endanger the safety and property of students and staff or the State of North Carolina will be treated as major infractions. These include, but are not limited to, assault, possession or use of controlled substances, theft, sexual acts, arson, escape, vandalism.~~

~~(c) Violations which are not violations of law but nevertheless constitute a serious threat to the living or learning environment of a training school will be treated as moderate infractions. These include, but are not limited to, fighting, leaving an assigned area without permission, use of profane and abusive language, encouraging misconduct of others visitation rules, self mutilation, and failure to follow specific staff instructions.~~

~~(d) Violations which are nuisances or disrupt or impede student growth and development will be treated as minor infractions. These include, but are not limited to, littering, malingering, failure to follow established procedures, improper dress, and tardiness.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

**SECTION .0600 - STUDENT RIGHTS:
RESPONSIBILITIES: AND PRIVILEGES**

09 NCAC 05F .0601 GENERAL PROVISIONS

Insofar as possible, students shall not be subjected to personally degrading, embarrassing, or potentially harmful experiences. Language which is personally insulting or degrading, work assignments without purpose, or any kind of physical abuse shall be prohibited.

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0602 RIGHTS OF ALL STUDENTS

All students, while in the custody of the Division of Youth Services, have the following specific rights and freedoms:

- ~~(1) Freedom of speech and self expression insofar as it does not impinge upon the rights and safety of others or disrupt educational or treatment programs;~~
- ~~(2) Unrestricted access to private counsel;~~
- ~~(3) Freedom of religion;~~
- ~~(4) The right to privacy except in situations where the student may be a threat to self or others;~~
- ~~(5) The right to possession and ownership of personal belongings which have been approved by the school director or his/her designee;~~
- ~~(6) Freedom from racially biased decisions;~~
- ~~(7) The rights to visitation privileges, mail, and telephone services which are described in~~

~~detail in the school's student handbook, which is given to each student during orientation;~~

- ~~(8) The right to the use of grievance procedures and due process described in detail in the school's student handbook;~~
- ~~(9) The right to a safe and human environment; and~~
- ~~(10) The right to necessary treatment.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .0603 RIGHT TO COMMUNICATION

~~(a) Students have the right to communicate or correspond with persons or organizations and to send and receive letters and packages. Books, periodicals and any other materials that can be lawfully mailed may be received by students at the discretion of the school director or his/her designee.~~

~~(b) Student's letters or phone calls will not be censored, read, or restricted.~~

~~(c) Students may be required to open incoming and outgoing mail in the presence of a staff member. If contraband is discovered, it shall be removed. Any illegal items or items which threaten the security of the institution, or safety of students and staff, will be considered contraband.~~

~~(d) Cash, checks, or money orders received in the mail in amounts exceeding five dollars (\$5.00) shall be turned over to the staff and credited to the student's account. Two staff members shall sign a receipt for the money, to be filed with the money. A copy of the receipt must be given to the student.~~

~~(e) Students may send mail directly to, and receive mail from any federal, state or local court, the Director of the Division of Youth Services, the Secretary of the Department of Human Resources, members of the General Assembly, the Governor, attorneys, or court counselors. Correspondence of this type must not be reviewed or limited in any way.~~

~~(f) The following points apply to correspondence between students and the Director of the Division of Youth Services:~~

- ~~(1) A letter written by a student to the Director must not be censored, opened for any purpose, delayed, or stopped by a staff member. The student shall be permitted to mail the letter personally or may choose to be given a signed receipt by the staff member who receives the mail from students. The receipt shall show the name of the student, the date the letter was received by the staff member, the name of the staff member, and a statement that the letter was addressed to the Director of the Division of Youth Services;~~
- ~~(2) Acknowledgement of the receipt of such a letter in the central office of the Division of Youth Services must be sent to the student within 72 hours of the arrival of the letter.~~

~~(g) The school director shall insure that each new student is informed of this policy during the student's initial orientation to the institution.~~

History Note: Authority G.S. 134A-20; 143B-10;

Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0604 RELIGIOUS POLICIES

- (a) Program planning shall provide the individual student with the opportunity for spiritual development while in training school.
- (b) No consideration shall be given to a student's church attendance or lack of church attendance in the granting or withdrawing of student privileges.

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0605 CONFIDENTIALITY RIGHTS

- (a) Records.
 - (1) All staff of the Division of Youth Services and associated institutions shall adhere strictly to the legally prescribed level of confidentiality stated in G.S. 7A-675 (f), in order to ensure protection of students' rights.
 - (2) In accord with G.S. 7A-675 (f) all requests for information, records, and files of students currently or formerly enrolled in training schools must be denied, except for requests by the juvenile, or Division of Youth Services staff who are providing direct services to the juvenile, and the court counselors.
 - (3) Any other release of records or files of a juvenile must be stipulated by court order or so authorized by the judge who authorized the commitment.
 - (4) Upon receipt of a court order for access to the student's records, the school director or his/her designee shall notify the Deputy Director for Institutional Services.
 - (5) An attempt must be made to locate the student whose records are being requested to inform him/her of the law enforcement agency's actions. This notification will allow the student to contest the issuance of a court order to disclose the records.
 - (6) As required, in part, by G.S. 148-49.13 the Division of Youth Services cooperate with the State Department of Correction in supplying or verifying information helpful for diagnosis, classification and program planning for youthful offenders. This requirement of G.S. 148-49.13 is incorporated by reference into these Rules, in accordance with G.S. 150B-14(c).
 - (7) The school director shall not release student records to any unauthorized person requesting access to the records. The school director or his/her designee shall notify the Deputy Director for Institutional Services immediately of any unauthorized requests for or attempts to gain access to student records for any purposes.

- (8) Student Records. No information relating to Division of Youth Services students shall be released to the news media or to any other agency or person without the permission of the student or his/her legal spokesman, parents, or guardian. Disclosure of information relative to specific public assistance applicants or recipients, except for purposes directly connected with the administration of the public assistance program, is prohibited by G.S. 108A-73 or 108A-80.

- (9) Any questions pertaining to the release, or a request for release of students records or files shall be referred in writing to the Deputy Director for Institutional Services and then to the Office of the Attorney General for appropriate resolution. Written opinions or suggestions from the Office of the Attorney General will be strictly followed by staff of the Division of Youth Services and its institutions.

- (b) Fingerprinting and photographing:
 - (1) Fingerprinting or photographing of students for identification purposes by staff members is prohibited.
 - (2) No person, who is not a parent or legal guardian of a student, who visits, tours, or inspects a Division of Youth Services' training school shall fingerprint or photograph that student without the consent of the facility director.

History Note: Authority G.S. 108B-45; 108A-73; 108A-80;
134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0606 STUDENT MONEY MANAGEMENT

- (a) Students are permitted to carry with them a total of up to five dollars (\$5.00). Any amount over five dollars (\$5.00) shall be placed in the individual student's account. The student may withdraw up to five dollars (\$5.00) per week for miscellaneous items.
- (b) Students must be given a full receipt for all funds placed in their individual accounts.
- (c) Parents shall be informed concerning procedures for sending money to their children. All funds accepted from parents must be in the form of checks or money orders.
- (d) A special account, in the nature of a trust fund, must be established for the student's earnings, and reasonable rules must be established for periodic withdrawals, expenditure and release of the entire amount when DYS supervision is terminated.

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0607 ROLE OF STAFF STUDENT ADVOCATES AND REPRESENTATIVES

TEMPORARY RULES

~~(a) Each school director shall appoint a sufficient number of staff members from each school to serve as student advocates.~~

- ~~(1) Names of student advocates shall be posted in all cottages;~~
- ~~(2) Staffing on various shifts shall be considered in the selection of advocates;~~
- ~~(3) Any advocate may appeal any action taken against the advocate due to his/her advocacy role to the Deputy Director for Institutional Services or may pursue the Department of Human Resources' Grievance Procedures, which shall be available upon request from the office of the training school's director.~~
- ~~(4) The advocate's role shall be:
 - ~~(A) To assist the student in the identification and resolution of any grievance;~~
 - ~~(B) To complete and forward the grievance form; and~~
 - ~~(C) To represent the student at any grievance hearings.~~~~

~~(b) Each cottage shall elect one student to serve a student representative. Students shall have the option of using the student representative or the staff student advocate in any grievance procedure.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0608 STUDENT GRIEVANCE PROCEDURE

~~(a) The following steps shall be used in the process which begins with the formulation of the grievance and continues until the final resolution of a grievance. The student shall communicate orally any grievance or problem to any staff member serving as student advocate or to a student representative. The student advocate or student representative shall carry out the following sequence of steps:~~

- ~~(1) Document the grievance by completing a grievance form. This form specifies information describing the grievance from the student's perspective.~~
- ~~(2) The student representative or student advocate shall try to resolve the grievance by serving as a mediator between the student and appropriate staff at the training school:
 - ~~(A) If the grievance is resolved to the satisfaction of the student, this shall be noted on the grievance form, as well as any changes affecting the student as part of the grievance resolution;~~
 - ~~(B) The grievance form must then be signed by the student and forwarded to the Director of the training school. A copy of the grievance form must be placed in the student's file.~~~~

~~(b) If the grievance is against the Director of the training school, the Deputy Director for Institutional Services shall assume the~~

~~responsibilities of the training school director with respect to resolution of the grievance, as described in Paragraphs (c) through (f) of this Rule.~~

~~(c) If the grievance is not resolved to the satisfaction of the student, the school director shall appoint an ad hoc committee within one working day after failure to resolve the grievance.~~

- ~~(1) The ad hoc committee must consist of:
 - ~~(A) Three adults, including two school staff, but not the advocate representing the student, and one representative from outside the school; and~~
 - ~~(B) Two students, one of which must be a student representative.~~~~
- ~~(2) The ad hoc committee shall hear the grievance with the student and his/her advocate in attendance. In hearing the grievance, the committee shall review available information and then attempt to resolve the grievance.~~
- ~~(3) Within 72 hours of hearing the grievance, the committee shall submit in writing its recommendations to the school director.~~

~~(d) If the recommendations of the ad hoc committee resolve the grievance to the satisfaction of the student, this will be stated on the grievance form, and the form shall be forwarded with the committee recommendations to the school director.~~

~~(e) If the recommendations of the ad hoc committee do not resolve the grievance to the satisfaction of the student, then the school director shall hold a hearing consisting of testimony by the following parties:~~

- ~~(1) the student;~~
- ~~(2) the student advocate or the student representative; and~~
- ~~(3) other persons having knowledge or information relevant to the grievance.~~

~~(f) The school director shall reach a decision or resolution within five working days of the hearing. The decision will be immediately communicated to the student and documented in writing.~~

~~(g) If the grievance is not resolved to the satisfaction of the student, the student may appeal to the Director of Youth Services.~~

- ~~(1) The student advocate shall initiate the appeal by sending a copy of the grievance form and the ad hoc committee report to the Director of the Division of Youth Services along with a written statement indicating that the grievance is being appealed.~~
- ~~(2) The Director of the Division of Youth Services may use division or training school staff as well as other resources to obtain additional information and to resolve the grievance.~~
- ~~(3) Upon receiving formal notification of the appeal, the Director shall have five working days in which to resolve the grievance or reach a decision concerning the student's grievance.~~

~~(h) After the Director of Youth Services has either resolved the grievance or determined that resolution satisfactory to the student is not possible, the school director shall:~~

- ~~(1) Review the grievance form and the Director of Youth Services' decision with the student, the~~

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~~student's advocate, or the student representative; and~~

- ~~(2) Sign the grievance form, request that the student sign the form indicating receipt of the decision and place the form in the student's treatment file.~~

~~(i) If the student is not satisfied with the decision, the student may initiate a contested case hearing pursuant to 10 NCAC 2B .0200 and G.S. 150B.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0609 CORPORAL PUNISHMENT AND CHILD ABUSE

~~(a) Corporal punishment and child abuse are prohibited under any and all circumstances.~~

~~(b) Corporal punishment and child abuse include:~~

- ~~(1) Slapping, pinching, kicking, arm twisting, hair pulling, or any other act intended to result in physical pain to the student. This includes standing in line for long periods, cold tubbings, hosings, or any prolonged action which may cause great physical discomfort;~~
- ~~(2) Any measure which degrades the student, such as shaving the head, marking the body, or requiring the student to wear striped or clothing designated as a mark of degradation or shame;~~
- ~~(3) Forcibly laying hands on a student other than in self defense or to prevent escape or harm from the student, or to gain control of a student when all other measures have failed;~~
- ~~(4) Use of violent, profane, or abusive language;~~
- ~~(5) Any other action on the part of an employee toward a student intended to be injurious, including deliberate neglect, or failure to respond to the student's respective needs.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

SECTION .0700 - STUDENT HYGIENE

09 NCAC 05F .0701 GENERAL PROVISIONS

~~(a) Students shall be permitted to wear personal clothing; parents may be encouraged to furnish clothing.~~

~~(b) State furnished clothing shall be labeled as such in a non-visible place. Personal clothing shall be labeled as such to safeguard its use by the owner.~~

~~(c) Students shall wear their own clothing. Lending or borrowing articles of personal wear is prohibited, for reasons of security.~~

~~(d) Staff members shall insure that students practice acceptable daily personal hygiene.~~

~~(e) Students shall be provided soap, towels, deodorant, toothbrushes, toothpaste, combs, toilet paper, and other comfort items and articles of body hygiene.~~

~~(f) Students shall be required to bathe at least once a day and after strenuous activity.~~

~~(g) Periods of rest and sleep appropriate for the age of the student shall be provided. Students shall not be put to bed early for the convenience of staff. Under no circumstances shall students be allowed a sleep period of less than eight hours per night unless specifically approved for a special event by the school or director or his designee.~~

~~(h) Students shall be fed three nutritious meals per day, according to the standards established by the state. No more than 14 hours shall elapse between the evening and the morning meals.~~

~~(i) Students shall be provided the opportunity for appropriate exercise. This shall include at least one hour of physical exercise a day except when a student may pose a risk for himself or others.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0702 STUDENT ATTIRE

~~(a) Clothing and footwear provided to students shall be in keeping with acceptable community standards and shall be designed to enhance the student's feelings of self worth and dignity.~~

~~(b) Each school shall establish written guidelines for student dress and hair styles that are in keeping with acceptable social standards and customs.~~

~~(c) Students shall be encouraged to assume responsibility in selecting, from among their own clothing, and wearing appropriate dress for individual needs.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0703 PHYSICAL HEALTH

~~The training school system shall encourage lasting health habits through appropriate information giving, supervision and daily practice. Health objectives include:~~

- ~~(1) Meeting nutritional needs of students;~~
- ~~(2) Providing appropriate medical care;~~
- ~~(3) Providing effective health education programs; and~~
- ~~(4) Providing regular physical exercise.~~

History Note: Authority G.S. 134A-8; 134A-20;

Eff. February 1, 1986;

Temporary Repeal Eff. July 15, 2002.

SECTION .0800 - CAMPING PROGRAM AND RECREATION

09 NCAC 05F .0801 GENERAL PROVISIONS

TEMPORARY RULES

- (a) ~~Unless restricted for health or security reasons, all students shall be allowed to engage in supervised outdoor recreation in an appropriate area on a daily basis, weather permitting.~~
- (b) ~~All schools shall provide an outdoor recreational area where security and visual supervision can easily be maintained.~~
- (c) ~~When outdoor recreational facilities are not available, all facilities shall provide a reasonable period of time each day for students to engage in indoor physical exercise.~~
- (d) ~~Arts and crafts supplies, books, current magazines, games, and other indoor recreational materials shall be made available for the students' use in each training school.~~
- (e) ~~Recreational programs shall be designed to provide students with appropriate interaction with the community. This can be accomplished by bringing volunteers and community members to the institutions and by taking students into the community for appropriate recreational activities.~~

History Note Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0802 INTER-SCHOOL RECREATIONAL ACTIVITIES

- (a) ~~All inter-school recreational activities shall be subject to review and approval by the Deputy Director for Institutional Services.~~
- (b) ~~Each school shall provide at least one staff member for each 10 students or a portion thereof. Supervision of females shall be provided by at least one female staff member and supervision of males shall be provided by at least one male staff member.~~
- (c) ~~Prior to departure from the campus, the school director or his/her designee shall appoint one staff member to be in charge of the trip.~~

History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0803 MINIMUM STANDARDS FOR CAMPING ACTIVITIES

- (a) ~~Camping activities shall be structured and supervised as low to medium stress challenge. No participants shall engage in high stress challenge activities nor shall an element of surprise be used to bring about high stress challenge in the camping program.~~
- (b) ~~The camping program consists of ten week sessions. The maximum number of student participants shall not exceed 20 per session. The first four weeks shall be spent in pre-camp classes; the last six weeks shall be spent in the wilderness.~~
- (c) ~~Following the six week wilderness experience, the program staff shall determine whether the student participant is to be discharged from the program to his/her home community or referred back to the treatment team for further evaluation and treatment.~~
- (d) ~~Prior to each outdoor activity, the program director shall develop a written plan of activity objectives. Prior to the onset of that activity, the supervising staff shall stop and review the plan with the students and consider the following:~~
- (1) ~~Current weather condition;~~
 - (2) ~~Mood of the group;~~
 - (3) ~~Conditions of counselors; and~~

- (4) ~~Condition of equipment on hand.~~

(e) ~~Any counselor involved in supervising an activity shall call for termination of that activity when he/she determines the activity to be in any way unsafe.~~

(f) ~~Within the first year of employment, all direct camp program staff shall receive the following training:~~

- (1) ~~Basic training for youth correctional officers as required by the Division of Youth Services;~~
- (2) ~~Basic first aid course and preventive intervention techniques as required by the Division of Youth Services;~~
- (3) ~~Advanced rescue and water safety;~~
- (4) ~~Advanced first aid course including C.P.R.;~~
- (5) ~~Basic canoeing through the Red Cross;~~
- (6) ~~Basic paddler through the American Canoeing Association;~~
- (7) ~~Basic mountain rescue technique;~~
- (8) ~~Basic instructors seminar in climbing and rappelling; and~~
- (9) ~~Winter camping and hiking techniques.~~

(g) ~~The specific qualifications of the staff members on duty will be a primary factor in planning activities.~~

(h) ~~An activity shall only be carried out if qualified staff are in direct supervision.~~

(i) ~~In the event of an emergency, the lead counselor shall take charge. His responsibilities shall include the following:~~

- (1) ~~Begin proper first aid;~~
- (2) ~~Decide whether to evacuate or bring in medical help;~~
- (3) ~~Send for appropriate help — Rescue Squad or Sheriff in all cases;~~
- (4) ~~Notify one of the following, who in turn, shall inform all others listed immediately:~~
 - (A) ~~Cottage parent supervisor;~~
 - (B) ~~Camp director;~~
 - (C) ~~Juvenile Evaluation Center program director;~~
 - (D) ~~Juvenile Evaluation Center director;~~
 - (E) ~~Juvenile Evaluation Center duty officer;~~
- (5) ~~Make necessary provisions for supervision of and any movement of non-involved campers;~~
- (6) ~~Complete in writing a thorough accident report.~~

(j) ~~At the start of each activity, the lead counselor shall check the first aid kit to insure that it is fully equipped. On special activities (climbing for example), the first aid supplies shall be supplemented with air splints, a collapsible stretcher, and other appropriate equipment.~~

(k) ~~Rule .0803 shall apply to Camp Woodson; which has offices on the campus of the Juvenile Evaluation Center.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .0900 - STUDENT WORK

09 NCAC 05F .0901 GENERAL PROVISIONS

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Students within the Division of Youth Services' supervision shall be expected to perform work assignments as follows:

- (1) ~~Work reasonably related to the students' housekeeping or personal hygiene needs.~~
- (2) ~~Work designated as a part of an approved vocationally oriented program for the student. If such work benefits the facility or program, the student may be considered for compensation for that work.~~
- (3) ~~The state shall not make any set off claim for care, custody, or services against such compensation.~~
- (4) ~~Such compensation shall be at the rate of at least twenty cents (\$0.20) per hour, subject to the availability of money in the Incentive Pay line Item for the budget.~~
- (5) ~~Students who volunteer for work assignments not connected with personal housekeeping or hygienic needs shall also be fairly compensated for such work, as resources permit.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-22;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .0902 MAINTENANCE WORK

- (a) ~~Students in a Division of Youth Services training school may be expected to participate in the necessary chores and details to maintain the cleanliness and sanitation of the campus. Responsibility for such duties shall be shared by as many students as possible.~~
- (b) ~~These duties shall include supervised work with training in the maintenance of household areas in a clean, sanitary condition.~~
- (c) ~~Students may share in the cleaning of dining, kitchen, recreation, and other living areas.~~
- (d) ~~Students shall be encouraged to develop a sense of responsibility for the care of the grounds and property so that such work will not be construed as menial or punitive, but as a necessary component of a healthy environment.~~
- (e) ~~Students may perform routine maintenance work and be reimbursed on a fee schedule established by the Division of Youth Services. Routine maintenance is defined as supervised work with training in maintaining the housing areas, washrooms, dining room areas, kitchen, school grounds, and other DYS school property.~~
- (f) ~~Students who are making a satisfactory adjustment and are interested in working will be recommended by the staff, specifically the treatment team, for job assignments. Incentive Pay rate shall be established by the Division of Youth Services.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .1000 - MEDICAL SERVICES

09 NCAC 05F .1001 MEDICAL SECURITY

- (a) ~~All medicines, prescriptive and non-prescriptive, shall be stored in such a manner that only the school nurse has access to them. Medicines shall be kept in a securely locked cabinet or closet in the infirmary setting.~~
- (b) ~~The school director shall maintain local regulations concerning the following medical security measures and ensure that all staff are aware of and follow the procedures. All information contained in a student's medical record shall be privileged and confidential.~~
- (c) ~~First Aid kits shall be stored in such a manner as to be available to the staff as well as to the nurse.~~
- (d) ~~All medicines and medical equipment shall be inventoried each quarter, by those accountable for access to such items; inventory records shall be submitted to the school director upon completion of the inventory.~~
- (e) ~~The emergency tray shall be inventoried on a weekly basis.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1002 ROUTINE VISITS AND SICK CALLS

- (a) ~~Physician's Visits:
 - (1) ~~The school physician shall conduct a sick call when requested.~~
 - (2) ~~Routine weekly school visits by the physician shall include screening, diagnosing, prescribing medication and treatment, and routine physical examinations.~~~~
- (b) ~~Nurse's Visits and Sick Calls:
 - (1) ~~The school nurse shall conduct a daily routine sick call which include dispensing medications, screening, performing prescribed treatments and applying first aid.~~
 - (2) ~~The nurse shall visit students in confined quarters and provide the same services listed in Subparagraph (b)(1) of this Rule.~~
 - (3) ~~The nurse shall transport students to outside appointments (referrals) when necessary. At least one nurse shall be on campus if this occurs.~~~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1003 HEALTH EDUCATION

The school nurse shall instruct students and staff on health needs and care in both a classroom setting and in an informal setting.

History Note: Authority G.S. 134A-20; 134A-21; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1004 ADMINISTRATION OF MEDICATIONS

- (a) ~~Stock drugs (those used frequently on school physician standing orders) shall be maintained only in reasonable quantity but not more than enough for one order period.~~

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~~(b) All other drugs shall be purchased on prescription for the individual student.~~

~~(c) The nurse shall administer medication as prescribed by a physician and in accordance with the physician's instructions.~~

~~(d) If a medication is to be given to a student at a time when the nurse will not be on duty, the nurse shall prepare for its distribution as follows:~~

~~(1) One single dose shall be put in a small envelope and sealed.~~

~~(2) The name of the student, the date is to be given, and the name of the cottage in which the student resides shall be recorded on the envelope.~~

~~(3) Injectable medications shall be administered only by the physician or the nurse as prescribed by the physician.~~

~~(e) Should a student refuse to accept his/her prescribed medication, the court counselor will be contacted for resolution.~~

~~(f) The nurse, as a member of the treatment team, shall prepare written information for the court counselor of any medication being used by a student when he/she is released. This information shall name the medication, the dosage, the frequency of administration and how long the student has received the medication.~~

~~(g) The nurse shall prepare a written statement for the court counselor concerning the physical condition of any student who has experienced a significant illness of any nature during the period of his commitment. This shall include the nature of any follow up care that the student needs after discharge.~~

~~(h) When a student is transferred from one campus to another and is receiving medication, information regarding the name of medication, the dosage, the frequency of administration, and how long the student has received the medication shall be forwarded to the facility. This information shall accompany the student and be properly addressed on arrival at the new location. A ten day supply of medication shall be transferred to the new facility for the use of the student in the event such medication is not available there and until the student can be seen by a local physician.~~

~~(i) Students placed in a community based program may have a 30 day supply of medication as required. This medication shall be delivered to the Director of the community based program, and he/she shall provide a written statement of receipt. The responsibility for insuring follow up medical care for the student is contingent upon the type of contract that is agreed upon between the community based program and the Division of Youth Services.~~

~~(j) Every order for medication for any student within the Division of Youth Services shall be reviewed every 30 days and renewed or cancelled. It shall be the responsibility of the nurse to consult with the physician to insure that the student is receiving proper medication.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-21; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1005 CHEMOTHERAPEUTIC DRUG MONITORING

~~(a) Each institution shall have a procedure for recording all administrations of drugs to juveniles, and for monitoring the short and long term effects of such drugs.~~

~~(b) The records maintained shall include:~~

~~(1) Type of medication;~~

~~(2) Quantity of medication;~~

~~(3) Date and time of day for administration of medication;~~

~~(4) Physician's reason for the prescription;~~

~~(5) Physician's observations of the effects of the medication; and~~

~~(6) Written observations of other personnel.~~

~~(c) These records shall become a part of the student's file.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10; Eff. February 1, 1986; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1006 MEDICATION SIDE EFFECTS

~~(a) Each institution must use the following procedures to monitor medication side effects.~~

~~(1) A sheet listing the significant side effects of medications must be available. The sheet shall have columns listed beside each side effect including:~~

~~(A) date,~~

~~(B) Dosage,~~

~~(C) Time,~~

~~(D) Physician notified,~~

~~(E) Treatment,~~

~~(F) Results, and~~

~~(G) Name of medication producing the side effect.~~

~~(2) This form shall serve as a basis for data gathering on frequency, nature, and dosage levels, side effects of medications used, and monitoring occurrences.~~

~~(b) All personnel shall notify the nurse or physician of any suspected side effects. The physician shall be responsible for signing and checking flow sheets.~~

~~(c) All medication errors shall be reported to the physician immediately. The physician shall decide if any action is necessary.~~

~~(d) The nurse shall fill out an incident report which states the date and time of error, the medication and dosage, any side effects, the physician notified, and any further action which was taken to counteract the medication error.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10; Eff. February 1, 1986; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1007 DRUG USAGE

~~(a) Under no circumstances shall stimulant, tranquilizing, or psychotropic drugs be used for purposes of program management or control, or for purposes of experimentation and research.~~

~~(b) Drugs shall be prescribed only by a licensed physician or psychiatrist.~~

~~(c) Drugs shall be dispensed only by a licensed physician or psychiatrist or nurse.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-21;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1008 VERBAL AND TELEPHONE ORDERS

- ~~(a) Telephone or verbal orders for medication and treatment shall be given only by an authorized physician and shall be accepted and written only by members of the staff who are authorized to administer the medication or treatment being ordered.~~
- ~~(b) When a telephone or verbal order is received, the staff member who receives the order shall record the order on the patient's order sheet.~~
- ~~(c) The chart shall then be flagged by the staff member to indicate that a verbal order was written.~~
- ~~(d) The responsible physician shall sign the verbal order on the flagged record within 48 hours.~~
- ~~(e) The chart must then be placed in the student's file.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1009 STOP ORDERS FOR MEDICATION

~~A medication that is ordered in an emergency or crisis situation shall be automatically discontinued after 48 hours unless renewed by the responsible physician.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

SECTION .1100 - SPECIAL HEALTH CARE

09 NCAC 05F .1101 SUICIDAL AND HOMICIDAL MANAGEMENT

- ~~(a) A student who is considered to exhibit suicidal or homicidal tendencies shall receive intensive supervision by staff in order to provide protection for the student and other students.~~
- ~~(b) When a student appears to be by conversation homicidal, or has made a gesture that is felt to be potentially homicidal, the student shall be isolated from the other students by placing said student in his room or, if necessary, in the "time-out" room.~~
- ~~(c) When a student appears to be either suicidal or homicidal or has made a gesture that is felt to be suicidal or homicidal, the school director or his designee shall be notified immediately.~~
- ~~(d) Upon learning that a student may be suicidal, arrangements shall be made immediately to obtain a psychiatric evaluation from the consulting psychiatrists or the local mental health center. If the psychiatric evaluation concludes that the juvenile may be suicidal, an attempt shall be made to secure voluntary or involuntary commitment to a mental hospital.~~
- ~~(e) Unit personnel shall maintain a constant surveillance of the student on a one-to-one basis until the attendant physician states that the crisis is over.~~
- ~~(f) The nurse shall render immediate first aid as is necessary if the student has made a suicide attempt and shall request further~~

~~instruction for the management of the student from the school physician.~~

~~(g) The student shall not attend any activity outside the unit until the school physician states that the student is able to do so.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-21;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1102 DEAF OR BLIND STUDENTS

- ~~(a) A student admitted to a Division of Youth Services' training school who is determined by thorough assessment to be legally blind or deaf shall be referred to the court for possible placement in a specialized residential program designed to serve blind or deaf students in North Carolina, in lieu of training school.~~
- ~~(b) A student who has been diagnosed as visually or hearing impaired to a lesser degree and who is capable of functioning in Division of Youth Services' programs shall receive direct services from the Division of Youth Services.~~
- ~~(c) Auxiliary services shall be provided by those agencies serving children with special hearing or visual problems.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-21;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1103 CONFIDENTIALITY OF MEDICAL RECORDS

- ~~(a) All information contained in a student's medical record shall be considered privileged and confidential.~~
- ~~(b) School directors shall take the necessary steps to ensure in-house confidentiality of student records.~~
- ~~(c) Unless a court order requiring access is presented or the consent of the student, parent, or legal guardian is obtained, only information that is necessary in order to provide appropriate care and services shall be released to personnel outside the facilities operated by or in conjunction with the Division of Youth Services.~~
- ~~(d) Only personnel having direct responsibility for the student and his/her treatment, and personnel having specific responsibilities in record-keeping shall have access to a student's record, except as otherwise provided in these Rules.~~
- ~~(e) Information contained within student records may be transferred between any authorized personnel of the diagnostic and treatment facilities of the Division of Youth Services.~~
- ~~(f) When providing information contained in student records to appropriate agencies or individuals, measures shall be taken to assure protection of the student's rights to confidential treatment of critical data.~~
- ~~(g) Statistical management information shall be coded to maintain confidentiality and shall be considered within the same rules of confidentiality as those that apply to student records.~~
- ~~(h) All confidentiality standards for the Division of Youth Services shall also apply to those agencies having contractual services with DYS programs or components of programs.~~

History Note: Authority G.S. 134A-8; 134A-20; 134A-21;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;

Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1104 SURGERY PERFORMED ON STUDENTS

(a) Non-Emergency Surgery:

- (1) ~~Prior to performing non-emergency surgery on a student under the supervision of the Division of Youth Services, consent shall be obtained from one of the following:~~
 - (A) ~~the minor's parent,~~
 - (B) ~~a responsible member of his/her family,~~
 - (C) ~~his/her guardian, or~~
 - (D) ~~the person having legal custody of the student.~~
- (2) ~~If such a person cannot be located, consent shall be obtained from the local health director in the area of the training school.~~
- (3) ~~It is the responsibility of the school director to ensure that a good faith effort is made to locate a person authorized to give consent for surgery performed on the student.~~
- (4) ~~If no such person can be located, and a registered letter is sent to and returned from the last known address of the guardian or responsible relative of the student, the local health director's consent may then be obtained.~~

(b) Emergency Surgery:

- (1) ~~In the event that emergency surgery must be performed and no family, parent, guardian, or legal custodian for the student can be found, the staff medical doctor and the school director or his designee may provide consent. If consent is refused, the student can receive treatment only if the procedures set forth in G.S. 7A-732 are followed.~~
- (2) ~~Such consent requires the written recommendation of the staff physician and the written consent of the school director or his/her designee.~~

~~(c) Elective Surgery. Elective surgery, of any nature, shall be permitted upon individual case consideration and within budget allowances.~~

History Note: Authority G.S. 130-191; 134A-8; 134A-20; 134A-21; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

SECTION .1200 - ALTERNATIVE THERAPEUTIC INTERVENTION PROGRAMS

09 NCAC 05F .1201 GENERAL PROVISIONS

- (a) ~~Procedures used by training schools are designed to humanely control students as described by Rule .0501 of this Subchapter, to maintain discipline and safety, and to create an environment where treatment and educational services can be provided.~~
- (b) ~~Training school staff shall monitor variances in student behavior. Those students who demonstrate a persistent lack of~~

~~progress in the regular program activities as well as those students who demonstrate extraordinary difficulty in understanding or responding to treatment by virtue of inappropriate behavior, shall be considered for alternative programming.~~

~~(c) Alternative therapeutic programs cannot be used interchangeably on a training school campus. Each program must respond to student behaviors.~~

~~(d) C.A. Dillon School serves as an alternative extension for Stonewall Jackson, Dobbs, Samarkand Manor and Juvenile Evaluation Center.~~

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15 2002.

09 NCAC 05F .1202 ASSIGNMENT TO WING AND INTENSIVE DEVELOPMENT PROGRAM

~~(a) Definition. Assignment to wing and intensive development program refer to placing a student or students apart from the campus population in a non-individual lock-up situation for treatment reasons. They differ in that the intensive development program is more closely tied to the behavior program and treatment goals for the student, whereas assignment to wing is more of a short-term strategy. Overall, both assignment to wing and the intensive development program are similar in operation, and one or the other is available at each training school.~~

~~(b) The ongoing goal of these programs shall be to achieve the reintegration of the student into the regular program.~~

~~(c) These programs may be recommended by an individual staff member of the treatment team and shall be instituted only in connection with an appropriate therapeutic intervention plan in response to the student's behavior and may function as follow-up to campus detention.~~

~~(d) Use of assignment to wing or intensive development program requires prior approval by the school director or his/her designee.~~

~~(e) All assignment to wing and intensive development program facilities shall be thoroughly inspected for safety on a daily basis.~~

~~(f) A routine search shall be conducted on all students placed in assignment to wing or intensive development programs. Routine searches are defined as pat and frisk searches with the student fully clothed. A routine search may also include a search of personal effects carried on the person, such as handbags, boxes, or other items.~~

~~(g) Students in the assignment to wing and intensive development program shall be under constant staff supervision.~~

~~(h) All students in assignment to wing or intensive development program shall receive the following services in accordance with their individualized treatment plans and individualized education plans:~~

- (1) ~~daily counseling,~~
- (2) ~~daily recreation,~~
- (3) ~~medical and dental treatment,~~
- (4) ~~vocational rehabilitation, if eligible, and~~
- (5) ~~educational services.~~

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986;

*Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1203 CAMPUS DETENTION

(a) ~~Definition. Campus detention refers to the individual separation of a student or students under lock from the campus population.~~

(b) ~~Justification for the use of Campus Detention.~~

(1) ~~Campus detention is to be utilized only when a student demonstrates behavior that presents him/her as out of control:~~

(A) ~~Out of control is defined as when a student is in danger of physically harming him/herself or other persons or when the student is clearly intending to destroy property.~~

(B) ~~Examples of behaviors justifying the use of campus detention include fighting, violent behavior toward staff or students or deliberate destruction of property.~~

(2) ~~Protective custody may be provided at a student's own request when legitimate fear for personal safety is an issue. When granted, the school director shall immediately identify and resolve the underlying problem giving rise to the student's request.~~

(3) ~~Campus detention may be used and is appropriate while court actions are pending.~~

(4) ~~Behaviors such as verbal abuse, and chronic or severe insubordination shall not provide justification for the use of campus detention unless institutional control is threatened.~~

(c) ~~Timetable:~~

(1) ~~Campus detention shall be used as a consequence of problematic behavior, shall last only until the student regains control, and shall not exceed 24 hours.~~

(2) ~~Eight hours during the daytime shall constitute the maximum time allowable for protective custody.~~

(3) ~~The school director or his/her designee must approve the use of isolation within one hour after initiation.~~

(d) ~~A routine search as defined in Rule .1202(f) of this Subchapter shall be conducted on all students placed in campus detention.~~

(e) ~~All staff members shall be thoroughly familiar with the training school detention policies. Each school director shall develop written instructions pertaining to the use of detention in compliance with these Rules for all employees.~~

(f) ~~All secure detention facilities shall be thoroughly inspected for safety prior to placing a student within them.~~

(g) ~~All students in secure detention shall be visited on a daily basis by the school medical staff.~~

(h) ~~Students shall be visually checked at least every 15 minutes by staff and every two hours by a supervisor to evaluate readiness for release. Such visual checks shall be documented.~~

(i) ~~No more than one student shall be placed in an individual detention room at any time except in an emergency.~~

(j) ~~Documentation:~~

(1) ~~A log (DYS Form Number 5506) shall be maintained on each student placed in campus detention. The log shall report all visitors, treatment services, periodic checks, and supervision. The log shall be available for periodic review.~~

(2) ~~Weekly campus detention reports shall be submitted to the Deputy Director for Institutional Services.~~

(k) ~~Monitoring of Campus Detention:~~

(1) ~~It is the responsibility of the Chief of Student Services of the Institutional Services Section in the Division's Central Office to insure that all schools comply with the provisions of the campus detention policy.~~

(2) ~~Periodic detention monitoring reports for each school shall be submitted by the Chief of Student Services to the Deputy Director for Institutional Services and the appropriate school director.~~

(l) ~~Facilities:~~

(1) ~~Facilities used for campus detention shall meet the minimum standards of 60 square feet per student and shall provide adequate ventilation, heating, lighting, sleeping, and bathroom facilities.~~

(2) ~~Each campus detention room shall be equipped with a security bed or its equivalent with a clean mattress, pillow, sheets, and blanket kept in good repair. These items may be removed temporarily if a student displays destructive tendencies toward him/herself or property.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1204 RIGHTS/STUDENTS IN ALTERNATIVE THERAPEUTIC INTERVENTION

(a) ~~Each student shall be provided with a period of exercise and recreation outside of his/her detention, assignment to wing, or intensive development program area for a minimum of one hour daily.~~

(b) ~~A student may be released from campus detention, assignment to wing or intensive development program to see approved visitors in the visiting area and under the supervision of a supervisor, administrator or professional staff member.~~

(c) ~~Detention rooms, assignment to wing, and intensive development program areas shall be kept clean and in good repair at all times. Detention rooms shall be deaned at least once every day as well as upon the student's release from the room.~~

(d) ~~Should a student in campus detention, assignment to wing or intensive development program endanger himself or others, restraints may be used until the student regains control of himself or a referral is made. During this period of treatment, a supervisory, administrative or professional staff member shall be present at all times.~~

(e) ~~Students in campus detention, assignment to wing or intensive development program shall wear street clothes~~

including pants and shirts for males and a dress or slack suit for females during the day, and pajamas at night. Soft-soled footwear shall be provided. Misuse of shoes shall be basis for their removal.

(f) Three meals identical to those received by mainstream students shall be served daily to each student in campus detention, assignment to wing or intensive development program.

(g) A variety of reading materials and games, commensurate to the student's interest and ability shall be provided at all times. Abuse of reading materials and games may be cause for removal of these items.

(h) Provisions shall be made for students in campus detention, assignment to wing or intensive development program to bathe daily, to groom hair daily and to brush teeth after meals.

(i) Mail privileges shall be afforded students in campus detention, assignment to wing, or intensive development program.

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1205 HEARING RIGHTS

(a) A student shall be notified of due process rights. A hearing shall be automatic upon placement in assignment to wing, intensive development program, or transfer to C.A. Dillon.

(b) The hearing shall precede placement in campus detention, assignment to wing or intensive development program. Provided that when the student is acting in an uncontrolled manner or the appropriate staff is not available, the hearing may be held not more than 24 hours after placement in either campus detention, assignment to wing or intensive development program.

(c) The school director or acting director shall appoint a panel of three staff members not involved in the incident resulting in a campus detention, assignment to wing or intensive development program.

(d) The student shall be provided with written notice of the reasons for placement in campus detention, assignment to wing or intensive development program and an explanation of his/her rights.

(e) The student shall have the right to confront person or persons recommending campus detention, assignment to wing or intensive development program before impartial staff members where the reasons and facts are presented.

(f) The student shall have the chance to present witnesses of his/her own choice and other evidence.

(g) During orientation upon direct commitment to C.A. Dillon, or during the course of a hearing for possible placement at Dillon, the student shall be notified that commitment of rule infractions may result in up to 72 hours of campus detention without a further hearing.

(h) A written record shall be made including findings, reasons, summary of evidence relied on, sanctions, and reasons for sanctions.

(i) Within 72 hours, the panel shall render a written decision.

(j) A student shall be notified upon entering the program, that if he commits infractions while in intensive development program

or assignment he may receive up to 72 hours of campus detention.

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1206 REFERRAL OF STUDENTS FOR CRIMINAL PROSECUTION

(a) All students in Division of Youth Services' institutions are subject to the same laws which apply to persons who are not in the custody of the state. If a student commits an illegal act while in training school, he is subject to prosecution for that act.

(b) All staff members are required to notify immediately the school director or his designee of any suspected criminal activity on the part of a student.

(c) The school director or his designee shall immediately conduct an investigation to determine if there is probable cause to believe any criminal offense has occurred. If the school director determines that a criminal offense has occurred, it shall be reported to a law enforcement agency. In addition the school director shall:

- (1) Contact the Assistant Director for Institutional Services by telephone and inform him of the situation, and
- (2) File an Unusual Incident Report in writing with the Assistant Director for Institutional Services outlining the alleged incident and naming the law enforcement agency that is investigating the incident.

(d) The school director shall keep the central office informed of the progress of the investigation.

(e) The school director shall submit a final report on the incident to the Deputy Director for Institutional Services.

(f) If the school director or his designee determines that the alleged offense does not involve criminal violation then he shall:

- (1) Inform the staff member who reported the incident of the reasons for the decision not to refer the student for prosecution.
- (2) Inform the Assistant Director for Institutional Services by means of an Unusual Incident Report of alleged criminal activity on the part of the student and the results of the school director's investigation.

(g) Emergency Law Enforcement Assistance:

- (1) This policy shall not be interpreted to interfere with the ability of a school director to request law enforcement assistance from any source. If the school director determines that delay in calling in law enforcement assistance could result in physical harm to staff or students or in the destruction of evidence or for any other compelling reason, the school director should immediately contact an appropriate law enforcement agency and request assistance.
- (2) Immediately after an emergency contact with a law enforcement agency, the school director shall telephone the central office and inform the Deputy Director for Institutional Services.

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1207 APPROPRIATE USE OF FORCE

~~(a) Personnel shall not use physical force against students or allow students to use physical force against other students except for the following purposes:~~

- ~~(1) To prevent imminent injury to the student, staff, or another person;~~
- ~~(2) To prevent substantial damage to property;~~
- ~~(3) To prevent escape from the training school grounds;~~
- ~~(4) To prevent serious disruption of the functioning of the facility by a student's refusal to obey an order.~~

~~(b) The amount of physical force that can be used shall not be in excess of that required to achieve its purpose as given in Paragraph(a) of this Rule.~~

~~(c) Corporal punishment is strictly prohibited.~~

~~(d) Any personnel using physical force against any student shall immediately file a written report with the school director or his/her designee setting forth the circumstances of the act, the degree of force, and the reasons for the use of force.~~

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1208 RESTRAINT OF AGGRESSIVE/UNCONTROLLABLE STUDENTS

~~(a) An aggressive, uncontrollable student may be restrained by staff in such a manner that the student cannot injure himself or others.~~

~~(b) If the student cannot be brought under control, he/she may be placed in detention under constant supervision until he/she regains control.~~

~~(c) If the student does not regain control after the use of detention and counseling and is attempting to harm himself or others, a straitjacket may be used until such time as the student regains control. During the time the student is confined in a straitjacket, he/she shall have constant supervision by a staff member, and a physician or psychiatrist shall immediately be contacted to provide appropriate treatment.~~

~~(d) Restraints shall not be used to confine a student to a bed, chair or any other object.~~

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .1300 - UNUSUAL INCIDENTS

09 NCAC 05F .1301 DEFINITION OF UNUSUAL INCIDENTS

~~Unusual incidents are occurrences which have a marked impact on the operation of the school and/or the welfare of staff or students. Unusual incidents include, but are not limited to:~~

- ~~(1) Fire, where major damage is sustained;~~
- ~~(2) Serious injury of a student;~~
- ~~(3) Death of a student;~~
- ~~(4) Actions by a student or students resulting in substantial property damage or loss of control;~~
- ~~(5) Serious injury or death of a staff member in the performance of duty;~~
- ~~(6) Sexual acting out or intercourse;~~
- ~~(7) Disruption of normal programs and activities due to natural forces, epidemics, etc.;~~
- ~~(8) Commission of a felony by a student or to a student;~~
- ~~(9) Corporal punishment and child abuse;~~
- ~~(10) Staff behavior or violation of policy that results in serious questions of ethics or morals, or in the contribution to the delinquency of a student;~~
- ~~(11) Three or more runaways within 24 hours;~~
- ~~(12) Outbreak of a communicable disease; and~~
- ~~(13) Incidents that cause negative reactions from the citizenry.~~

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1302 REPORTING UNUSUAL INCIDENTS

~~(a) School directors shall report all unusual incidents to the Deputy Director for Institutional Services.~~

~~(b) The Deputy Director of Institutional Services shall report all unusual incidents to the Director of the Division of Youth Services.~~

History Note: Authority G.S. 134A-20; 143B-10;
 Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1303 NOTIFICATION OF SERIOUS INJURY OF A STUDENT

~~A serious injury is defined as one that requires hospitalization or treatment on an emergency basis. Notification shall be given in the following priority when a student is seriously injured:~~

- ~~(1) The Deputy Director for Institutional Services shall immediately be notified by telephone by the school director or his/her designee.~~
- ~~(2) The school director or his/her designee shall then notify by telephone the student's parents, legal guardian, or person having legal custody of the student.~~
- ~~(3) Inquiries from the news media shall be referred to the appropriate school director or his/her designee. He/she will respond only after notification of the student's parents, legal guardian, or person having legal custody of the student.~~
- ~~(4) The school director or his/her designee shall also notify by telephone the court counselor assigned to the student.~~

History Note: Authority G.S. 134A-20; 143B-10;
 Eff. February 1, 1986;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1304 DEATH OF A STUDENT

- (a) ~~If a student assigned to a training school dies, the school director or his/her designee shall make arrangements for a staff representative from the institution or the appropriate court counselor to inform the parents or guardian of the death.~~
- (b) ~~The designated staff representative shall inform the parents or other appropriate person of the facts surrounding the nature and cause of death consistent with the circumstances at the time of notification.~~
 - (1) ~~Division of Youth Services assistance shall be offered to the family in making arrangements for shipping the remains and personal effects of the student to the appropriate place.~~
 - (2) ~~The representative shall remain the liaison person with the family throughout the completion of the arrangements.~~
- (c) ~~The school director or his designee shall:~~
 - (1) ~~Immediately notify the SBI or the local law enforcement agency and the Deputy Director for Institutional Services.~~
 - (2) ~~Notify the appropriate court counselor, and the medical examiner and coroner for disposition of the body.~~
- (d) ~~General Procedures (Death on Campus):~~
 - (1) ~~If a body has been found, it must be covered, unmoved, and the area kept isolated;~~
 - (2) ~~Immediately notify a physician; and~~
 - (3) ~~Official entry of the death and discharge by death shall be documented by the physician.~~

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1305 CHILD ABUSE

Occurrences of child abuse, as defined in Rule .0609 of this Subchapter, shall be treated as follows:

- (1) ~~Reporting.~~ All suspected instances of child abuse shall be reported to the local Director of Social Services within 24 hours of identification of such an instance.
- (2) ~~Physical Examination.~~ Any student involved in an actual or suspected incident of child abuse shall immediately be seen by the school physician on call and a report of the student's physical condition shall be filed with the school director and forwarded to the Deputy Director for Institutional Services.

History Note: Authority G.S. 7A-543; 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. August 1, 1990;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1306 SEXUAL ACTING OUT AND INTERCOURSE

- (a) ~~Sexual activity, including but not limited to kissing, fondling, and similar behavior between staff and students is absolutely prohibited.~~
- (b) ~~Sexual activity between students is absolutely prohibited.~~
- (c) ~~If it is determined that sexual intercourse has taken place, the following procedures shall be followed:~~
 - (1) ~~Notification of the school physician;~~
 - (2) ~~Physical examination by physician;~~
 - (3) ~~Laboratory work, to include a test for syphilis, urinalysis, pregnancy test (and a re-test if indicated); and~~
 - (4) ~~Notification of parents or guardian.~~

History Note: Authority G.S. 134A-8; 134A-20;
 Eff. February 1, 1986;
 Amended Eff. July 1, 1990;
 Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1307 RUNAWAYS

- (a) ~~If, after a reasonable search, it is determined that a student is not on campus and has left campus without appropriate authorization, the student shall be considered a runaway and shall be reported as such.~~
- (b) ~~The school director shall devise a runaway plan and appoint a return officer in the absence of a security force.~~
 - (1) ~~The return officer or security guard shall immediately search the area.~~
 - (2) ~~The return officer or security guard shall immediately telephone local law enforcement agency and provide the following information concerning the runaway for notification to the Police Information Network System:~~
 - (A) ~~Student's name;~~
 - (B) ~~Physical characteristics;~~
 - (C) ~~Date of birth;~~
 - (D) ~~Place of birth; and~~
 - (E) ~~Date when the student will be eighteen.~~
 - (3) ~~The return officer or security guard shall not reveal the offense for which the student was committed to the training school. However, if it is believed that the student was armed or dangerous, or that he committed a crime after running away from the school, this information shall be made available to the local law enforcement agency.~~
 - (4) ~~The return officer shall notify the student's court counselor.~~
 - (5) ~~After the initial telephone contact with the local law enforcement agency, the return officer shall send a written authorization to apprehend to the law enforcement agency confirming the fact that the student is missing and verifying the student's date of birth. Copies shall also be sent to law enforcement agencies in the student's home county and to his court counselor.~~
- (c) ~~Notification of Parents Regarding Runaways.~~ The school director or his/her designee shall notify by telephone the parents or guardians of a student who has run away.

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- ~~(1) The telephone call to parents shall immediately follow the call to the local law enforcement agencies;~~
- ~~(2) Telephone calls shall be followed by a letter confirming the call;~~
- ~~(3) If parents or guardians do not have a telephone, a letter shall be sent immediately to the affected parents; and~~
- ~~(4) A telephone call notifying parents of the runaway's return to custody shall be made immediately upon the runaway's return. If the parents or guardians do not have a telephone, a letter shall be sent to them immediately.~~

~~(d) When the student is located and returned to the Division Youth Services, the return officer shall notify the local law enforcement agency of the student's return so that the student's name can be purged from the Police Information Network System file.~~

~~(e) Apprehension by Division of Youth Services employees.~~

- ~~(1) Employees of the Division of Youth Services attempting to apprehend runaways shall:

 - ~~(A) Carry identification that acknowledges them as employees of the Division of Youth Services;~~
 - ~~(B) Request permission of the owner before entering private property to search for a runaway except when in hot pursuit onto open land;~~
 - ~~(C) Take no unnecessary risks to capture a runaway;~~
 - ~~(D) Use law enforcement agencies to apprehend the runaway when necessary;~~
 - ~~(E) Use no firearms;~~
 - ~~(F) Use no dogs to track runaways;~~
 - ~~(G) Restrain a runaway by physical force or with handcuffs only if he/she is positively identified; and~~
 - ~~(H) Use only the force necessary to restrain the student.~~~~

- ~~(2) In the absence of the positive identification of a suspected runaway, the employee shall:

 - ~~(A) Question the suspect after showing Division of Youth Services' identification;~~
 - ~~(B) Not accuse the suspect of being a runaway;~~
 - ~~(C) Not detain a person against his will or force him to accompany the employee in any way; and~~
 - ~~(D) Use no physical force with anyone except to protect oneself or another person.~~~~

~~(f) Prohibition Against Using Students to Search for Runaways. The use of students to search for or apprehend runaways is absolutely prohibited under any and all circumstances.~~

~~(g) Termination of Runaway. Runaway status is terminated by the student's return to the institution or his/her being placed in the custody of a law enforcement agency.~~

~~(h) Upon termination, the following procedures shall apply:~~

~~(1) Detention Status. If a student commits a crime while a runaway, is apprehended, is awaiting trial as an adult, and is being held in some facility not operated by Division of Youth Services, he shall then be placed on detention status to the agency that is holding him, pending the outcome of his trial. If the student is found not guilty, the Division of Youth Services shall take custody of the student.~~

~~(2) Final Discharge. If a student is tried as an adult, is found guilty, and is committed to an adult correctional facility, he/she shall be granted a final discharge from the Division of Youth Services. A final discharge shall be granted to a student on runaway status upon reaching his/her 18th birthday or after a student has been on runaway status for one year without reaching his 18th birthday; such request for final discharge must be written by the court counselor.~~

~~(3) The return officer shall notify all appropriate law enforcement agencies, appropriate court counselors, parents, or guardians, who were informed of the runaway when apprehension of the runaway has occurred.~~

~~(i) Should the school director or his/her designee determine that the student who has run is a threat to the security of the training school, he/she shall contact the Deputy Director for Institutional Services and arrange for an administrative transfer to a school with greater security. The school director shall base his/her request on:~~

- ~~(1) The seriousness of the crime for which the student was charged;~~
- ~~(2) The potential danger to other students;~~
- ~~(3) The attitude of the student toward the Division of Youth Services;~~
- ~~(4) The likelihood of another runaway attempt; and~~
- ~~(5) The evaluation and recommendation of the treatment team.~~

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1308 COMMUNICABLE DISEASE CONTROL

~~In the event of a communicable disease outbreak the school nurse shall notify the Immunization Program Representative in that Department of Human Resources region for proper containment procedures and consultative services.~~

History Note: Authority G.S. 134A-20; 134A-21; 143B-10; Eff. February 1, 1986; Temporary Repeal Eff. July 15, 2002.

SECTION .1400 - TRANSPORTATION OF STUDENTS

09 NCAC 05F .1401 RESPONSIBILITIES OF TRANSPORTATION OFFICERS

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- (a) The transportation officers shall:
- (1) ~~Insure that all appropriate automobile equipment, including a first aid kit and a fire extinguisher, is available on any vehicle transporting students.~~
 - (2) ~~Ensure that all vehicles transporting students do not exceed their maximum capacity. The maximum number of students who may be transported in a car is five. The maximum number of persons who may be transported in a station wagon or van shall not exceed the manufacturer's suggested capacity, including the driver.~~
 - (3) ~~Insure that seat belts are worn by the transportation officer and all passengers.~~
 - (4) ~~Insure that there are appropriate security features in any vehicle which is transporting students considered to be assaultive or to have the potential for running away. The transportation officer who is not driving shall sit in the back seat directly behind the driver.~~
 - (5) ~~Ensure that no more than two students who are considered assaultive are transported at one time in the same vehicle. Any assaultive student shall be seated in the back seat.~~
 - (6) ~~Insure that a minimum of two staff members accompany all students being transported by a bus.~~
- (b) Transportation of Male and Female Students:
- (1) ~~Female students being transported shall always be accompanied by a female staff member.~~
 - (2) ~~No unaccompanied female staff member shall transport male students.~~
 - (3) ~~When both male and female students are being transported, both male and female staff members shall accompany those students.~~
 - (4) ~~If a security officer from the school's security force accompanies either male or female student while being transported, then the requirements stipulated in Subparagraphs (b)(1) through (b)(3) of this Rule do not apply.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1402 USE OF RESTRAINTS IN TRANSPORTING STUDENTS

- (a) ~~The minimum necessary restraints shall be employed in the transportation of students when the situation indicates such a need. Handcuffs may be used in transporting students when the following factors indicate a potential threat to the safe transfer of the students:~~
- (1) ~~Age of student,~~
 - (2) ~~Size of student,~~
 - (3) ~~Purpose of transfer,~~
 - (4) ~~Mental state of the student,~~
 - (5) ~~Prior performance of student, and~~
 - (6) ~~Most recent behavior.~~

- (b) ~~Students being transported may be searched for contraband or weapons.~~
- (c) ~~If only one student is being transported, the student shall be handcuffed in front of his/her body with his/her seat belt tightly fastened. The student must be seated in the back seat of the vehicle on the side away from the driver. The student shall never be seated behind the driver.~~
- (d) ~~A student shall never be handcuffed to a motor vehicle.~~
- (e) ~~A female staff member shall never transport a handcuffed student away from the campus alone.~~
- (f) ~~When a student is transported in handcuffs, the transportation officer shall submit a written report to the school director or his designee explaining the circumstances which necessitated the use of restraints. Copies of all reports shall be forwarded to the Deputy Director for Institutional Services within 72 hours of the transportation.~~
- (g) ~~Leg restraints can be employed only with the prior approval of the school director or his/her designee upon notification of the Deputy Director for Institutional Services.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1403 REPORTING ON-THE-ROAD EMERGENCIES

- (a) ~~If a serious "on the road emergency" occurs which poses a threat to the safety of the public or student, the transportation officer shall immediately notify the North Carolina Highway patrol, requesting the required assistance, and the school director or his designee.~~
- (b) ~~As soon as possible, the transportation officer shall submit a written report to the school director concerning the incident. This report must contain the name of the student or other persons involved, the nature of the emergency incident, and the actions taken.~~
- (c) ~~Upon receipt of the written report, the school director or his designee shall report the incident to the Deputy Director for Institutional Services.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

SECTION .1500 - CAMPUS SAFETY AND SECURITY

09 NCAC 05F .1501 CAMPUS SECURITY

- (a) ~~Each school director and the campus security force are in charge of the security of the school including maintaining order throughout the institution, supervising transportation and traffic, designating parking areas for employees and visitors and supervising all merchandise and state property.~~
- (b) ~~Persons and vehicles entering or leaving the grounds of any school shall be subject to search to prevent prohibited articles from the facility. Staff and visitors will be searched when there is suspicion of contraband or violation. Visitors who refuse to be searched will be asked to leave the campus.~~
- (c) ~~No employee or visitor under the influence of alcohol or drugs shall be permitted on the grounds of the school. Such~~

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~~incidents shall be reported to the school director or his/her designee.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1502 SCHOOL SAFETY AND EMERGENCY PREPAREDNESS COMMITTEE

~~(a) The school director shall establish a school safety and emergency preparedness committee.~~

~~(b) Based on recommendations of this committee, the school director shall prepare and have in effect at all times a plan for meeting campus emergencies.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1503 CONTRABAND

~~Any item that is found in the possession of a student that has not been approved for the student's possession by the staff as listed in the Training School's Student Handbook, given to each student during his/her orientation, shall be considered contraband and shall be confiscated.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1504 LAW ENFORCEMENT USE OF STUDENTS

~~(a) Students committed to Division of Youth Services shall not be recruited or used for investigations of criminal activity. This ban on the use of students in undercover investigations includes both on and off campus activities.~~

~~(b) Students shall not be used by law enforcement agencies in such a manner as to place the student in a position of danger or where he/she may face a threat of retaliation if his/her activities are discovered.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1505 DANGEROUS WEAPONS, DEVICES, AND SUBSTANCES

~~(a) Dangerous weapons, devices, or substances of any kind shall not, under any circumstances be brought into or kept in any facility. This restriction applies to all residents, staff, and visitors, but not to law enforcement personnel or the security personnel who are authorized to carry weapons. Forbidden articles include, but are not limited to: firearms (dismantled or otherwise), knives (except when specifically authorized for program related use), ammunition, explosives or pyrotechnic devices, and chemical incapacitating sprays (Mace, etc.).~~

~~(b) Sporting items such as bow and arrows, pen knives for camping trips, fish scalers, etc., used for supervised recreational purposes by program residents, may be stored at the program if a highly secure area is available for such storage.~~

~~(c) Sharp or potentially dangerous tools and other items used in maintenance, vocational training, hobbies, cooking classes, etc., shall be accounted for at the conclusion of the activity.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1506 SWIMMING AND WATER SAFETY

~~(a) The following procedures shall be followed by all staff when swimming is offered as a recreational activity:~~

~~(1) There shall be at least one trained lifeguard on duty during any swimming or water activity.~~

~~(2) The lifeguards on duty shall hold an American Red Cross Advanced Senior Life Saving Certificate or the YMCA equivalent.~~

~~(3) Students who have been tested and proven to be strong swimmers and who have been instructed in the basic techniques of water rescue may be designated to assist in the supervision of swimming activities. The personality and general stability of the student must be evaluated when considering this assignment.~~

~~(4) Life saving equipment such as ring buoys, hooks, and boats, shall be easily accessible at all times. Lifeguard stations shall be situated to afford an unobstructed view of all swimmers in the water. A buddy check shall be made at least every 20 minutes during any swimming activity.~~

~~(b) The staff member in charge of swimming activities shall inspect the proposed swimming area for any safety hazards and dangerous conditions before designating the area safe for swimming.~~

~~(c) Students are prohibited from swimming in unsupervised areas at any time.~~

~~(d) All students shall be evaluated for swimming ability before they are allowed to participate in swimming activities.~~

~~(e) It shall be the responsibility of the program staff member supervising any boating activity to ascertain that appropriate life jackets are available for each student and that he/she wears the life jacket at all times while in the boat. Rescue equipment must be available for use by program staff in an emergency. A staff member with a life saving certificate and boating experience shall be on duty during all boating activities.~~

*History Note: Authority G.S. 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1507 BOMB THREATS

~~(a) All bomb threats shall be regarded as genuine until proven otherwise. Basic bomb threat procedures described in Paragraphs(b) through (f) must be followed.~~

~~(b) When a bomb threat is received, staff shall immediately supervise evacuation of the premises and then notify the school director or his/her designee.~~

~~(c) After the school director or his designee has been provided with the basic details by the staff member who received the bomb threat, local law enforcement authorities shall be notified immediately.~~

~~(d) Upon arrival, local law enforcement authorities shall be placed in complete control. Staff members with master keys and floor plans of the facility must be available to assist, if requested. The person who received the threat should identify himself/herself to law enforcement upon their arrival.~~

~~(e) Under no circumstances shall staff or students be allowed to search the facility for a bomb. The responsibility rests with the local law enforcement authorities.~~

~~(f) If it appears that a bomb has been found, neither staff nor students shall be allowed near this area. Staff shall ensure that the area remains clear and that professional assistance is obtained.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1508 SEVERE WEATHER CONDITIONS

All staff and students shall move inside when weather conditions may endanger the safety of the staff and students. Procedures referenced in the Training School Policy Manual, Division of Youth Services, available in each school's administrative office, must be adhered to when threatening weather conditions, such as tornadoes or lightning are present.

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

09 NCAC 05F .1509 FIRE SAFETY

~~(a) In the event of a fire a staff member shall immediately sound the alarm and see that the building is evacuated. The campus security officer shall be asked to report the fire and its location, and if possible, a fire extinguisher shall be obtained and an effort made to extinguish the fire.~~

~~(b) Fire Drills and Building Evacuation Procedures:~~

~~(1) Fire drill and building evacuation procedures shall be established for every facility.~~

~~(2) These procedures shall be reviewed and approved in writing by the local fire department.~~

~~(3) Clearly stated procedures for fire drills and building evacuations shall be posted in a conspicuous place at all appropriate areas of the facility. The location of these posted procedures must be approved in writing by the local fire inspector. These procedures shall include the designation of specific areas outside the building where staff and residents report for a head count by the staff member in charge of the program when a facility must be evacuated.~~

~~(4) Unannounced fire drills shall be conducted at least once a month in all programs. Additional~~

~~drills shall be conducted more frequently if evacuation time and adherence to procedures is not deemed satisfactory at the monthly drill.~~

~~(5) The school director shall establish a procedure whereby all new staff and residents are immediately informed of fire drill and building evacuation plans.~~

~~(6) It shall be the responsibility of the staff in charge at the time of the fire drill to inspect all areas of the building to ascertain that all persons have evacuated the premises.~~

~~(7) A separate Fire Safety Log shall be kept at all facilities. The log shall contain:~~

~~(A) A record of all fire safety inspections by the Fire Marshal and local fire officials;~~

~~(B) A summary of all deficiencies noted by the Fire Marshal and local officials;~~

~~(C) A record of corrections of said deficiencies;~~

~~(D) A record of all fire drills, total evacuation time, and any other observations concerning same;~~

~~(E) Results of periodic fire safety inspections by designated staff, including an alarm system check and a check of the operating status of fire fighting equipment.~~

~~(c) The current phone number of the local fire department shall be conspicuously displayed next to every facility phone.~~

~~(d) All fire fighting equipment shall be inspected monthly to insure availability and proper operation.~~

~~(e) All staff and students shall be trained in the proper operation and use of available fire fighting equipment and the alarm system.~~

~~(f) The school director shall request an on-site inspection of the facility by the State Fire Marshal at least once every twelve months.~~

~~(g) Immediate steps shall be taken to correct all fire safety deficiencies noted by the State Fire Marshal. Any required corrections that are not within the monetary or manpower capability of the program shall be submitted in writing by the staff in charge to the school director.~~

~~(h) All "No Smoking" areas of the facility shall be clearly enforced by the staff in charge.~~

~~(i) All fire extinguishers shall be serviced once a year by a company licensed by the State Fire Marshal's office. The extinguishers shall then be tagged to document the service.~~

*History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.*

SECTION .1600 - VISITATION POLICIES

09 NCAC 05F .1601 ON-CAMPUS VISITS

~~(a) Students in Division of Youth Services' training schools shall have the right to communicate in person with members of~~

their own family and others who have been approved in writing by the court counselor.

(b) Visiting areas shall be supervised in an unobtrusive manner without eavesdropping on conversations or otherwise interfering with the participants' privacy.

(c) After being in residence in the training school for 15 days each student shall be entitled to one visit of three hour's duration per week, by eligible visitors.

(d) In exceptional cases, the school director or his/her designee may approve visits prior to the end of the 15 day period of residence.

(e) The school director or his/her designee may declare a person ineligible to receive visits when it is determined that such visits would not make a positive contribution to the student's adjustment. Notification of this decision shall be made to the Deputy Director for Institutional Services.

(f) A student who has been transferred from one school to another shall not lose his/her eligibility for on-campus visits.

(g) Visiting time shall be between 8:00 a.m. and 4:00 p.m. on every Sunday and Wednesday. Extended visits beyond 4:00 p.m. may be approved by the school director or his/her designee.

(h) A student who is eligible for off-campus visits but who desires to spend all of a portion of his/her off-campus visiting privileges on campus, shall not be limited to the three hour requirement for on-campus visits.

(i) Authorized Visitors:

(1) Parents and responsible relatives shall be encouraged to visit students in the training schools. The Division of Youth Services may place more formal controls on visitors who are responsible relatives or parents:

(A) For the purposes of this policy, "parents" shall be defined as the student's natural or stepparents, or legal guardians. If the student's parents are separated or divorced, it is possible that one or both parents have been denied visitation rights by a court. The social worker at the student's school shall contact the appropriate court counselor to determine if such is the case. If a parent has been denied visitation rights, Division of Youth Services shall honor the court's order and deny such rights to the parents.

(B) Responsible relatives shall be defined as: a spouse, brothers, sisters, grandparents, or any other relatives who have not disobeyed any rules of the Division concerning visitation. If the visitor claims to be a responsible relative to the student and his/her name does not appear on the student's list, he/she shall produce evidence of the relationship. Identification that indicates residence in the same home as the student shall be sufficient. If the visitor does not reside in the same home as the student, he/she shall produce further proof of the

relationship with the student. This proof may be provided either in a letter from the student's court counselor stating the visitor's relationship with the student or other means satisfactory to the school director. The burden of proof of the relationship to the student shall rest with the visitor.

(2) Visitors other than "parents or responsible relatives" shall be allowed to visit only upon prior approval by the school director or his/her designee.

(3) The list of authorized visitors shall be completed by the student and his court counselor prior to the student's admission to training school and subject to final approval of the School Director.

(4) All visitors shall sign their name in the visitor's log.

(5) Identification of visitors: The following procedure shall be used to establish the identity of authorized visitors before they shall be allowed to visit a student:

(A) On arrival at a school, the visitor shall be directed to a visitor's receiving area for identification before being allowed to visit a student. Visitors shall be required to produce positive identification. This identification may be in the form of:

- (i) Driver's license;
- (ii) Military identification card;
- (iii) Draft card;
- (iv) Identification card issued by the state;
- (v) Credit cards;
- (vi) Social Security card; or
- (vii) Other reliable identification documents.

(B) Cards which contain a photograph shall be sufficient identification of a visitor. If the visitor does not have an identification card with a photograph, he/she shall produce a minimum of two types of non-photographic documents. Minor visitors who do not have either a photographic identification card or two non-photographic cards must be accompanied by an adult who does possess the required identification.

(C) Under no circumstances shall anyone without positive identification be allowed to visit a student.

(j) Disruptive Visitors:

(1) The final decision as to who may visit a student shall be the responsibility of the school director or his/her designee.

(2) The school director or his/her designee shall have the right to refuse entry to a visitor when

~~he/she is obviously intoxicated, extremely hostile, verbally abusive, or unable to control his/her behavior.~~

- ~~(3) If the school director or his/her designee determines that a visitor should not be allowed to visit a student, he/she shall ask the visitor to leave the campus. If the visitor refuses to leave, the school director shall inform the visitor that if he/she remains on the campus, he/she will be trespassing and the local law enforcement agency will have the visitor removed. If the visitor still refuses to leave, the school director shall contact the local law enforcement agency and have the visitor removed from the campus.~~
- ~~(4) If the visitor becomes aggressive and seeks to take the student with him, the staff shall not seek to restrain him and thereby endanger their safety, but shall immediately contact law enforcement officers concerning the incident.~~
- ~~(5) Only in extreme cases which imply violence to the student shall an attempt be made to physically restrain the visitor. Excessive force shall never be used to stop a visitor. The force used shall be only enough to prevent harm to the student or staff. Efforts shall be directed at restraint. If the visitor indicates a desire to leave the campus without the student, he/she shall be allowed to do so. No attempt shall be made to detain him/her until the law enforcement agency representative arrives.~~
- ~~(6) If a disruptive visitor situation exists, the school director or his/her designee shall notify the Deputy Director for Institutional Services.~~

(k) Search of Persons Entering Institutions:

- ~~(1) Persons who enter the campus of a Division of Youth Services' training school to visit students may be searched for contraband as a condition of visitation.~~
- ~~(2) The search shall be made as a condition of entrance to the campus if the school director or his/her designee believes that the visitor may be concealing contraband.~~
- ~~(3) Before a search of a visitor is made, he/she shall sign a "Consent to Search" form. If the visitor refuses to sign the consent form, he/she shall be refused entrance into the school.~~

History Note: Authority G.S. 134A-8; 134A-20; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1602 OFF-CAMPUS VISITS

~~(a) After being in residence in the training school for a minimum of 30 days and demonstrating a satisfactory adjustment, students shall be eligible for off-campus visits with parents, guardians or other person approved by the court of the school director during regular visiting hours.~~

~~(b) The length of the visit shall be eight hours unless otherwise specified by the treatment team, the school director, or his/her designee.~~

~~(c) Visiting time shall be between 8:00 a.m. and 4:00 p.m. on every Sunday and every Wednesday. Individual requests for other visiting hours or days may be approved by the school director or his/her designee as they are received.~~

History Note: Authority G.S. 134A-20; 134A-26; 143B-10; Eff. February 1, 1986; Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1603 HOME VISITS

~~(a) Students who have completed 90 days in residence and have exhibited a satisfactory adjustment to the training school environment shall be eligible for home visits of two to five days in length.~~

~~(b) Home visit means a visit to the home of the natural parents, stepparents, legal guardians, legal custodians, or if those persons are not available, to the home of a friend or community sponsor.~~

~~(c) The frequency of home visits shall not exceed one visit per quarter (three months).~~

~~(d) More frequent or extended visits may be granted by the school director or his designee upon approval by the Deputy Director for Institutional Services.~~

~~(e) Based on the student's progress, home visits may be granted for up to 10 days for Christmas and teacher vacation days.~~

~~(f) The student shall be responsible for initiating the request for a home visit at least 30 days in advance of the desired dates by completion of the "Request for Home Visit" form. This form is obtained from the cottage supervisor at each institution, completed by the student, and then submitted to the cottage supervisor. The decision to grant or refuse the request for home visit is made through the following steps:~~

- ~~(1) The student's progress and adjustment shall be reviewed by appropriate staff, who shall then recommend to the school director as to whether or not the visit should be approved by the school.~~
- ~~(2) If the request for home visit is disapproved, the reasons for this decision will be presented to the student in writing along with statements as to what the student must accomplish for consideration of a home visit.~~
- ~~(3) If the school approves the home visit, the student's court counselor shall be notified in writing and asked to grant approval of the court. The court counselor's written approval must be received prior to confirmation of the home visit.~~
- ~~(4) The decision of the court counselor and transportation arrangements will be communicated to the student.~~

~~(g) Emergency visits may be granted by the school director in situations such as death or serious illness of a family member. The court counselor shall be notified immediately of all such visits, including leave and return dates, transportation arrangements and place of residence.~~

~~(h) Home visits shall be arranged to minimize interruption of the student's treatment program.~~

TEMPORARY RULES

~~(i) Students shall return to the school by 4:00 p.m. at the conclusion of the home visit unless they have received special permission from the school director or his/her designee to return at a later time.~~

~~(j) A student who has been transferred from one school to another shall not lose his/her eligibility for home visits.~~

History Note: Authority G.S. 134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1604 CAMPUS DETENTION VIS ITS

~~A student placed in campus detention shall be subject to the rules and regulations contained in the visiting policy, depending upon his/her ability to cope with visitors. Visits shall take place outside the detention room. Decisions concerning the visiting as they apply to students in campus detention shall be made by the school director or his/her designee.~~

History Note: Authority G.S. 134A-20; 134A-26; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

SECTION .1700 - PROCEDURE FOR STUDENT RELEASE

09 NCAC 05F .1701 DEFINITIONS APPLICABLE TO THIS SECTION

For purposes of this Section, the following definitions apply:

- ~~(1) "Definite Commitment" means any student committed to training school for a definite term not to exceed two years, provided the judge committing the juvenile has found that the juvenile meets the following criteria:
 - ~~(a) Is fourteen years of age or older;~~
 - ~~(b) Has previously been adjudicated delinquent for two or more felony offenses; and~~
 - ~~(c) Has been previously committed to a residential facility.~~~~
- ~~(2) "Hard to Place Student" means any student for whom it is determined that appropriate placement is not available after the following procedures have been completed:
 - ~~(a) The six month evaluation (or an evaluation that occurs prior to a six month stay) indicated the student ready for release;~~
 - ~~(b) A pre-release planning conference is completed.~~~~
- ~~(3) "Indefinite Commitment" means any student who is not a definite commitment and has been committed to training school for an indefinite term not to exceed his/her eighteenth birthday, including capital offenders and Governor's transfers from the Department of Correction.~~
- ~~(4) "Regular Commitment" means any student who is not a definite commitment, a capital offender, or a Governor's transfer.~~

History Note: Authority G.S. 7A-652; 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1702 POLICY

~~Recommendations for the release of a student shall be made by the treatment team and approved by the school director in writing. General readiness for release shall be assessed periodically by the treatment team.~~

History Note: Authority G.S. 7A-654; 7A-655; 7A-656;
134A-20; 143B-10;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1703 TWO-MONTH EVALUATION

~~(a) The treatment team shall evaluate each student's progress at least two months after his/her admittance to training school and subsequently every two months that the student is institutionalized.~~

~~(b) All pertinent information, including but not limited to, undated medical, psychological and psychiatric assessments and input from the student's court counselor shall be shared with the treatment team.~~

~~(c) A file shall be maintained on all student admissions by each institution.~~

- ~~(1) Each school director shall designate an individual who shall maintain such a file.~~
- ~~(2) This file shall project a date for each student's progress to be evaluated, together with a date indicating the maximum time for which a given student may be held.~~
- ~~(3) The file shall also contain a notation of each student's run time. Run time shall not be counted in determining a student's total length of stay.~~

History Note: Authority G.S. 7A-654; 7A-655; 7A-656;
134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1704 PRE-RELEASE PLANNING CONFERENCE

~~(a) When it is determined that a student is ready for release, a pre-release planning conference shall be conducted.~~

~~(b) The pre-release planning conference shall be held involving as many of the following as is possible, and documentation of such shall be placed in the student's file.~~

- ~~(1) The juvenile and his/her parents or guardian;~~
- ~~(2) Appropriate court counselors or adult probation officers who have supervised the juvenile on probation or will supervise aftercare. A twenty day notice shall be given to the court counselor or probation officer prior to the holding of a pre-release planning conference. Discussion on aftercare in regard to conditional release or discharge shall occur during the pre-release planning conference;~~

TEMPORARY RULES

- ~~(3) — Appropriate educational representative from student's committing county local school district (i.e., guidance counselor); and~~
- ~~(4) — Appropriate treatment team.~~

History Note: Authority G.S. 7A-654; 134A-20; 143B-10;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1705 MAXIMUM SENTENCES: DEFINITE COMMITMENTS

~~(a) A 30 day notice of projected release date shall be given to the appropriate court counselor unless waived by agreement at the pre-release planning conference.~~

~~(b) A 25 percent reduction in the maximum sentence of a student entering training school as a definite commitment may be granted if the student has committed no major infractions of regulations of the facility to which he/she is assigned. The following procedures apply:~~

- ~~(1) — Six months evaluation of progress is completed, or when it is determined a student is ready for release prior to a six-month length of stay, an evaluation of progress shall be completed;~~
- ~~(2) — Pre-release planning conference is conducted;~~
- ~~(3) — Treatment team recommends 25 percent reduction to school director in writing;~~
- ~~(4) — School director recommends 25 percent reduction to Deputy Director for Institutional Services in writing;~~
- ~~(5) — Deputy Director for Institutional Services approves 25 percent reduction of definite commitments in writing.~~

~~(c) A reduction in maximum sentence of more than 25 percent may only be granted by a court of competent jurisdiction. The Division may petition the court to grant this reduction for a student who has committed no major infraction of regulations of the facility to which he has been assigned. The following procedures shall apply:~~

- ~~(1) — No major infractions of the regulations of the facility to which the student is assigned;~~
- ~~(2) — Six-month evaluation of progress is completed;~~
- ~~(3) — Pre-release planning conference is conducted;~~
- ~~(4) — Treatment team recommends more than 25 percent reduction to school director in writing;~~
- ~~(5) — The school director recommends more than 25 percent reduction to Assistant Director for Institutional Services in writing;~~
- ~~(6) — The Division files a motion for court review and court hearing occurs.~~

History Note: Authority G.S. 7A-652; 7A-654; 7A-664;
134A-8; 134A-20;
Eff. February 1, 1986;
Amended Eff. July 1, 1990;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1706 INDEFINITE COMMITMENTS

~~(a) For serious offenders and governor's transfers from the Department of Correction, the following procedures apply:~~

- ~~(1) — Six-months evaluation complete;~~
- ~~(2) — Treatment team recommends release to school director in writing;~~
- ~~(3) — Pre-release planning conference conducted;~~
- ~~(4) — School director contacts court;~~
- ~~(5) — School director recommends release in writing to Deputy Director for Institutional Services;~~
- ~~(6) — Deputy Director for Institutional Services approves release in writing to school director.~~

~~(b) For regular commitments, the following procedures apply:~~

- ~~(1) — Six-month evaluation completed or evaluation of progress if student is identified ready for release prior to a six-month stay;~~
- ~~(2) — Pre-release planning conference is conducted;~~
- ~~(3) — Treatment team recommends release to school director in writing; and~~
- ~~(4) — School director approves recommendation of treatment team in writing.~~

History Note: Authority G.S. 7A-652; 7A-654; 7A-655;
134A-20;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

09 NCAC 05F .1707 HARD-TO-PLACE STUDENTS

~~After a student is found to be hard-to-place, the school director shall request assistance from the Deputy Director for Institutional Services using DYS Form 7519, Requesting Assistance for Hard-to-Place Students. A copy of the request shall be forwarded to the Deputy Director for Community Services.~~

History Note: Authority G.S. 7A-654; 134A-20;
Eff. February 1, 1986;
Temporary Repeal Eff. July 15, 2002.

TITLE 10 – DEPARTMENT OF HUMAN AND HEALTH SERVICES

Rule-making Agency: DHHS – Division of Medical Assistance

Rule Citation: 10 NCAC 26H .0506, .0509

Effective Date: July 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; S.L. 1995, c. 507, s. 23.10; 42 CFR 440.80; 42 CFR 440.170(f).

Reason for Proposed Action:

10 NCAC 26H .0506 – This amendment requires that rates may not result in funding greater than amounts budgeted by the General Assembly. Additionally, this change established the rate for personal care services in recipient's home to be \$13.24, effective July 1, 2002.

10 NCAC 26H .0509 – This amendment requires that rates may not result in funding greater than amounts budgeted by the

General Assembly. In addition, this change will reduce the current rate payment from \$35.36 to \$33.60 per hour.

Comment Procedures: Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, 2504 Mail Service Center, Raleigh, NC 27699-2504.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

10 NCAC 26H .0506 PERSONAL CARE SERVICES

(a) Payment for personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse, shall be based on a ~~negotiated~~ hourly fee not to exceed reasonable cost. Effective July 1, 2002, this hourly fee is established at \$13.24. Effective July 1, 2003, the rate is adjusted annually by the inflation methodology included in paragraphs (4), (5) and (6) of Attachment 4.19-B, Section 7, Page 2 of the North Carolina Medicaid State Plan. The rates may not result in funding greater than amounts budgeted by the North Carolina General Assembly.

(b) The Division of Medical Assistance will enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in adult care homes.

- (1) Effective August 1, 1995 reimbursement for private providers shall be determined by the Division of Medical Assistance based on a capitation per diem fee (fee) derived from review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial fee is based on one hour of services per patient day. Additional payments may be made utilizing the one hour fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial one hour fee is computed by adding together the estimated salary, fringes, direct supervision and allowable overhead. Effective January 1, 2000 the cost of medication administration and additional personal care services direct supervision shall be added to the fee. The fee(s) may be recalculated each year based on the most current annual cost report available to the state. This annual adjustment shall not exceed the amount approved by the North Carolina General Assembly. The rates may not result in funding greater than amounts budgeted by the North Carolina General Assembly. Payments may not exceed the limits set in 42 CFR 447.361. Effective January 1, 2000, private provider payments shall be cost settled with any overpayment repaid to the Division of Medical

Assistance. No additional payment to the provider shall be made due to cost settlement. The first cost settlement period shall be the nine months ended September 30, 2000. Subsequently, the annual cost settlement shall be the 12 months ended September 30.

- (2) Effective January 1, 1996 public providers shall be paid on an interim basis using the above method. Payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payments to the provider shall be made due to cost settlement.

(c) Changes to the Payment for Services Prospective Plan for Personal Care Services will become effective when the Centers for Medicare and Medicaid Services (~~CMS~~), U.S. Department of Health and Human Services, approves amendment submitted to CMS by the Director of the Division of Medical Assistance as #TN ~~01-14~~ 02-11.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; S.L. 1995 c. 507, s. 23.10; 42 C.F.R. 440.170(f); Eff. January 1, 1986; Temporary Amendment Eff. April 22, 1996; January 9, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. January 1, 2000; Temporary Amendment Expired on October 28, 2000; Amended Eff. April 1, 2003; Temporary Amendment Eff. July 1, 2002.

10 NCAC 26H .0509 PRIVATE DUTY NURSING

(a) Private duty nursing services shall be reimbursed at the lower of billed customary charges or an established hourly rate. ~~The rate shall be derived from the average billed charges per hour in the base year and, beginning July 1, 1990, Effective July 1, 2002 this hourly rate is \$33.60. Effectively July 1, 2003, this rate shall be adjusted annually by the percentage change in the rate for a skilled nursing visit by a home health agency. The rate may not result in funding greater than amounts budgeted by the North Carolina General Assembly.~~

(b) Effective October 1, 1993, payment for Private Duty Nursing Medical Supplies, except those related to provision and use of DME, shall be reimbursed at the lower of a provider's billed customary charges or the maximum fee established for certified home health agencies. The maximum amount for each item shall be determined by multiplying the prevailing Medicare Part B allowable amount by 145 percent to account for the allocation of overhead costs and by 80 percent to encourage maximum efficiency. Fees shall be established based on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. The Medicare allowable amounts shall be those amounts available to the Division of Medical Assistance as of July 1 of each year. This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.80; Eff. January 1, 1994; Temporary Amendment Eff. July 1, 2002.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
FILE #02 DHR 1013

ASSOCIATION FOR HOME AND HOSPICE CARE OF)
 NORTH CAROLINA INC., JENNIFER KEEFE, TAMMY)
 THRIFT, and JULIA THOMPSON on behalf of D.J.)
 THOMPSON,)
 Petitioners,)
)
 v.)
)
 DIVISION OF MEDICAL ASSISTANCE, NORTH CAROLINA)
 DEPARTMENT OF HEALTH AND HUMAN SERVICES,)
 Respondents.)

PRELIMINARY INJUNCTION

Upon the motion for a preliminary injunction of Petitioners Association for Home and Hospice Care of North Carolina, Inc. (“AHHC”), Jennifer Keefe, Tammy Thrift, and Julia Thompson, on behalf of D. J. Thompson, pursuant to N.C. Gen. Stat. § 150B-33(b) and Rule 65 of the North Carolina Rules of Civil Procedure, this Court has reviewed the evidence of record, the relevant authorities, and the arguments of counsel for both parties and makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

TEMPORARY RULES

1. The Petitioner AHHC is an association of approximately 460 home care and hospice agencies in North Carolina (“AHHC Agencies”). AHHC Agencies provide the majority of Personal Care Services under North Carolina’s program of medical assistance (“the Medicaid Program”). The majority of Medicaid Private Duty Nursing Services are provided by AHHC Agencies and many AHHC Agencies participate as case managers (“CAP Lead Agencies”) and provide services under Medicaid Community Alternative Programs (“CAP Programs”). Approximately 37,000 North Carolinians receive Personal Care Services, Private Duty Nursing Services, or CAP Services reimbursed through the Medicaid Program.
2. Jennifer Keefe is a Medicaid Personal Care Services recipient who resides in Salisbury, North Carolina. She has had spastic cerebral palsy since birth and ambulates in a motorized wheelchair. Ms. Keefe is unable to drive and is dependent upon her Medicaid Personal Care Services care giver to provide a number of essential services for her.
3. Tammy Thrift is a recipient of Medicaid Private Duty Nursing Services who lives in Kings Mountain, North Carolina. Ms. Thrift is a quadriplegic resulting from an accident who is absolutely dependent upon 24 hour a day nursing services.
4. Julia Thompson is the Grandmother and Guardian of D.J. Thompson, both of whom reside in Rockwell, North Carolina. D.J. has muscular dystrophy and receives essential services through a Medicaid CAP Program.
5. DMA is the Agency responsible for the administration of North Carolina’s Medicaid Program. N.C.G.S. Chapter 108A, Article 2, Part 6. The Medicaid Program serves low income persons who must meet certain eligibility requirements.
6. On June 18, 2002 Petitioners’ filed a Petition for Contested Case Hearing in this Court challenging decisions announced by DMA by memos to providers on May 30, 2002 and June 10, 2002. (Exhibits D and E of the Petition). These memos informed providers that DMA would make reductions ranging from 5% to 29% in reimbursement for certain home and community-based services effective July 1, 2002. DMA announced that reimbursement for all Personal Care Services and Private Duty Nursing Services would be reduced by 5%; that reimbursement to CAP Lead Agencies would be reduced by 25% to 29%; and that reimbursement for other CAP Services would be reduced by 5%. The CAP Services affected by these announced reimbursement cuts included services to mentally retarded persons, developmentally disabled adults, persons with AIDS and children with HIV infection, and medically fragile children.
7. By memo on June 26, 2002, DMA announced that it was rescinding its decision to reduce the reimbursement for case management services for the CAP/DA Program. By Affidavit of DMA’s Deputy Director filed in response to Petitioners’ Motion, DMA also indicated that it will rescind its decision to reduce reimbursement for case management services in the CAP/C and CAP/AIDS Programs. DMA has not rescinded its decision to implement the other reimbursement cuts announced in its memos of May 30th and June 10th.
8. In support of their Motion, Petitioners presented arguments and affidavits to support their claims that DMA’s announced reimbursement cuts substantively and procedurally violate state and federal law in a number of ways including:
 - (1) DMA’s unilateral change in methodology and reduction in payment rates violate state and federal requirements that a State Medicaid agency’s payments must be sufficient to enlist enough providers so that services under Medicaid are available to recipients at least to the extent that those services are available to the general population and that payment for services must be consistent with efficiency, economy, and quality of care. (42 U.S.C. § 1396a(a)(30)(A), and N.C.G.S. § 180A-56);
 - (2) DMA failed to consider the factors set forth in 42 U.S.C. § 1396a(a)(30)(A), as it was required to do, prior to making its decisions on these reimbursement cuts;
 - (3) DMA is depriving home care providers of their rights to reconsideration and appeal as set forth in DMA’s regulations by attempting to make its reimbursement rate changes effective before providers can avail themselves of the reconsideration process, directly contrary to DMA’s own regulations (10 N.C.A.C. 26K);
 - (4) DMA failed to comply with the federal requirement for consultation with its Medical Care Advisory Committee before deciding on these reimbursement cuts;
 - (5) DMA failed to comply with provisions of Session Law 2001-424, the State Budget Act, by not using the latest audited cost reporting data available in establishing these new rates and in making changes to the reimbursement methodologies and by not establishing reimbursement rates that will allow efficient Medicaid providers to comply with certification requirements, licensure rules, or other mandated quality or safety standards. (Section 21.19(w) and 21.24(c)).

(6) DMA's unilateral reduction of reimbursement for home and community-based services will force many North Carolina citizens to be institutionalized, contrary to North Carolina public policy and in violation of North Carolina's Policy Act for the Aging (N.C.G.S. § 143B-181.3).

9. DMA's decisions to cut reimbursement for the home and community-based services at issue were, according to DMA, based only upon budgetary concerns. The Director of DMA admitted to AHHC representatives that DMA did not consider the costs of providing these services. Petitioners presented Affidavits from the Executive Director of AHHC and from several home care providers stating that even under the current reimbursement for these services, the majority of home care providers are not receiving sufficient reimbursement to cover the costs of providing these home and community-based services.

10. Petitioners' affidavits indicate that many providers will go out of business and others will stop serving Medicaid patients if these reimbursement reductions are allowed to take affect. Those AHHC Agencies that continue in business serving the Medicaid population will be forced to reduce wages to their employees, which will have a detrimental, adverse impact upon employee recruitment, retention and quality of services. Many North Carolina citizens eligible for Medicaid services will either not receive any services or will be forced into more expensive institutional settings and many Medicaid recipients will not receive the quality of services to which they are entitled. Petitioners Keefe, Thrift, and Thompson will be at serious risk of losing their essential Medicaid home and community-based services which they need to avoid institutionalization. DMA admits on its website that the services provided through the Medicaid CAP Programs contribute to a better quality of life for recipients and their care-givers and is more cost-effective than the alternative of institutional care.

11. If DMA's reimbursement cuts are allowed to take affect prior to a hearing on the merits of Petitioners' claims, Petitioners are likely to suffer irreparable loss and harm. Some AHHC Agencies may be forced out of business or may discontinue serving Medicaid persons and the reduction in care takers salaries that these reimbursement reductions will cause will result in a detrimental, adverse impact upon employee recruitment, retention and quality of services.

THEREFORE, the Court concludes as a matter of law that:

1. Petitioners have shown a likelihood of success on the merits, specifically that DMA's reimbursement reductions violate federal and state laws applicable to the Medicaid Program;
2. Petitioners have shown that without a Preliminary Injunction, they are likely to suffer irreparable loss. Issuance of a Preliminary Injunction is necessary for the protection of Petitioners' rights during the course of the litigation;
3. This Court has authority to enjoin DMA from making its reimbursement reductions effective, pending a hearing on the merits of Petitioners' claims, under N.C.G.S. § 150B-33(6) and (9) and Rule 65 of the North Carolina Rules of Civil Procedure;
4. The potential for harm to Petitioners in the absence of a Preliminary Injunction is greater than the potential harm to DMA if a Preliminary Injunction is granted; and
5. No security for the issuance of an injunction is required at this time, but this Court may reconsider the issue of security at a later date, if necessary.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That, until further Order of this Court, the Respondent DMA is hereby restrained from giving effect to the reimbursement reductions announced in its memos of May 30th and June 10th (Exhibits D and E of the Petition) and its temporary rules, 10 N.C.A.C. 26H.0506 and .0509.
2. The Respondent DMA shall promptly communicate with all recipients of its May 30th and June 10th memos that it is enjoined from implementing these reimbursement reductions until further order of this Court.
3. That the hearing in this contested case shall be expedited and counsel for the parties shall communicate with the undersigned about available dates for a hearing beginning after the first full week in August.
4. No security for the issuance of this Order is required at this time.

This Order is effective on July 1, 2002, as announced in open Court on that date.

This 5th day of July, 2002.

The Honorable Beecher R. Gray
Administrative Law Judge Presiding

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

**CHAPTER 68 - CERTIFICATION BOARD FOR
SUBSTANCE ABUSE PROFESSIONALS**

Rule-making Agency: *NC Substance Abuse Professional Certification Board*

Rule Citation: *21 NCAC 68 .0216*

Effective Date: *July 1, 2002*

Findings Reviewed and Approved by: *Julian Mann*

Authority for the rulemaking: *G.S. 90, Article 5C*

Reason for Proposed Action: *This Rule is necessary to provide a standard for background investigations of applicants as a part of the process of awarding certifications.*

Comment Procedures: *Written comments may be submitted to Jim Scarborough, Executive Director, NC Substance Abuse Professional Certification Board, PO Box 10126, Raleigh, NC 27605.*

SECTION .0200 - CERTIFICATION

21 NCAC 68 .0216 BACKGROUND INVESTIGATION

(a) Every applicant for registration or certification shall provide, at her or his expense, a global criminal history report when:

- (1) An applicant has met all requirements for registration; or
- (2) The applicant has met all requirements for certification; or
- (3) The Board receives information indicating a possible conviction.

If the applicant is unable to submit a report due to his or her inability to obtain the report from the appropriate agency due to the agency's denial of a request for the report, a signed statement listing all of the applicant's criminal convictions (to include all crimes appearing in the categories listed below) shall satisfy this requirement until the applicant can obtain his or her global criminal history report.

(b) If an applicant was registered more than one year earlier, a additional criminal history report is required when applying for certification.

(c) The applicant shall disclose and provide complete information regarding all misdemeanor and felony convictions. Failure to make full and accurate disclosure shall be grounds for immediate application denial, or other disciplinary action applicable to registration or certification.

(d) Applications with criminal histories from any jurisdiction shall be categorized according to the seriousness of the offense. The category shall be determined by the most serious offense, as defined by North Carolina law.

(e) These categories are as follows:

- (1) Category I. The following crimes:
 - (A) Homicide and attempted murder; or
 - (B) Sexual assault, including but not limited to attempted sexual assault, rape, indecent liberties with a child, molestation, and sexual assault of a child.
- (2) Category II. Crimes that primarily result in physical or emotional harm to others, including but not limited to:
 - (A) Manslaughter;
 - (B) Kidnapping or attempted kidnapping;
 - (C) First degree arson;
 - (D) Robbery or attempted robbery;
 - (E) Assault (felony);
 - (F) Larceny from person; and
 - (G) Habitual DWI.
- (3) Category III. Crimes that do not primarily result in physical or emotional harm to others, including but not limited to:
 - (A) Any combination of three or more misdemeanors from Category IV;
 - (B) Assault (misdemeanor);
 - (C) Burglary;
 - (D) Three or more DWIs;
 - (E) Larceny (felony but not from the person);
 - (F) Forgery (felony);
 - (G) Possession of a controlled substance (felony);
 - (H) Delivery of a controlled substance (felony);
 - (I) Financial transaction card theft or fraud;
 - (J) Unauthorized use of a motor vehicle;
 - (K) Unlawfully carrying a weapon (felony or misdemeanor);
 - (L) Burglary of a vehicle;
 - (M) Falsification of government documentation (felony); and
 - (N) Second degree arson.
- (4) Category IV. Misdemeanors which do not result in physical or emotional harm to others. Three or more Category IV convictions (committed as separate incidents) shall be reclassified as a Category III offense. Category IV offenses include but are not limited to:
 - (A) Two DWIs;
 - (B) Possession of a controlled substance;
 - (C) Injury or damage to property;
 - (D) Resisting arrest;
 - (E) Larceny;
 - (F) Prostitution;
 - (G) Criminal mischief;
 - (H) Driving while license suspended or revoked; and

TEMPORARY RULES

- (I) Falsification of government documents.
- (5) Category V. Three or more Category V convictions other than a DWI (committed as separate incidents) shall be reclassified as a Category IV offense. Category V offenses include but are not limited to:
- (A) One DWI;
 - (B) Disorderly conduct;
 - (C) Three or more bad checks; and
 - (D) Intoxicated and disruptive in public.
- (f) The Board shall determine if the conviction is directly related to the duties and responsibilities of a substance abuse professional. The Board shall consider the following factors:
- (1) The nature and seriousness of the crime;.
 - (2) The relationship of the crime to the purposes for requiring a registration or certification as a substance abuse professional;
 - (3) The extent to which a registration or certification might offer an opportunity to engage in further criminal activity of the same type; and.
 - (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a substance abuse professional.
- (g) If the Board determines that the conviction does not relate to the duties and responsibilities of a substance abuse professional, the Board shall process the registration or certification application according to standard procedures.
- (h) If the Board determines that the conviction does relate to the duties and responsibilities of a substance abuse professional, the Board shall evaluate the present fitness of the individual to provide substance abuse services.
- (i) The Board shall use the following guidelines in evaluating an individual's present fitness:
- (1) An applicant with a Category I conviction shall have at least 12 to 15 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category I conviction to be eligible for registration or certification.
 - (2) An applicant with a Category II conviction shall have at least 7 to 12 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for registration or certification.
 - (3) An applicant with a Category III conviction shall have at least three to seven years since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for registration or certification.
 - (4) An applicant with a Category IV conviction shall have at least three years since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for registration or certification.
- (5) An applicant with a Category V conviction shall have at least one year since the applicant has completed all aspects of his or her sentence received as a result of the last Category V conviction to be eligible for registration or certification.
- (j) The Board shall also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a substance abuse professional;
- (1) The age at the time each crime was committed;
 - (2) The conduct and work history of the person before and after the criminal conviction;
 - (3) Evidence of the person's rehabilitation efforts and outcome;
 - (4) The extent and nature of the past criminal history;
 - (5) Two letters of recommendation from qualified credentialed counselors; and.
 - (6) Other evidence of fitness that may be relevant to the Board's assessment, such as a psychological test, mental health status report, substance abuse assessment, etc.
- (k) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.
- (l) An individual whose application is denied or whose registration is suspended or revoked may request a hearing under the procedure established in Article 5C of Chapter 90 and Chapter 150B of the North Carolina General Statutes and the North Carolina Administrative Code.

History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44; Temporary Adoption Eff. May 15, 2002; Temporary Amendment Eff. July 1, 2002.

TITLE 28 - DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Rule-making Agency: *Department of Juvenile Justice and Delinquency Prevention*

Rule Citation: *28 NCAC 01A .0101, .0201-.0204, .0301-.0302; 28 NCAC 02A .0101-.0111, .0201-.0204; 28 NCAC 03A .0101-.0102, .0201, .0301-.0309, .0401-.0406, .0501-.0502; 28 NCAC 04A .0101-.0106*

Effective Date for Temporary Rule: *July 15, 2002*

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

Authority for the rulemaking: *G.S. 78-1701; 7B-1803; 7B-1900; 7B-1902; 7B-1903; 7B-1906; 7B-2413; 7B-3100; 143B-511; 143B-512; 143B-516; 143B-517; 143B-536; 143B-543; 143B-550; 150B-4; 150B-20; 150B-21.2*

Public Hearing:

Date: September 10, 2002

Time: 2:00 p.m.

Location: Department of Juvenile Justice and Delinquency Prevention, 410 S. Salisbury St., Raleigh, NC

Proposed Effective Date for Permanent Rule: April 1, 2003

Reason for Proposed Action: In 2001, the North Carolina General Assembly established the Department of Juvenile Justice and Delinquency Prevention through G.S. 143B-511 and granted the Secretary of Juvenile Justice with rule making authority through G.S. 143B-516. In seeking the adoption of these temporary rules, the Department is responding to the mandate of the General Assembly to provide for the effective administration of programs to prevent juvenile crime from occurring and to rehabilitate juvenile offenders.

Comment Procedures: All comments should be directed to the rules coordinator, Larry Dix, by mail at 410 S. Salisbury St., Raleigh, NC 27601 or by fax at (919) 733-0780. All comments must be received by September 10, 2002.

Fiscal Impact

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

CHAPTER 01 – DEPARTMENTAL RULES

SUBCHAPTER 01A – DEPARTMENTAL MANDATES

SECTION .0100 – GENERAL PROVISIONS

28 NCAC 01A .0101 SCOPE

- (a) The rules in this Title implement the rule-making authority given the Department of Juvenile Justice and Delinquency Prevention.
- (b) The rules in this Chapter establish requirements for:
 - (1) APA rule-making petition process; and
 - (2) Information sharing.

History Note: Authority G.S. 143B-512(a); 143B-516; Temporary Adoption Eff. July 15, 2002.

SECTION .0200 - RULEMAKING PROCEDURES

28 NCAC 01A .0201 PETITIONS

- (a) Any petition for the adoption, amendment, or repeal of a rule within Title 28 of the North Carolina Administrative Code must be made to the Secretary of the Department of Juvenile Justice and Delinquency Prevention and addressed to: Secretary/Administrative Hearing Officer, Department of Juvenile Justice and Delinquency Prevention, 1801 Mail Service Center, Raleigh, NC 27699-1801; or delivered in person to the Office of the Secretary.
- (b) The petition shall contain the following information:
 - (1) either a draft of the proposed rule or a summary of its contents;
 - (2) the reasons for the petition;

- (3) the effect on existing rules or orders;
- (4) any data supporting the petition;
- (5) the effect of the petition on existing practices in the area involved in cost factors;
- (6) the names and addresses, if known, of those most likely to be affected by the petition; and
- (7) the name and address of the petitioner.

- (c) The Secretary shall determine, based on a study of the facts in the petition, whether the public interest will be served by granting the petition. The Secretary will consider all the contents of the submitted petition, plus any additional information deemed to be relevant.
- (d) If the decision is to deny the petition, the petitioner shall be given notice that the decision including reasons why the petition was denied and may be appealed through Judicial Review as provided in G.S.150B-20(d).

History Note: Authority G.S. 143B-512(a); 150B-20; Temporary Adoption Eff. July 15, 2002.

28 NCAC 01A .0202 HEARINGS

- (a) Persons desiring to make oral presentations at a public hearing may submit a written copy of the presentation to the hearing officer prior to or at the public hearing.
- (b) Persons making oral presentations shall be limited to 10 minutes. If prior permission is requested the hearing officer may extend the length of the presentation beyond 10 minutes if he determines that it is required to ensure a full understanding of the issues.
- (c) The hearing officer at the public hearing shall announce a written list identifying the parties who have filed written submissions prior to the hearing and copies of those submissions will be made available upon request.
- (d) A written submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it. Written submissions must be sent to: Secretary/Administrative Hearings Officers, Department of Juvenile Justice and Delinquency Prevention, 1801 Mail Service Center, Raleigh, NC 27699-1801; or submitted in person to the Hearing Officer at the time of the public hearing.
- (e) The Hearing Officer shall have complete control over the rulemaking hearing, including:
 - (1) the responsibility of having a record made of the hearing;
 - (2) extension of and enforcement of time allotments;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations; and
 - (5) general management of the hearing.
- (f) The Hearing Officer shall give each person attending the hearing a fair opportunity to present views, data, and comments.

History Note: Authority G.S.143B-512(a); 150B-21.2; Temporary Adoption Eff. July 15, 2002.

28 NCAC 01A .0203 FEES

The Department may charge a fee to persons requesting materials from hearing records. The fee will cover the cost of meeting the request.

*History Note: Authority G.S. 143B-512(a);
Temporary Adoption Eff. July 15, 2002.*

28 NCAC 01A .0204 DECLARATORY RULINGS

(a) The Secretary or his designee shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to: Secretary/Administrative Hearing Officer, Department of Juvenile Justice and Delinquency Prevention, 1801 Mail Service Center, Raleigh, NC 278699-1801.

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

- (1) The name and address of the petitioner;
- (2) The statute or rule which the petition relates; and
- (3) A concise statement of the manner in which the petitioner is aggrieved by the rule and the criteria under this Rule that justifies the request for a declaratory ruling.

(c) The Secretary or the Department's Hearing Officer may issue notice to persons who may be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(d) A record of all declaratory ruling proceedings shall be maintained by the Secretary's Office and shall be available for public inspection during regular business hours. This record shall contain:

- (1) The original request;
- (2) The reasons for refusing to issue a ruling when the request is denied;
- (3) All written memoranda and information submitted;
- (4) Any written minutes or audio tape or other record of the oral hearing; and
- (5) A statement of the ruling when the request is granted.

*History Note: Authority G.S. 143B-512; 143B-516, 150B-4;
Temporary Adoption Eff. July 15, 2002.*

SECTION .0300 - INFORMATION SHARING

28 NCAC 01A .0301 DESIGNATED AGENCIES AUTHORIZED TO SHARE INFORMATION

The following agencies shall share with one another upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent:

- (a) The Department of Juvenile Justice & Delinquency Prevention;
- (b) The Office of Guardian Ad Litem Services of the Administrative Office of the Courts;
- (c) County Departments of Social Services;
- (d) Area mental health developmental disability and substance abuse authorities;
- (e) Local law enforcement agencies;
- (f) District attorneys' offices as authorized by G.S. 7B-3100;
- (g) County mental health facilities, developmental disabilities and substance abuse programs;
- (h) Local school administrative units;

- (i) Local health departments; and
- (j) A local agency designated by an administrative order issued by the chief district court judge of the district court district in which the agency is located, as an agency authorized to share information pursuant to these Rules and the standards set forth in G.S. 7B-3100.

*History Note: Authority G.S. 7B-3100;
Temporary Adoption Eff. July 15, 2002.*

28 NCAC 01A .0302 INFORMATION SHARING AMONG AGENCIES

(a) Any agency that receives information disclosed pursuant to G.S. 7B-3100 and shares such information with another authorized agency, shall document the name of the agency to which the information was provided and the date the information was provided.

(b) When the disclosure of requested information is prohibited or restricted by federal law or regulations, a designated agency shall share the information only in conformity with the applicable federal law and regulations. At the request of the initiating designated agency, the designated agency refusing the request shall inform that agency of the specific law or regulation that is the basis for the refusal.

*History Note: Authority G.S. 7B-3100;
Temporary Adoption Eff. July 15, 2002.*

CHAPTER 02 – INTERVENTION/PREVENTION PROGRAM FUNDING

SUBCHAPTER 02A - INTERVENTION/PREVENTION PROGRAM STANDARDS

SECTION .0100 - JUVENILE CRIME PREVENTION COUNCIL FUND

28 NCAC 02A .0101 SCOPE

The rules in this Subchapter establish the requirements for state funding to counties in order to assist in the development of residential and non-residential community based, intervention and prevention programs for delinquent youth, undisciplined youth and those youth at risk of becoming delinquent.

*History Note: Authority G.S. 143B-544; 143B-550;
Temporary Adoption Eff. July 15, 2002.*

28 NCAC 02A .0102 DEFINITIONS

In this Subchapter the following terms have the listed meanings:

- (1) Juvenile Crime Prevention Council Fund (JCPC Fund). The funding account allocated by the General Assembly to the Department for the use of county government on a matching basis to establish and to maintain intervention and prevention services planned for by the Juvenile Crime Prevention Council.
- (2) Cash Match. The local funding provided by county government and other local resources and used to provide the share of a program

budget proportionate to the Department funds as required by the Department.

(3) In-Kind Match. A non-cash, local contribution to the operating costs of a Juvenile Crime Prevention Council funded program.

(4) Juvenile Crime Prevention Council Fund. The allocation by the state for Juvenile Crime Prevention Council's managed by the Department.

History Note: Authority G.S. 143B-516(e); 143B-543; 143B-550;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0103 COUNTY ELIGIBILITY

(a) The Department shall provide to counties annual written notification of the amount of the Juvenile Crime Prevention funds available and the local match required to utilize these state appropriated dollars.

(b) The Chairperson of the Board of County Commissioners, in order to indicate the desire of the county to participate in the Juvenile Crime Prevention Council fund, shall submit an annual funding plan to provide intervention and prevention funding.

(c) Counties may withdraw from the program at any time by giving 30 days prior written notice of the withdrawal. Funds designated for a county choosing to withdraw shall be placed in the discretionary fund. Notice of withdrawal must be signed by the Chairperson of the Board of County Commissioners.

(d) Counties shall not spend Juvenile Crime Prevention Council funds to duplicate services otherwise required by law.

(e) Counties shall not use the Juvenile Crime Prevention Council fund to supplant existing funds for services or programs.

History Note: Authority G.S. 143B-516; 143B-543; 143B-550;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0104 FUNDING

(a) Every participating county shall receive continuation funds in the amount of the previous fiscal year. The Department may apportion expansion funds with an equal amount per county or a proportionate amount per county based on the county population that is 10-17 years of age or a combination of the two.

(b) If the legislative appropriation for any fiscal year is less than that of the previous year, the Department shall calculate reductions in the county allocations using the same factors identified in Paragraph (a) of this Rule.

History Note: Authority G.S. 143B-516(b)(9); 143B-550;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0105 LOCAL MATCH

(a) Local match required for the expenditure of Juvenile Crime Prevention Council funds allocated for each county during any fiscal year may include either cash or in-kind contributions, except that capital expenditures shall require a cash match.

(b) Cash used as a required match may include any local general revenue funds collected by the local government and included in the current fiscal year budget.

(1) For purposes of this Rule, cash may not include any state or federal monies; however,

Juvenile Crime Prevention Council funds may be used as a match for federal grants.

(2) Cash used as a required match may also include any private foundation grant or individual contribution so long as such grant or contribution is made a part of the operating budget of the local program and is reported to the County Finance Officer on the Program Agreement and Accounting forms.

(c) In-kind contributions may include non-cash goods or services within a county's current assets or operation that is used to support the operation of any new or continuing program for which Juvenile Crime Prevention Council funds are requested.

(1) For purposes of this Rule, an in-kind match is a non-cash contribution provided to meet the objectives of the program whether contributed by the program or by third parties.

(2) In documenting the value of an in-kind contribution, the county will:

(A) Use the value of goods or services that directly benefits and is specifically identifiable to the programs's activities; and

(B) Assess the contribution necessary to accomplish the program's objectives.

(C) The percentage of a staff member's time used toward local match must be paid for with local revenues and the time must be spent in support of the program's activities.

History Note: Authority G.S. 143B-516(b)(11);
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0106 BUDGET AND BUDGET AMENDMENTS

(a) A Program Agreement Form including a line item budget is required for each program receiving Juvenile Crime Prevention Council funds.

(b) Juvenile Crime Prevention Council funds shall be administered by county governments in accordance with the provisions of G.S. 159-15.

(c) Audits shall be submitted to the county and to the Department as required by law.

(d) The county shall receive from the program and shall submit a line item budget with the Department in accordance with G.S. 159-15 when there is an adjustment in the revenues or in the cost center expenditures. Notice to the Department of any budget amendment must be made by submission of a program agreement revision prior to June 30 of the fiscal year of operation.

(e) Prior to the expenditure of funds, a county shall receive from a program and shall submit a program agreement revision for approval when a budget change within a program will result in a change in the overall impact of service delivery capability. Such changes include:

(1) Eliminating a staff member or function in the program;

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- (2) Assigning a staff member to a service delivery function not included in the approved Program Agreement;
 - (3) Shifting Juvenile Crime Prevention Council funds from one currently funded program to another within the same county; and
 - (4) Any request for Discretionary Funds.
- (f) Counties shall use funds only for the purposes approved by the Department in a program agreement or revision.

History Note: Authority G.S. 143B-516;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0107 DISCRETIONARY FUNDS

(a) Discretionary funds shall be treated as additional state funds over and above the annual allotment to a county and shall not be available for more than one year. Discretionary Funds may not be expended on routine operations of a local program that causes increased recurring cost to the state.

(b) In order to receive discretionary funds, the program must:

- (1) Be a program funded by the Department, which is in danger of closing or reducing its level of service. The program shall submit a statement of projected future funding sources documenting how the program plans to continue in operation during the next year; or
- (2) Be a currently operating departmentally funded program in need of equipment, materials, renovations, or staff development, which will expand or enhance the service capability of the program on a continuing basis. A program shall show a measurable expansion of services, which may include:
 - (A) More youth physically served in the renovated facility;
 - (B) Additional staff training that will add a new treatment dimension to the ongoing program; or
 - (C) Equipment or materials directly relating to improved treatment.

(c) Discretionary Funds may be used for emergency placement of youth for whom all local resources have been exhausted but where Department placement is inappropriate.

(d) Juvenile Crime Prevention Council funds that remain uncommitted for six consecutive months that are released by the withdrawal of a county from the Juvenile Crime Prevention Council and that are released with the third quarter accounting shall be transferred to the discretionary fund and made available to other participating counties.

History Note: Authority G.S. 143B-516; 143B-512;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0108 DISBURSEMENT, REVERSIONS AND FINAL ACCOUNTING

(a) Funds approved for Juvenile Crime Prevention Council programs shall be disbursed monthly, except for seasonal programs. Seasonal program funds shall be disbursed as determined by the Department.

(b) The county shall submit the third quarter accounting forms for the Juvenile Crime Prevention Council and all funded

programs to the Department at the end of the ninth month of the fiscal year unless otherwise required by the Department. This statement shall be prepared jointly by the program director and the county finance officer.

(c) A Final Accounting Form must be submitted not later than July 31 of each fiscal year to the Department. If a reversion is indicated from the Final Accounting Form, the Department shall notify the county finance officer of the reversion and the county will refund all reverted funds to the Department within 45 days of notification.

History Note: Authority G.S. 143B-516(a); 143B-550;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0109 THIRD PARTY PAYMENTS

(a) Client fees may not be required by programs which receive Juvenile Crime Prevention Council funds.

(b) When third party payments are billed on behalf of youth served in Juvenile Crime Prevention Council programs, the revenue generated must be used only for authorized expenses, and documented through a program agreement revision approved by the Department during the fiscal year in which the payment is received by the program. Authorized expenses include:

- (1) Expansion of services through a locally approved amendment;
- (2) Purchase or replacement of supplies or equipment, or to make other one-time expenditures that will directly enhance the effectiveness or the program; and
- (3) Reduction of the amount of Juvenile Crime Prevention Council funds necessary to meet the program's obligations during the fiscal year. Notification to the Juvenile Crime Prevention Council is required so that Juvenile Crime Prevention Council funds may be reallocated to meet other needs within the county or released to the Department.

(c) Third party payments may not be used as local match funds. Third party payments must be treated as other revenue and the source of funds must be included in the final accounting report.

History Note: Authority G.S. 143B-516; 143B-550;
Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0110 CAPITAL EXPENDITURES

(a) Capital expenditures include equipment valued in accordance with Office of State Budget policy and with a useful life of more than one year. Equipment expenses incurred by programs where Juvenile Crime Prevention Council funds constitute the major funding source shall be subject to the following:

- (1) Inventory control shall be maintained by placing all equipment purchased by funded programs on the local equipment inventory.
- (2) Equipment purchased by such programs shall, for the life of that equipment, be used solely for the purpose stipulated in the Program Agreement.
- (3) The disposal of such equipment shall be in accordance with the county's surplus

equipment policy and any revenue realized by the county shall be returned to the program for which the equipment was purchased.

- (4) Should the program cease operation during the useful life of the equipment, the county may, with the approval of the Department, transfer the equipment to another youth serving program within the county.
- (5) If the property cannot be transferred to another youth serving program, the county in agreement with the Department may reimburse the program at the fair market value of the property and transfer the property.
- (6) The county, in agreement with the Department, may sell property and transfer revenue to any youth serving program.

(b) All other Juvenile Crime Prevention Council funded programs shall abide by the program's policy for capital expenditures. If no policy exists, then the county government shall establish a policy. The program shall abide by the county government policy.

History Note: Authority G.S. 143B-516; 143B-550; Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0111 FORMS

Forms for fiscal control and monitoring are available from the Department. These forms include:

- (1) The Program Agreement Form is signed by a representative of the Department, county government, the program provider, and the Juvenile Crime Prevention Council. This form is required for each program annually, and describes the services to be provided and details the projected revenues and expenditures.
- (2) The Program Agreement Revision Form is signed by a representative of the Department, county government, the program provider, and the Juvenile Crime Prevention Council when any change in the programs services or any change in the revenues or expenditures of the program occurs.
- (3) The Final Accounting form is signed by the county finance officer and documents actual expenditures and identifies any unexpended balance. This form is required annually.
- (4) Third Quarter Accounting Form is required for each program at the end of the ninth month of the fiscal year to show a statement of projected unexpended funds. This statement shall be prepared jointly by the program director and the county finance officer.
- (5) Client Tracking Form is used by all funded programs to record on a monthly basis, demographic data and program performance data for each child served in a program. The information is collected upon admission to and termination from the program and is used to monitor program compliance.

(6) Monthly Batch Control Form is the document, which summarizes the Client Tracking Forms submitted on a monthly basis to the Department's Area Office.

(7) Local equipment inventory form identifies that equipment or property purchased by Juvenile Crime Prevention funds and is maintained and submitted annually by the program receiving funds with the Final Accounting Form.

History Note: Authority G.S. 143B-516; Temporary Adoption Eff. July 15, 2002.

SECTION .0200 - DIVISION OF RESPONSIBILITIES

28 NCAC 02A .0201 RESPONSIBILITIES OF COUNTY GOVERNMENT

Each county desiring to receive funding from the Juvenile Crime Prevention Council fund shall:

- (1) Notify the Department of the establishment of the Juvenile Crime Prevention Council;
- (2) Ensure that Juvenile Crime Prevention Council funds are used exclusively for programs that provide direct services to juveniles who have either been adjudicated delinquent or undisciplined, petitioned for delinquent acts or undisciplined behavior, diverted from intake, or at-risk of becoming delinquent;
- (3) Determine whether or not it is in its best interests to collaborate with other counties for the development of programs to address their juvenile needs;
- (4) Utilize generally accepted accounting procedures that guarantee the integrity of the expenditure of Juvenile Crime Prevention Council funds in local programs;
- (5) Report to the North Carolina Department of Juvenile Justice and Delinquency Prevention at the end of the third quarter of each year the anticipated balance of unexpended funds and to report program expenditures at the end of the fiscal year;
- (6) Ensure that a fair and equitable process for the distribution of funds is followed;
- (7) Provide the North Carolina Department of Juvenile Justice and Delinquency Prevention with an annual risk and needs based plan for the provision of services to address the local juvenile justice need; and
- (8) Ensure that programs receiving state funds are public agencies or private non-profit organizations and that they are appropriately licensed.

History Note: Authority G.S. 143B-516; 143B-517; 143B-544; 143B-549; 143B-550; Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0202 JUVENILE CRIME PREVENTION COUNCIL RESPONSIBILITIES

In implementing the planning requirements of G.S. 143B-543, the Juvenile Crime Prevention Council's shall:

- (1) Monitor currently funded Juvenile Crime Prevention Council programs and evaluate the availability of intermediate and community level sanctions;
- (2) Maintain a current and ongoing assessment of the needs of children involved or potentially involved in the juvenile justice system;
- (3) Submit to the county commissioners an annual plan for the provision of intervention/prevention services which shall include at a minimum:
 - (A) A list of services which prioritizes funding for intermediate and community level sanction programs and may include prevention programs;
 - (B) A statement from the Juvenile Crime Prevention Council, verifying the existence of adequate intermediate and community level sanctions if prevention programs are included in the funding recommendations;
 - (C) Verification of the request for proposal process ensuring public notification of available funding; and
 - (D) Program proposals that are recommended for funding;
- (4) Explore alternative funding sources, including other state and federal funds and private corporations and foundations; and
- (5) Promote public awareness of delinquency, risk factors, and prevention strategies.

History Note: Authority G.S. 143B-549; 143B-550; Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0203 JUVENILE CRIME PREVENTION COUNCIL CERTIFICATION

(a) In order to receive funds from the Department, each Juvenile Crime Prevention Council shall satisfy the following:

- (1) Have membership appointed by the Board of County Commissioners;
- (2) Have written bylaws which ensure open meetings, recorded minutes, notice of meetings and distribution of minutes prior to or during subsequent meetings;
- (3) Have established external communication requirements as follows:
 - (A) The Juvenile Crime Prevention Council shall communicate through the media and by written Request for Proposals the availability of funding to all public and private non-profit agencies and interested community members, which serve children, and their families;
 - (B) The Juvenile Crime Prevention Council shall make annual needs assessment information available to

all non-profit agencies and interested community members who serve children and their families; and

(C) The Juvenile Crime Prevention Council shall inform its members and other interested members of the community about full Council meetings.

(b) To apply for certification, each Juvenile Crime Prevention Council shall complete an Application for Certification, which is available through the Department.

(c) The completed Application for Certification shall be signed by the Juvenile Crime Prevention Councils Chairperson, the Chairperson of the Board of County Commissioners or county manager and forwarded to the Department not later than June 30 of each year.

History Note: Authority G.S. 143B-516; 143B-544; Temporary Adoption Eff. July 15, 2002.

28 NCAC 02A .0204 JUVENILE CRIME PREVENTION COUNCIL ADMINISTRATIVE GRANTS

(a) The Department shall allow administrative grants as approved for each county Juvenile Crime Prevention Council certified under these Rules to fund administrative expenses.

(b) This administrative grant shall be deducted from the regular Juvenile Crime Prevention Council fund allocation set forth in Rule .0103 of this Subchapter.

(c) Administrative grants shall be used only for reasonable expenses incurred by or in support of the Juvenile Crime Prevention Council including but not necessarily limited to operating expenses, per diem expenses, and training.

(d) No local match is required for administrative grants. The Department will request refunds of unexpended funds or unapproved expenditures.

History Note: Authority G.S. 143B-516; 143B-544; 143B-545; 143B-546; 143B-547; 143B-548; Temporary Adoption Eff. July 15, 2002.

CHAPTER 3 – INTERVENTION/PREVENTION PROGRAM REQUIREMENTS

SUBCHAPTER 3A - REQUIREMENTS FOR PROGRAMS AND JUVENILE CRIME PREVENTION CRIME PROGRAMS

28 NCAC 03A .0101 SCOPE

(a) The rules in this Subchapter establish the requirements for programs assigned to the Intervention/Prevention and Youth Development Division within the Department.

(b) The programs covered by these Rules include the Governor's One on One Program, the Eckerd Wilderness Camping Program, the Multipurpose Juvenile Home Program, the Camp Woodson Program, the Support Our Students Program, the Teen Court Program and Juvenile Crime Prevention Council Programs.

(c) These Rules also apply to appropriations for other programs that are directed by the General Assembly for special projects or pilot initiatives where the funding and reporting of activities are assigned to the Department.

History Note: Authority G.S. 143B-516(b)(8);
Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0102 DEFINITIONS

In this Subchapter the following terms have the listed meanings:

- (1) Individual Plan of Care. A written record maintained on each juvenile served by programs operated by receiving funding support from the Department which shall include the following elements:
 - (a) A schedule of planned program activities;
 - (b) Any other specially designed activities to meet the needs of an individual client;
 - (c) The anticipated length of stay;
 - (d) Specific behavior and attitude changes expected to result from the implementation of the Plan of Care;
 - (e) A method of evaluating a program impact on such things as self esteem, academic performance, personal enrichment, social growth and development, delinquent behavior, school attendance; and
 - (f) A mechanism for periodic review and revision based on progress or lack thereof.

History Note: Authority G.S. 143B-516(b)(8);
143B-516(b)(9);
Temporary Adoption Eff. July 15, 2002.

SECTION .0200 - GRANT ADMINISTRATION FOR SPECIAL PROGRAMS

28 NCAC 03A .0201 FUNDING REQUIREMENTS

- (a) All of the programs within the Intervention/Prevention and Youth Development Divisions shall be funded by contractual agreement between the organizations receiving the funds and the Department with the exception of Camp Woodson and the Eastern North Carolina Wilderness Camp for Juveniles.
- (b) Each contract shall specify the authorized expenditures of the contractual agreement and shall detail those expenditures through a line-item budget as well as by a narrative description.
- (c) Programs receiving funding from the Department under contractual agreement shall provide documentation of actual expenditures.
- (d) Failure to comply with provisions of contractual agreements may result in forfeiture or repayment of funding.
- (e) Any funds received under a contractual agreement and not expended during the contract period shall be returned to the Department.

History Note: Authority G.S. 143B-517; 143B-516(b)(10);
Temporary Adoption Eff. July 15, 2002.

SECTION .0300 - CLIENT PROTECTION AND SAFETY

28 NCAC 03A .0301 EMPLOYMENT POLICIES

- (a) Personnel in programs supported by funding from the Department shall be employees in good standing with a local governmental agency or with a private sector organization.
- (b) For each position within programs operated by or receiving Department funding support there shall be a written job description detailing the primary duties of the position and stating the minimum education and experience requirements.
- (c) In addition to the rules in this Chapter, individuals employed by programs receiving funding support through the Department shall be subject to the employment policies and procedures of the program receiving and administering that funding support.

History Note: Authority G.S. 143B-512(a), 143B-516(b)(9);
Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0302 APPROPRIATE CARE AND TREATMENT

- (a) Procedures or philosophies that encourage or promote consistent patterns of humiliation, verbal abuse, manhandling, use of fear tactics, intimidation, or infliction of physical pain are prohibited.
- (b) This Rule shall apply to staff, residents, and contracted services supported by Departmental funds. Programs funded by the Department shall make no referrals to programs or service providers who are known to violate this Rule.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(6);
143B-516(b)(9);
Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0303 BEHAVIOR MANAGEMENT AND DISCIPLINE

- (a) In determining appropriate discipline, each program shall consider the child's age, intelligence, emotional makeup, and past experience.
- (b) Each program shall develop and adhere to a written policy regarding behavior management and discipline which includes the following minimum requirements:
 - (1) Physical or corporal punishment shall not be permitted.
 - (2) Physical or mechanical restraint shall be used only when necessary to protect a child from physical injury to self or others or when transporting a juvenile who is being held under a secure custody order.
 - (3) No juvenile shall be placed in a locked room or other place, except for juveniles being held under a secure custody order.
 - (4) Meals or nourishment shall not be denied.

History Note: Authority G.S. 143B-516(b)(4);
143B-516(b)(5); 143B-516(b)(9);
Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0304 SOLICITATION OF FUNDS AND JUVENILE PUBLICITY

- (a) Juveniles and their families served by any program funded by the Department shall not be required to raise or solicit funds for any agency. They may, however, organize or participate in fund raising activities on a voluntary basis. Individual juveniles may participate with written parental permission.

(b) Pictures or any other means of identifying children may not be used in public relations efforts for the program, unless a written statement of permission is obtained, signed by the child and either a parent or legal guardian.

(c) No juvenile shall be coerced or pressured into acknowledging in public his treatment at the agency or his gratitude for the treatment.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0305 ALCOHOL AND OTHER DRUG POSSESSION AND USE

Program managers, direct services staff, and volunteers of programs funded by the Department shall not possess or consume or be under the influence of any alcohol or non-prescription controlled substance while engaged in any program activities.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0306 FIREARMS AND OTHER WEAPONS

Program managers, direct services staff, and volunteers shall not use or be in possession of any firearms or other weapons while working with youth in programs funded by the Department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0307 OPPORTUNITIES FOR RELIGION PROVIDED

Residential programs funded by the Department shall provide opportunities for individual children to participate in religious services and other religious activities within the framework of their individual and family interest at the parent, juvenile or legal guardian's request.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0308 INSURANCE REQUIRED

Each program funded by the Department, other than programs operated by units of local government, shall, at a minimum, maintain liability insurance in the amount of five hundred thousand dollars (\$500,000) to cover any juvenile participating in the program and provide documentation of such at the request of the department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0309 SAFETY CONCERNS

(a) All programs funded by the Department must ensure that safety measures are in place for all program sponsored functions which include trained staff and safety equipment.

(b) During periodic on-site visits by officials representing the Department, programs shall provide written documentation of staff training and competency in all program activities authorized by the contract.

(c) All residential programs shall comply with all mandated licensure requirements.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

SECTION .0400 - PROGRAM REQUIREMENTS

28 NCAC 03A .0401 STAFF ORIENTATION AND TRAINING

(a) All programs funded by the Department must provide for staff and volunteer orientation and training. Written documentation of the program orientation and training policies and plans must be available upon request.

(b) All programs must provide personal and professional development training for staff and volunteers.

(c) All programs must provide training for direct service staff in basic youth interactions skills.

(d) All professional and volunteer staff who lead program activities which require special skills or certification must be trained in the skills necessary for each particular activity.

(e) All programs providing treatment services shall employ staff who are eligible by degree or credential to provide such treatment, or who receive clinical supervision by someone who is eligible to provide such treatment.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0402 EMERGENCY PLAN

(a) Each program shall develop and distribute to staff members and volunteers an emergency plan which includes names and phone numbers of individuals to be notified in emergency situations that may occur during program activities.

(b) The emergency plan must provide that in the event of an emergency resulting in the serious injury or death of a program staff member, participant or volunteer the Department shall be notified immediately. This plan shall include the after hours phone numbers of individuals designated within the Department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0403 ADMISSION GUIDELINE REQUIREMENTS

(a) All programs receiving funding support from the Department shall develop within admission guidelines covering age and gender appropriateness, the primary reasons for which juveniles are considered for admission and any applicable admission restrictions that may apply.

(b) All programs shall provide a response to referring agencies regarding their admission decision within 15 days of the referral.

History Note: Authority G.S. 143B-516(b)(3); 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0404 RECORD OF CLIENT CONTACTS AND INDIVIDUAL PLAN OF CARE

(a) All programs shall maintain a written record of contact with clients that includes:

- (1) The date of admission, source of and reason for referral and a summary of the problems the client was experiencing at the time of the referral;
- (2) A record of the dates and activities of the client program participation;
- (3) The date and reason for termination from the program; and
- (4) An Individual Plan of Care.

(b) All information in the client's record shall be considered privileged and confidential and may be released only as required by law.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0405 REQUIREMENT OF RELEASE POLICY

Programs shall develop written policies governing documentation of the release of clients. Release records shall include:

- (1) The last date of program contact;
- (2) The reason for release;
- (3) A listing of all persons and agencies who receive notice; and
- (4) The name of any agency contact person for additional information concerning the clients' progress during the program.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0406 PROGRAM EVALUATION

(a) All programs shall collect and submit statistical information designed to measure the program effectiveness in correcting the program behaviors and underlying causes of delinquency and undisciplined behavior.

(b) Programs must develop strategies for measuring key behavior changes for at least 12 months after termination of services.

(c) Each program shall provide an evaluation design detailing:

- (1) The expected benefits of the program;
- (2) The specific data that will document success;
- (3) A specific schedule for reporting results; and
- (4) A listing of those agencies and individuals who will receive the results.

History Note: Authority G.S. 143B-516(b)(4);

143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002.

SECTION .0500 - ENFORCEMENT PROCEDURES

28 NCAC 03A .0501 COMPLIANCE MONITORING

Compliance with the provisions of this Subchapter shall be monitored by on-site visits conducted by or authorized by the Department and by review of required periodic reports documenting the required provisions of the contractual agreement between the program and the Department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002.

28 NCAC 03A .0502 CORRECTIVE ACTION AND PENALTIES

(a) When any of the terms of the contract are documented to have been violated through the monitoring and evaluation of program requirements, the Department shall take measures to correct the violation.

- (1) Where violations of state or federal law are documented the Department shall notify law enforcement officials; and
- (2) Where conditions or practices are found within a program that creates a threat or danger to students or staff the following measures shall be taken:
 - (A) Notification to local Division of Social Services and if appropriate law enforcement;
 - (B) Notification to designated Departmental officials;
 - (C) Discontinuation of all funding and request for complete fiscal audit of the program; and
 - (D) Maintenance of detailed written records of all actions taken until any issues of harm or danger are resolved.

(b) Where allegations or information indicates that conditions or practices may exist which constitutes a threat or danger to staff or students within a program the Department shall conduct an on-site visit to the program. Additionally the following measures shall be taken:

- (1) Notification to designated Departmental officials; and
- (2) Maintenance of detailed written records of all actions taken until any issues regarding harm or danger are resolved.

(c) Where the program refuses to make good faith efforts to correct violations identified in the monitoring and evaluation process and where such refusal adversely impacts or affects the quality of services or reduces the number being served, the Department may:

- (1) Impose the penalties provided for in the contractual agreement; or
- (2) Without notice, terminate the contract.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9);

Temporary Adoption Eff. July 15, 2002.

CHAPTER 4 – JUVENILE COURT

SUBCHAPTER 04A - JUVENILE COURT SERVICES

SECTION .0100 - GENERAL PROVISIONS

28 NCAC 04A .0101 DEFINITIONS

In this Subchapter the following terms have the listed meanings:

- (1) Complaint. A written allegation that a juvenile is delinquent or undisciplined with a signature verifying that the allegation is true. A complaint initiates the intake process.

History Note: Authority G.S. 7B-1701; 143B-516(b)(5); 143B-516(b)(6);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 04A .0102 INTAKE

(a) Complaints - Complaints alleging that a juvenile is undisciplined or delinquent are accepted by a juvenile court counselor for evaluation. All complaints shall be in writing and must contain the following:

- (1) The juvenile's name;
- (2) The juvenile's age and date of birth;
- (3) The name of the juvenile's parents, guardians, or custodians;
- (4) The juvenile's home address;
- (5) The facts supporting any allegation that a juvenile is undisciplined or delinquent;
- (6) The date the complaint is received by the court counselor;
- (7) The complainant's name, address, and telephone number; and
- (8) The complainant's signature, verified before an official authorized to administer oaths.

(b) Intake evaluation - In order to determine whether a complaint will be filed as a petition, the juvenile court counselor in the best interest of the juvenile shall consider the following factors:

- (1) Protection of the community;
- (2) The seriousness of the offense;
- (3) The juvenile's previous record of involvement in the legal system including previous diversions;
- (4) The ability of the juvenile and the juvenile's family to use community resources;
- (5) Consideration of the victim;
- (6) The juvenile's age; and
- (7) The juvenile's culpability in the alleged complaint.

(c) Diverted and retained complaints:

- (1) The juvenile court counselor will retain a complaint and develop a diversion plan with the juvenile and the juvenile's parents, guardians or custodians if it is determined that intervention related to the offense is needed and may be accomplished without court involvement.

(2) A diversion plan may include a diversion contract as set out in G.S. 7B-1706.

(3) The complaint including a diversion plan or contract must be resolved within six months after a decision to divert and retain a complaint is made; and

(A) Written notice of the diversion plan is provided to the juvenile and the juvenile's parents, guardians or custodians; or

(B) A diversion contract has been entered.

(4) If the juvenile agrees to pay damages or restitution as part of a diversion plan or contract, payment shall be made directly to the victim or through a program set up to account for payment of such damages or restitution.

History Note: Authority G.S. 143B-516(b)(50); 143B-516(b)(6); 7B-1701;

Temporary Adoption Eff. July 15, 2002.

28 NCAC 04A .0103 SERVICES TO THE COURT

(a) The Department shall provide information and assistance concerning a juvenile case before, during or after a hearing as the court may require, including the preparation of written reports for the court, completion of risk and needs assessments to be used by the court at disposition and assistance in secure and non-secure custody matters.

(b) Secure and Non-secure custody - The Department shall assist in secure and non-secure custody matters regarding alleged or adjudicated delinquent and undisciplined juveniles in accordance with any administrative order entered in the judicial district or court order entered by a judge. The Department may transport any juvenile in secure custody to and from any placement facility.

History Note: Authority G.S. 143B-536; 7B-2413; 7B-1803; 7B-1900; 7B-1902; 7B-1903(e); 7B-1906(f);

Temporary Adoption Eff. July 15, 2002.

28 NCAC 04A .0104 COMMITMENT TO THE DEPARTMENT

(a) Juvenile court counselors shall provide services to juveniles committed to the Department and their families during the commitment period which includes:

- (1) Serving as a liaison between the Department staff, the juvenile, and his family, community agencies and the court;
- (2) Assisting in treatment planning during the commitment; and
- (3) Participating in planning for post-release supervision.

(b) When a juvenile is committed to the Department for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor will notify the victim or the victim's immediate family that they may request in writing to be notified in advance of the juvenile's schedule release date. The chief court counselor will provide the victim or the victim's immediate family:

- (1) The name of the juvenile; and

(2) The name, address and telephone number of the chief court counselor who is to receive the request to be notified.

History Note: Authority G.S. 7B-2513; Temporary Adoption Eff. July 15, 2002.

28 NCAC 04A .0105 POST-RELEASE SUPERVISION

- (a) Juvenile Court counselors shall provide post-release supervision services for any juvenile released from a youth development center.
- (b) A needs assessment shall be completed by the court counselor to determine the social, medical and educational needs of the juvenile and make proper referrals and provide services during the post-release supervision period.
- (c) The chief court counselor or designee shall determine the appropriate level of supervision for the juvenile and shall assign the case to a court counselor for supervision.
- (d) Juvenile court counselors shall document the level of supervision in the juvenile's file.

History Note: Authority G.S. 7B-2514; Temporary Adoption Eff. July 15, 2002.

28 NCAC 04A .0106 SUBSTANCE ABUSE TESTING

- (a) The Department shall contract for testing services and will provide supplies for testing juveniles for use of alcohol and controlled substances.
- (b) Alternate drug and alcohol testing services may be used for individual juveniles at the expense of the parent or another agency if approved by the court.
- (c) Other entities may be used to provide alcohol or drug testing services in a district if the chief court counselor submits a plan to the Department insuring that testing services that are minimally equal to the services provided through the Department are readily available to the court for juveniles under the court's jurisdiction.
- (d) Juvenile court counselors shall administer drug and alcohol tests only if ordered by the court.

History Note: Authority G.S. 143B-516(b)(7); Temporary Adoption Eff. July 15, 2002.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, August 15, 2002, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, August 9, 2002 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

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

Appointed by House

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

RULES REVIEW COMMISSION MEETING DATES

August 15, 2002

Commission Review/Administrative Rules

*Log of Filings (Log #187)
April 20, 2002 through June 20, 2002*

DEPARTMENT OF ADMINISTRATION

Purpose	1 NCAC 40 .0104	Adopt
Organization	1 NCAC 40 .0105	Adopt
Definitions	1 NCAC 40 .0106	Adopt
Definitions	1 NCAC 40 .0205	Adopt
Issuance of Driving Eligibility Certificates	1 NCAC 40 .0206	Adopt
Revocation of Driving Eligibility Certificates	1 NCAC 40 .0207	Adopt
Student Appeals Process	1 NCAC 40 .0208	Adopt

CULTURAL RESOURCES, DEPARTMENT OF/US NORTH CAROLINA BATTLESHIP COMMISSION

Admission Prices	7 NCAC 5 .0203	Amend
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DHHS/DIVISION OF FACILITY SERVICES

Criteria and Standards for Nursing Facility or	10 NCAC 03R .1125	Amend
Required Performance Standards	10 NCAC 03R .1126	Amend

DHHS/COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & SUBSTANCE ABUSE SERVICES

Scope Outpatient Opioid	10 NCAC 14V .3601	Amend
Definitions Outpatient Opioid	10 NCAC 14V .3602	Amend
Operations Outpatient Opioid	10 NCAC 14V .3604	Amend
Scope Residential Recovery	10 NCAC 14V .4101	Amend
Staff Residential Recovery	10 NCAC 14V .4102	Amend
Operations Residential	10 NCAC 14V .4103	Amend

DHHS/COMMISSION FOR MH/DD/SAS

Schedule IV Controlled Substance	10 NCAC 45H .0205	Amend
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DEPARTMENT OF INSURANCE

Deviations from Rates of the North Carolina Rate	11 NCAC 10 .1106	Amend
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DEPARTMENT OF INSURANCE

Purpose and Definitions	11 NCAC 12 .0815	Amend
Minimum Benefit Standards for Before January 1 1992	11 NCAC 12 .0820	Amend
Minimum Benefit Standards January 1 1992	11 NCAC 12 .0835	Amend
Guaranteed Issue for Eligible Persons	11 NCAC 12 .0842	Amend

DENR/ENVIRONMENTAL MANAGEMENT COMMISSION

RULES REVIEW COMMISSION

Form and Contents of Petition	15A NCAC 02I .0501	Adopt
Review by a Committee of the Commission	15A NCAC 02I .0502	Adopt
Presentation to the Commission	15A NCAC 02I .0503	Adopt
Recourse to Denial of Petition	15A NCAC 02I .0504	Adopt
DENR/MARINE FISHERIES COMMISSION		
Definitions	15A NCAC 03I .0101	Amend
Possession or Transportation	15A NCAC 03I .0120	Amend
Fyke or Hoop Nets	15A NCAC 03J .0111	Amend
Prohibited Shellfish	15A NCAC 03K .0101	Amend
Shellfish or Seed Management	15A NCAC 03K .0103	Amend
Permits for Planting Shellfish from Prohibited	15A NCAC 03K .0104	Amend
Depuration of Shellfish	15A NCAC 03K .0107	Amend
Marketing Oysters Taken from Private Shellfish	15A NCAC 03K .0205	Amend
Oyster Size and Harvest Limit Exemption	15A NCAC 03K .0207	Amend
Mechanical Harvest Season	15A NCAC 03K .0302	Amend
Snapper Grouper	15A NCAC 03M .0506	Amend
Bluefish	15A NCAC 03M .0511	Amend
Standards for Shellfish Bottom and Water Column	15A NCAC 03O .0201	Amend
Cancellation	15A NCAC 03O .0208	Amend
Procedures and Requirements to Obtain Permits	15A NCAC 03O .0501	Amend
DENR/SOIL AND WATER CONSERVATION COMMISSION		
Purpose	15A NCAC 06H .0101	Adopt
Definitions	15A NCAC 06H .0102	Adopt
Approval of Best Management Practices (PMPs)	15A NCAC 06H .0103	Adopt
Approval of Water Quality Technical Specialists	15A NCAC 06H .0104	Adopt
Application of BMP Approval and Technical Special	15A NCAC 06H .0105	Adopt
DENR/COMMISSION FOR HEALTH SERVICES		
STDS for the MGMT of Specific HW/Types HWM Facility	15A NCAC 13A .0111	Amend
Definitions	15A NCAC 13A .1801	Amend
OCCUPATIONAL LICENSING BOARDS/NC BOARD OF NURSING		
License By Examination	21 NCAC 36 .0211	Amend
Licensure Without Examination (By Endorsement)	21 NCAC 36 .0218	Amend
NC STATE BOARD OF COMMUNITY COLLEGES		
Education Services for Minors	23 NCAC 02C .0305	Amend
Fee Waivers for the Human Resources	23 NCAC 02D .0319	Amend
Budget FTE Funding	23 NCAC 02D .0326	Amend
Program Classification	23 NCAC 02E .0101	Amend
Work Station Occupational Skills Training	23 NCAC 02E .0402	Amend
Instruction to Captive or Co-Opted Groups	23 NCAC 02E .0403	Amend
Assistance for Economic Development	23 NCAC 02E .0404	Adopt

*Log of Filings (Log #188)
June 20, 2002 through July 22, 2002*

AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE		
Adoption by Reference	2 NCAC 38 .0701	Amend
DEPARTMENT OF INSURANCE		
Foreign Promoting Holding Companies Licensed Sub	11 NCAC 11B .0502	Repeal
Foreign and Holding Companies Unlicensed Sub	11 NCAC 11B .0503	Repeal
Sale of Securities by Foreign Corporation	11 NCAC 11B .0504	Repeal
Foreign Promoting and Holding Companies Definition	11 NCAC 11B .0505	Repeal
Foreign Company Securities Sale Position Letter	11 NCAC 11B .0506	Repeal
Foreign Company Securities Private Placement	11 NCAC 11B .0507	Repeal
Foreign Company Securities Verifiable Capital/Sur	11 NCAC 11B .0508	Repeal
Foreign Company Securities Inconsequential	11 NCAC 11B .0509	Repeal
Foreign Company Securities Confidentiality of Mat	11 NCAC 11B .0510	Repeal
Foreign Company Securities Shelf Registration	11 NCAC 11B .0511	Repeal
Foreign Company Securities Disclaimer Offshore	11 NCAC 11B .0512	Repeal
Foreign Company Securities Disclaimer General	11 NCAC 11B .0513	Repeal

RULES REVIEW COMMISSION

Formation of Domestic Companies Procedural	11 NCAC 11B .0514	Repeal
Foreign Company Securities Institutional Investors	11 NCAC 11B .0515	Repeal
Domestic Company Projection	11 NCAC 11B .0516	Repeal
Domestic Company Background Investigation Report	11 NCAC 11B .0517	Repeal
Domestic Company Escrow Agreement	11 NCAC 11B .0518	Repeal
Y2K Interim Claim Payments	11 NCAC 12 .0327	Repeal
Definitions	11 NCAC 12 .1701	Repeal
Viatical Settlement Providers	11 NCAC 12 .1702	Repeal
Viatical Settlement Brokers and Representatives	11 NCAC 12 .1703	Repeal
Standards for Evaluation of Reasonable Payments	11 NCAC 12 .1704	Repeal
Reporting	11 NCAC 12 .1705	Repeal
Contracts and Payment of Proceeds	11 NCAC 12 .1706	Repeal
Solicitation	11 NCAC 12 .1707	Repeal
Advertising Standards	11 NCAC 12 .1708	Repeal
Disclosure	11 NCAC 12 .1709	Repeal
Definitions	11 NCAC 12 .1710	Adopt
License Requirements	11 NCAC 12 .1711	Adopt
Viatical Settlement Brokers	11 NCAC 12 .1712	Adopt
Standards for Evaluation of Reasonable Payments	11 NCAC 12 .1713	Adopt
Reporting Requirements	11 NCAC 12 .1714	Adopt
General Rules	11 NCAC 12 .1715	Adopt
Contracts and Payments of Proceeds	11 NCAC 12 .1716	Adopt
Disclosure	11 NCAC 12 .1718	Adopt
Prohibited Practices	11 NCAC 12 .1719	Adopt
Insurance Company Practices	11 NCAC 12 .1720	Adopt
Scope and Purpose	11 NCAC 15 .0101	Repeal
Definitions	11 NCAC 15 .0102	Repeal
Outside Contractor	11 NCAC 15 .0103	Repeal
Uniform Billing Form	11 NCAC 15 .0104	Repeal
Description of Data to be Submitted	11 NCAC 15 .0105	Repeal
Data Submission	11 NCAC 15 .0106	Repeal
Provider Verification	11 NCAC 15 .0107	Repeal
Compliance Penalties for Noncompliance	11 NCAC 15 .0108	Repeal
Data Accessibility	11 NCAC 15 .0109	Repeal
Confidentiality of Data	11 NCAC 15 .0110	Repeal
Fees and Charges for Data	11 NCAC 15 .0111	Repeal
Successor Forms	11 NCAC 15 .0112	Repeal
DEPARTMENT OF INSURANCE		
Location Mailing Address and Telephone	11 NCAC 17 .0103	Amend
DEPARTMENT OF JUSTICE		
Definitions	12 NCAC 04E .0104	Amend
DEPARTMENT OF LABOR		
Elevator Safety Code	13 NCAC 15 .0201	Amend
Definitions	13 NCAC 20 .0101	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Outstanding Resource Waters	15A NCAC 02B .0225	Amend
Tar-Pamlico River Basin	15A NCAC 02B .0316	Amend
Definitions of Terms	15A NCAC 02H .0103	Amend
Filing Applications	15A NCAC 02H .0106	Amend
Scope and Purpose	15A NCAC 02H .1301	Adopt
Application Process	15A NCAC 02H .1302	Adopt
Public Notice and Public Hearing	15A NCAC 02H .1303	Adopt
Decision on Application for Permits or Certificate	15A NCAC 02H .1304	Adopt
Review of Applications	15A NCAC 02H .1305	Adopt
DENR/SOIL AND WATER CONSERVATION COMMISSION		
Purpose	15A NCAC 06H .0101	Adopt
Definitions	15A NCAC 06H .0102	Adopt
Approval of Best Management Practices BMPs	15A NCAC 06H .0103	Adopt
Approval of Water Quality Technical Specialists	15A NCAC 06H .0104	Adopt
Application of BMP Approval and Technical Special	15A NCAC 06H .0105	Adopt
EDUCATION, STATE BOARD OF		

RULES REVIEW COMMISSION

License Patterns	16 NCAC 06C .0304	Amend
State Graduation Requirements	16 NCAC 06C .0503	Amend
Athletic Trainers	16 NCAC 06E .0203	Amend
Charter School Advisory Committee	16 NCAC 06G .0502	Amend
DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION		
Military Leave With Pay	25 NCAC 01E .0802	Amend
Definitions	25 NCAC 01E .0803	Repeal
Periods of Entitlement for All Reserve Components	25 NCAC 01E .0804	Amend
Unacceptable Periods	25 NCAC 01E .0807	Repeal
Administrative Responsibility	25 NCAC 01E .0808	Repeal
Military Leave Without Pay Attendance at Service	25 NCAC 01E .0812	Repeal
Extended Active Duty	25 NCAC 01E .0814	Repeal
Employee Responsibility Leave Without Pay	25 NCAC 01E .0815	Repeal
Employer Responsibility	25 NCAC 01E .0816	Repeal
Retention and Continuation of Benefits	25 NCAC 01E .0817	Amend
Reinstatement From Leave Without Pay for Military	25 NCAC 01E .0818	Amend
Reserve Enlistment Program of 1963 Rep 63	25 NCAC 01E .0819	Repeal

AGENDA
RULES REVIEW COMMISSION
August 15, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0206 Objection 04/18/02 (Bryan)
 - B. NC Medical Board – 21 NCAC 32B .0101; .0104; .0105; .0106 Objection 04/18/02 (Bryan)
 - C. NC Medical Board – 21 NCAC 32M .0112 Objection 04/18/02 (Bryan)
- IV. Commission Business

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. NC Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. NC Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
<u>HEALTH AND HUMAN SERVICES</u>				
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Birgit James v. NC Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Unieca Richardson v. NC DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Isa Spaine v. NC Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
<u>ADMINISTRATION</u>				
San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02	
<u>JUSTICE</u>				
<i>Alarm Systems Licensing Board</i>				
Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02	
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02	
<i>Private Protective Services Board</i>				
Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02	
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02	
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02	
<i>Sheriffs' Education & Training Standards Commission</i>				
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02	
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02	
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02	
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02	
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02	
<u>ENVIRONMENT AND NATURAL RESOURCES</u>				
Helen R. Bass v. County of Durham	02 EHR 0191	Gray	06/26/02	
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02	
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02	
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02	
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02	

ENGINEERS AND LAND SURVEYORS

CONTESTED CASE DECISIONS

NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02		
<u>OFFICE OF STATE PERSONNEL</u>					
Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02		
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02		
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR	93
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02		
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02		
Reginald Ross v. NC Department of Correction	01 OSP 1122/23	Wade	06/28/02		
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR	93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02		
Wade Elms v. NC Department of Correction	01 OSP 1594	Gray	06/27/02		
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR	103
Joy Reep Shuford v. NC Department of Correction	01 OSP 2179	Overby	06/25/02		
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02		
Bryan Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theresa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02		
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02		
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR	328
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02		
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02		
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02		
Doris J. Bery v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02		
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02		
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02		
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02		
Michael Forreect Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02		
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02		
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02		
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02		
<u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u>					
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02		

¹ Combined Cases

CONTESTED CASE DECISIONS

1. Petitioner began her employment at Neuse Correctional Institution (Neuse) as a Correctional Officer (CO) on April 11, 2000. Shortly after she began her employment at Neuse, Petitioner told Respondent that she was pregnant.

2. On April 27, 2000, Petitioner's doctor at the Wayne Women's Clinic (the Clinic) in Goldsboro wrote a note stating that Petitioner was in the early stages of her pregnancy and that she was able to perform the duties of her position with the single restriction that she not be exposed to abdominal trauma. (R. Ex. 3). Petitioner presented this note to Respondent.

3. On May 2, 2000, as a standard step in the hiring process, Petitioner, along with all newly hired COs, was required to have her doctor review her Essential Job Functions. Petitioner showed those to her doctor at the Wayne Women's Clinic who reviewed the essential job functions for Petitioner's job. The doctor responded with a memorandum, which stated that Petitioner "is" physically able to perform all the essential functions. (R. Ex. 4)

4. In July of 2000, Petitioner lost her babies (twins) and was hospitalized. Petitioner subsequently applied for Leave Without Pay (LWOP) for the period from July 7, 2000 to August 9, 2000. The LWOP form indicated that the reason for the leave was "death of children." Petitioner's application for LWOP was approved by Superintendent W. E. (Ed) McMichael, Jr.

5. Although Petitioner received LWOP, she was not placed on Family Medical Leave. In order to be eligible for Family Medical Leave, a State employee must have 12 months total service with the State and be in pay status at least 1,040 hours during the previous 12-month period. (R. Ex. 19). At that time, Petitioner had been employed by Neuse for approximately 3-1/2 months and was not eligible for Family Medical Leave.

6. On August 9, 2000, Petitioner was cleared by her doctors to return to work, which she did.

7. In 2001, Petitioner again became pregnant.

Whom It May Concern." (R. Ex. 10) 8. Petitioner was seen by the doctors at the Clinic and was given a form letter concerning her pregnancy, addressed "To

9. That letter stated, in part, the following:

...Unless medical problems arise, we encourage our patients to remain gainfully employed throughout pregnancy until about the last 4 weeks prior to their due date... Throughout pregnancy, we recommend that patients not be asked to work more than eight (8) hours a day, or forty hours a week.... (R. Ex. 10)

10. COs at Neuse are required to arrive for work before their shift starting time so that they may attend shift change duty meetings at which time they are briefed on occurrences in the previous shift and are given their instructions for the coming shift. Additionally, because of the necessity for coverage by COs around the clock, Sergeants who are responsible for a shift are required to ensure that all posts on their shift are filled. Sergeants who are in charge of shifts, which are going off duty, must see that those posts are filled until their replacements arrive or until a substitute can be found. Mr. McMichael testified that it is the duty and responsibility of the Sergeants to keep the posts under their command filled.

11. When Petitioner began her employment at Neuse, she was asked to sign a statement notifying her that she may be asked to work various shifts and holidays. That statement read as follows:

I understand that in accepting the position of correctional officer that I may be required to work split or rotating shifts, weekends, and/or holidays as required. I will be available for any shift. (R. Ex 2)

12. Mr. McMichael testified that he requires that new COs sign that notice so that they will clearly understand that they will be required to work on many shifts, split shifts, and holidays.

13. On Friday, November 31, 2001, Petitioner was working a weekend day shift under the supervision of Sergeant Wallace Ford. At the end of the shift, Sergeant Ford reported to Petitioner that he had learned that her replacement CO was not coming in and he had, thus far, been unable to find a replacement. He told Petitioner that she would have to stay. Petitioner replied that she could not stay "because of her condition."

14. Sergeant Ford asked her what her "condition" was and she replied that she was pregnant and not allowed to work more than 40 hours per week. She gave Sergeant Ford a copy of the form letter from her doctor. (R. Ex. 10) Sgt Ford did not read the letter. Sergeant Ford told Petitioner that she would have to bring that to the attention of the administration on Monday morning. Petitioner stayed until a replacement was found.

15. On Monday morning, December 3, 2001, Sergeant Ford reported the matter to Personnel and Petitioner was called to the Personnel Office at Neuse (Personnel). Petitioner brought the form letter from her doctor to Personnel.
16. Personnel Officer, D. J. Perkins, gave Petitioner a form, which lists the essential job functions of a CO and instructed her to take it to her doctor. (R. Ex. 11) The essential job functions on the form were taken from the North Carolina Department of Correction job description for the position of Correctional Officer. (R. Ex. 12)
17. Respondent did not tell Petitioner which doctor she was to use for the essential job functions review and at that point did not know what doctor she would go to. Petitioner chose to take the form to her doctor at Wayne Women's Clinic.
18. Dr. Daphne Jones of the Clinic, wrote a note dated December 4, 2001, which stated:
- Lashaundon Smith is under my care for the following pregnancy, EDC 6-1-02. Due to patient's job schedule, it is okay for her to report to work 15 minutes before shift duty for total workday of 8 hrs 15 min. (sic) (R. Ex. 13)
19. Dr. Jones also completed the Essential Job Functions form, signed it and dated it December 5, 2001. (R. Ex. 11) Also on December 5, 2001, Petitioner returned to Neuse with the completed Essential Job Functions form, which she delivered to Personnel. Further, on December 5, 2001, Petitioner completed a "Request for Reasonable Accommodation" form and submitted it to the Respondent. (R. Ex. 14) Also on December 5, 2001, Mr. McMichael, the Superintendent, completed under the Approving Authority section of the "Request for Reasonable Accommodation" form that Petitioner "cannot be accommodated due to medical restriction." The section to be completed by the Supervisor was left blank on the form. (R. Ex. 14) Mr. McMichael and Petitioner never engaged in a discussion regarding her request for reasonable accommodations and his denial came less than at most an hour or two after Petitioner submitted her request.
20. Of the 21 Essential Job Functions, five were marked "cannot perform" and one was marked "can perform" on a limited basis. (R. Ex. 11) The five Essential Job Functions that Petitioner could not perform were the following:
- (No. 10) Perform rescue functions during emergencies, disasters, and at accident scenes to include administering CPR and basic emergency first aid, physically removing people away from dangerous areas, extinguish fires using fire extinguishers, fire hoses, and self-contained breathing apparatus, and evacuating and securing people from confined areas.
- The doctor added a notation under the "Comment" section, which stated, "Patient cannot move people nor should she be exposed to harmful chemicals."*
- (No. 11) Engage in duties associated with the apprehension of escaped/fleeing inmates including but not limited to running, jumping, climbing, crawling, balancing on narrow or uneven surfaces, jumping down from elevated surfaces, and using bodily force to gain entrance through barriers. Use reasoned judgment in determining the degree of force and in the exercise of deadly force in the apprehension and control of inmates. Load, unload, aim and fire handgun, shotgun, and rifle at the level of proficiency required.
- (No. 12) Defend oneself or another against attack by violent persons utilizing unarmed self-defense, batons, or other approved self-defense techniques and devices.
- (No. 13) Effectively subdue and restrain, using a reasonable degree of force if necessary, violent or uncooperative inmates using handcuffs, restraints, and other approved restraint techniques and devices in order to prevent escapes, injury to persons, damage to property, and to gain compliance with lawful orders.
- (No. 14) Successfully complete the Department's In-Service Training of Firearms, CPR, Unarmed Self-Defense, and OC (pepper) spray on an annual basis. During initial training, full exposure (defined as being sprayed in the face) to OC spray is required.
21. The Essential Job Function that Petitioner could perform on a limited basis was as follows:
- (No. 6) Conduct continuous visual and audio surveillance of daily activities of inmates within the scope of assigned post (post may be located either indoors or outdoors and neither are climate controlled), including climbing stairs, working for extended periods of time on elevated surfaces such as guard towers, standing and walking for extended periods of time, and physically checking doors, windows, gates, barred sections, fences, and other areas to ensure proper security, sanitation, and safety practices.

Petitioner's doctor included the following comment: "May perform on limited basis – would need breaks every 1-2 hours with no longer than 8 hour shift."

22. Mr. McMichael learned on the morning of Monday, December 3, 2001, that CO Smith had reported to her Sergeant that she could not work more than 40 hours per week and that she had been given the Essential Job Functions form for a doctor to complete.

23. Mr. McMichael had no knowledge whatsoever on how Petitioner's doctor would complete the form. Nonetheless he began to consider the various posts at Neuse which might be considered less dangerous or have less inmate contact, again not knowing what comment's would be made by Petitioner's doctor. He looked at no other accommodations and did not engage in any discussion with Petitioner or her doctor.

24. Mr. McMichael knew that one of the Gatehouse posts was considered to be less dangerous and to have less inmate contact. The Institution's arsenal of weapons is stored in the Gatehouse. In emergency situations, the Gatehouse officer becomes responsible for distributing weapons to all other COs. The Gatehouse posts are considered to be light duty posts. Mr. McMichael knew that CO Kenneth Coley, who had been injured in an automobile accident while transporting inmates, was already assigned to that post on one of the shifts. Mr. McMichael knew that CO Regina Rich, who had been injured while on duty, was assigned to that Gatehouse Post on another shift.

25. Mr. McMichael knew that Segregation Control was another post assignment at Neuse. It operates the lock devices for the Segregation Unit at Neuse. Inmates who are placed in Segregation are there either because they are being screened into the prison system or because they have had behavioral violations. Should an incident occur, the control officer would be required to participate along with the other COs to resolve the incident. The Segregation Control was also considered to be a less dangerous post with less inmate contact. A shift time was vacant at the time Petitioner made her request for reasonable accommodations. CO Jason Whitmore, who had suffered a back injury, was expected back from his medical leave some time in the future and "arrangements" were for him to be placed in the Segregation Control post.

26. Mr. McMichael knew the job functions of a correctional officer. It is doubtful whether Mr. McMichael reviewed the Essential Job Functions form completed by Petitioner's doctor, given that the doctor signed the form, Petitioner turned in the form and Mr. McMichael denied accommodations all on December 5, 2001. If he did review the form, it was very cursory and involved no discussion with the Petitioner or Petitioner's doctor. Nonetheless, Mr. McMichael determined in isolation from the one making the accommodation request or the medical personnel examining Petitioner that Petitioner could not perform rescue functions during an emergency, could not perform duties associated with apprehending fleeing inmates, could not load and fire a gun, could not defend herself or another against attack, could not subdue or restrain violent or uncooperative inmates and could not complete in-training which included being exposed to pepper spray with or without reasonable accommodations. By signing as approving authority, he held out to Petitioner that, he further determined neither that Neuse, nor the Department of Correction nor the State of North Carolina could make a reasonable accommodation for Petitioner.

27. Without engaging in any discussion with Petitioner, Mr. McMichael determined that the Gatehouse could not even be considered for discussion with Petitioner and was not appropriate for her because of the need to have a CO who could quickly and efficiently distribute weapons to a large number of COs. He further, isolated from Petitioner or her medical doctors, determined that Petitioner could not be spoken with or even be considered for placement in Segregation Control because she could be needed for outbreaks in that Unit. No evidence was presented as to the frequency or nature of that possibility. Lastly, though at least one position was vacant, Mr. McMichael determined that the post at the Gatehouse and the post at Segregation Control were filled.

28. Without engaging in discussion with Petitioner or her medical advisors, Mr. McMichael determined that, given the number and severity of the restrictions placed on Petitioner in the form, he could not place her in any CO post at Neuse, even if one had been available. Nothing in the record indicates he explored any other reasonable accommodation other than reassignment, nor even explored the possibility of accommodation elsewhere with Petitioner's employer, the State of North Carolina.

29. Within a matter of hours (at best) after an accommodation request was made on December 5, 2001, Mr. McMichael completed the Request for Reasonable Accommodation form by writing at the bottom the following: "Cannot be accommodated due to medical restrictions." (R. Ex. 15) A call was made to Petitioner by Respondent within approximately 20 minutes after Petitioner made her written request for accommodations that any and all accommodations were being denied.

30. On December 6, 2001, Mr. McMichael wrote to Petitioner informing her that her request for accommodation was denied. That letter stated:

Your "Request for Accommodation" dated December 5, 2001 was denied due to the medical restrictions placed upon you by your physician. You will need to remain out of work on sick, vacation or leave without pay until cleared to return to full duty by your physician. If your status

changes, you may request another set of Essential Job Functions from Ms. Perkins at any time to return to your physician for completion. (R. Ex. 16)

31. On December 6, 2001, Petitioner returned to Personnel and completed a LWOP Request, which was approved by Mr. McMichael. (R. Ex. 17)

32. Also on December 6, 2001, Mr. McMichael wrote to Petitioner informing her that her request for leave without pay had been approved. He informed her, however, that she was not eligible for Family Medical Leave because her doctor had not taken her completely out of work. (R. Ex. 18)

33. Family Medical Leave does provide that the State will continue to pay its share of the medical insurance coverage for an employee who is out on Family Medical Leave. Family Medical Leave provides State employees with the opportunity to leave their positions for an unspecified amount of time with the guarantee and understanding that their positions are being held open for their return. Family Medical Leave does not provide State employees with salary continuation during the time they are out on leave. State employees may receive salary while they are out on leave only if they are using the balances of the annual and sick leaves. (R. Ex. 19)

34. At a later date, in approximately March of 2002, Mr. McMichael requested that Personnel review Petitioner's eligibility for Family Medical Leave. It had come to his attention that Petitioner might be eligible for this leave based on the following qualification;

(B)ecause the employee has a serious health condition that prevents the employee from performing one or more essential functions of the position. (R. Ex. 19, p. 6 of 14)

35. The matter was reviewed by the DOC Personnel Office in Raleigh and Mr. McMichael was subsequently informed that Petitioner was eligible for Family Medical Leave. He was also informed that Petitioner's coverage would be made retroactive to the date on which she went out of work.

36. The Essential Job Functions form given to Petitioner at the time of her first pregnancy in 2000 was a two-page form listing 20 essential job functions. That form did not have a space after each essential job function with the words "Can perform," "Cannot perform" and "Comments." (R. Ex. 24) By the time of Petitioner's second pregnancy in 2001, the Essential Job Functions form had been retyped to include the check boxes after each job function. A number of other changes had also been made. (R. Ex. 11)

37. Fourteen of the Essential Job Functions listed on the 2000 form are identical to those listed on the 2001 form. Job Function #4 is identical except that the 2001 form adds the words, "...even under conditions of little or no immediate supervision." Job Function #7 is identical except that the 2001 form adds the words, "...and making sound, reasoned decisions..." Job Function #10 is identical except that the 2001 form adds the words, "...and self-contained breathing apparatus..." Job Function #11: The new form replaces the words, "Use reasonable and necessary degree of force to include deadly force..." with the words, "Use reasoned judgment in determining the degree of force and in the exercise of deadly force..." Job Function #14: The 2001 form adds the words, "OC (pepper) spray" and the following sentence is also added: "During initial training, full exposure (defined as being sprayed in the face) to OC spray is required. Job Function #18: The 2001 form replaces the words, "Tolerate verbal and mental abuse by inmates and other and maintain a professional demeanor." with the words, "Maintain a professional demeanor and emotional self-control at all times, especially when subject to verbal and mental abuse by inmates and others and during unexpected crises, emergencies and other highly stressful situations." Job Function #21 does not appear on the 2000 form. It is added to the 2001 form and states, "Properly accept negotiable instruments from inmates, visitors, and mail for appropriate deposit to inmate trust fund accounts and properly handle daily canteen purchases.

38. The use of pepper spray during training was added because it is a weapon necessary to maintain control in violent situations and COs must be trained in its use, including experiencing full exposure by being sprayed in the face. Changes to the Essential Job Function form were made to the form used for all COs and for all fitness-for-duty situations.

39. In recent years, there were twelve (12) pregnancies among the COs at Neuse, not including Petitioner's two pregnancies. Of those twelve (12) pregnancies, nine did not request an accommodation. Of the nine pregnant COs who did not request an accommodation, all worked their regular job assignments and their employment was not effected in any way. Of the three pregnant COs who requested accommodation, one was denied an accommodation because her doctor placed a restriction on her ordering that she not work anywhere near an inmate. Another was denied because there was no light duty position available at the time that she made her request, which was not already occupied. The third pregnant CO who requested an accommodation, was granted an accommodation and was placed on telephone duty at the Goldsboro unit, which is no longer in operation. There was no evidence that Respondent engaged in any discussion with those asking for accommodation.

BASED UPON the above Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to Chapter 150B of the North Carolina General Statutes.
2. In a discrimination case, the burden of proof is on the Petitioner to show that Respondent discriminated against her. Petitioner must first go forward to establish a prima facie case of discrimination. In the typical discrimination case, the Petitioner seeks to prove that the Respondent's proffered non-discriminatory reason for an adverse employment action was, in reality, an excuse for a discriminatory action. Once the parties satisfy their relatively modest obligations the trier of fact proceeds to decide the ultimate question: whether Petitioner has proven that the Respondent discriminated against her.
3. Courts in North Carolina look to federal law for guidance when making decisions regarding discrimination claims brought under state law. North Carolina's Persons with Disabilities Protection Act and the federal Americans with Disabilities Act (ADA) and Rehabilitation Act as well as N.C. Gen. Stat. §§ 126 *et seq.* prohibit employment discrimination against a qualified individual with a disability. In addition to legislating against those traditionally recognized forms of discrimination, the ADA, Rehabilitation Act and State law also provide that unlawful discrimination can occur when an employer fails to consider an employee's disability where its adverse effect on the individual's job performance can be avoided. ADA, § 102(b)(5); 42 U.S.C. § 12112(b)(5). That is, employers have an affirmative obligation to provide reasonable accommodation for disabled individuals. The regulations issued by the Justice Department implementing § 504 of the Rehabilitation Act (which is the section of the Rehabilitation Act that is directly analogous to the ADA) state: a recipient *shall* make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
4. Regulations and case law basically state that reasonable accommodation means reasonable modifications or adjustments to be determined on a case-by-case basis which are designed as attempts to enable an individual with a disability to be hired or to remain in the position for which he was hired. They go on to state that reasonable accommodations include, but are not limited to altering facilities; restructuring jobs, work schedules, and assignments; reassigning the employee to a vacant position for which the person is able and competent ... to perform; acquiring or modifying equipment to provide "readers or interpreters"; adjusting testing, training materials, or policies; and educating fellow workers. It is noted that reassignment is listed as one of the available reasonable accommodations in the middle of a laundry list of reasonable accommodations, which clearly apply to existing employees.
5. An employer may defend against a claim of reasonable accommodation by proving that making such accommodation would impose an undue hardship on the employer. The latter is an affirmative defense, upon which the employer bears the burden of persuasion. *E.g.*, ADA, § 102(b)(5)(A), Barth v. Gelb, 2 F.3d 1180 (D.C. Cir. 1993), *cert denied*, 511 U.S. 1030 (1994) In determining whether an accommodation imposes an undue hardship, the trial court should consider the nature and cost of the accommodation, the financial resources of both the facility involved and the employer as a whole, and the type and characteristics of the employer's operation. *See Nelson v. Thornburg*, 567 F.Supp. 369 (E.D.Pa.1983), *aff'd* 732 F.2d. 146 (3rd Cir. 1984), *cert. denied*, 469 U.S. 1188 (1985).
6. Determinations about the reasonableness of an accommodation or the impact of its hardship must be done on a case-by-case basis, with careful attention to the particular circumstances and guided by state and federal legislative policy of enhancing employment opportunities for those with disabilities through workplace adjustments. Essentially, the law mandates common sense courtesy and cooperation. "Accommodation" implies flexibility, and workplace rules, classifications, schedules, etc., must be made supple enough to meet that policy. "Undue hardship" implies a balancing, and the employer's interest in avoiding costs and disruption can furnish a defense only when they outweigh the policy gains. "It is plain enough what 'accommodation' means. The employer must be willing to consider making changes in its ordinary work rules, facilities, terms, and conditions in order to enable a disabled individual to work." Vande Zande v. Wisconsin Dept. of Admin., 44 F.3d 538 (7th Cir.1995).
7. The process by which accommodations are adopted ordinarily should engage both management and the affected employee in a cooperative, problem-solving exchange. The Fifth Circuit Court of Appeals in Taylor v. Principal Fin. Group, Inc., 93 F.3d 155 (5th Cir.1996) has described the interactive process by stating, "In general ... it is the responsibility of the individual with the disability to inform the employer that an accommodation is needed." 29 C.F.R. § 1630.9, App. (1995). Once such a request has been made, "the appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the qualified individual with a disability." 29 C.F.R. § 1630.9, App. (1995). In other words, the responsibility for fashioning a reasonable accommodation is shared between the employee and employer. 29 C.F.R. § 1630.9, App. (1995). Similarly, the Seventh Circuit and First Circuit Courts of Appeals have described this "interactive" process to determine "reasonable accommodation" by stating this process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations, 29 C.F.R. § 1630.2(o)(3) (1995), and stating that the employer must make a reasonable effort to determine any appropriate accommodations and declaring that the regulations envision an interactive process that requires

participation by both parties. *Beck v. Wisconsin Bd. of Regents*, 75 F.3d 1130, 1135-36 (7th Cir.1996). See also *Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667, 677 (1st Cir.1995).

8. The Tenth Circuit Court of Appeals in *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (1999) stated that once the employer's responsibilities within the interactive process are triggered by appropriate notice by the employee, both parties have an obligation to proceed in a reasonably interactive manner to determine whether the employee would be qualified, with or without reasonable accommodations, for another job within the company. They go on to state the obligation to engage in an interactive process is inherent in the statutory obligation to offer a reasonable accommodation to an otherwise qualified disabled employee. See also *Baert v. Euclid Beverage, Ltd.*, 149 F.3d 626, 633 (7th Cir.1998) ("The ADA requires that employer and employee engage in an interactive process to determine a reasonable accommodation."); *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 694 (7th Cir.1998) ("The 'reasonable accommodation' element of the [the ADA] imposes a duty upon employers to engage in a flexible, interactive process with the disabled employee needing accommodation so that, together, they might identify the employee's precise limitations and discuss accommodations which might enable the employee to continue working.").

9. The Third, Fifth, and Seventh Circuits have held that the interactive process is obligatory. See *Mengine v. Runyon*, 114 F.3d 415, 419 (3d Cir.1997) (finding that an employer is required to participate in an interactive process under the Rehabilitation Act); *Taylor v. Principal Financial Group, Inc.*, 93 F.3d 155, 165 (5th Cir.) (finding that a request for accommodation obligates an employer to participate in the process of determining one), cert. denied, 519 U.S. 1029, 117 S.Ct. 586, 136 L.Ed.2d 515 (1996); *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281, 1285-86 (7th Cir.1996) (finding that an employer has a good faith obligation to help an employee determine a reasonable accommodation). Further, most Courts find they are not to interpret the language of 29 C.F.R. § 1630.2(o)(3) as permissive. Section 1630.2(o)(3) states that it "may be necessary" to initiate an interactive process. The term "may" describes the fact that sometimes there may be the necessity to engage in an interactive process. When it is necessary, it is not optional. "May" is not being used to create a permissive option and should be interpreted very narrowly. In cases where accommodation may be possible, the interactive process is required. This interpretation of § 1630.2(o)(3) is consistent with the intent of the EEOC as evidenced by the mandatory language used in the EEOC's interpretive guidance for the section. See § 1630 app. 1630.9.

10. Though Respondent claimed she did not want to be treated as a person with a disability she did present circumstances to her employer that she was a person with a disability when, at the end of a shift, she was told she would have to continue working due to the fact that her replacement CO was not coming in and the Sergeant in charge had, thus far, been unable to find a replacement; and Petitioner replied that she could not stay "because of her condition." The subsequent essential job functions form reviewed by her doctor and submitted by Petitioner to Respondent on December 5, 2001 was sufficient for the employer to believe that Petitioner was a person with a disability. The form indicated in part, that Petitioner was not allowed to pursue an escaping inmate, engage in any duties associated with an escape, engage in rescue operations, defend herself or others, load or fire a gun, participate in any use of force involving violent or uncooperative inmates or work more than an eight (8) hour shift (though, in a separate document, her doctor allowed an extra 15 minutes per day) or have full exposure to pepper spray.

11. Respondent was correct identifying and/or regarding Petitioner as a person with a disability. N.C. Gen. Stat. §§ 168A states that a qualified person with a disability requesting a reasonable accommodation must apprise the employer of her disabling condition, submit any necessary medical documentation, make suggestions for such possible accommodations as and known, and cooperate in any ensuing discussion and evaluation aimed at determining possible or feasible. Chapter 168A also requires that once a requested accommodation has been requested, the employer shall investigate whether there are reasonable accommodations that can be made and make them.

12. N.C. Gen. Stat. §§ 168A defines a qualified person with a disability regarding employment as a person with a disability who can satisfactorily perform the duties of the job with or without reasonable accommodations. Reasonable accommodation may consist of a number of possibilities, not just one. Further the reading of "qualified individual with a disability" to include individuals who can perform an appropriate reassignment job within the company, with or without reasonable accommodation, even though they cannot perform their existing job no matter how much accommodation is extended, is supported by nearly every circuit that has explicitly or implicitly considered the issue. See *Feliciano v. Rhode Island*, 160 F.3d 780, 785-86 (1st Cir.1998)

13. The ADA expressly provides that unlawful discrimination can occur when an employer fails to consider and provide a reasonable accommodation unless such would create an undue hardship (hardship may also include financial issues, safety issues or fundamentally altering the program). Case law, EEOC guidance and common sense indicate that an employer has an obligation to enter into an "interactive process" to determine what accommodation of a disability is reasonable once the employer has notice of a disability or a request for accommodation has been made.

14. To establish her prima facie showing, Petitioner testified that there were other COs who had been injured and had been placed in light duty assignments (apparently accommodated), and she was not. Petitioner also alleged that beside her being treated differently from other pregnant COs, she was treated differently on the occasions of her first and second pregnancies. Petitioner further showed that when Respondent refused to accommodate her or even enter into an interactive process with her she was already several months

pregnant and had participated in a use of force on an uncooperative, violent inmate, in which she had to use pepper spray. Further she showed she had been performing the functions of her job. Petitioner also testified that the Respondent only considered her request for accommodation for twenty (20) minutes before denying it, that is Petitioner showed that on December 5, 2001, she returned to the Personnel Office at Neuse with the completed Essential Job Functions form from her doctor which was the first time Respondent had seen that document. Further, on December 5, 2001, Petitioner completed a "Request for Reasonable Accommodation" form and submitted it to the Respondent. Also on December 5, 2001, Mr. McMichael, the Superintendent, completed under the Approving Authority section of the "Request for Reasonable Accommodation" form that Petitioner "cannot be accommodated due to medical restriction." Within approximately 20 minutes after her submission of a request for accommodation, Petitioner received a call she had been denied an accommodation.

15. Petitioner has established a prima facie case.

16. After Petitioner has established her prima facie showing, Respondent may go forward to show that there were legitimate, non-discriminatory reasons for the denial of Petitioner's request for accommodation. Further Respondent may go forward to show that they fulfilled all of their requirements regarding the treatment of persons with disabilities, that is their affirmative obligation to provide reasonable accommodation for disabled individuals unless such accommodation would cause an undue hardship, including hardship regarding safety or fundamentally altering the nature of the business.

17. Without the benefit of Petitioner's form from her doctor and without discussion with Petitioner and before submission by Petitioner of any necessary medical documentation, suggestions from Petitioner for such possible accommodations, and before allowing Petitioner to cooperate in any ensuing discussion and evaluation, as are required by the North Carolina Statutes; Respondent investigated some possible reassignments within Neuse. He certainly did not investigate all or even very many of the possible accommodations that might have been possible.

18. Respondent did investigate two possible accommodations and found as to one, that two COs who had been injured and then cleared by their doctors to return to work were assigned to the Gatehouse on different shifts and determined that was unavailable to Petitioner. In the other possibility, he found that another CO who was about to return after an injury, and "arrangements" had been made to assign that individual to Segregation Control, though the position was vacant at the time of Petitioner's request.

19. There is no evidence that Respondent performed any type of serious analysis on even the very few accommodation possibilities Respondent reviewed (such as when the vacancy would actually be filled, was the injured employees in any better position that Petitioner to fulfill the responsibilities of the post, etc.). Further, Respondent presented no evidence that Respondent considered any number of the other possibilities of accommodation that are set forth in the ADA regulations as well as the EEOC' Enforcement Guidance on Reasonable Accommodation followed by the North Carolina Civil Rights Division of the Office of Administrative Hearings. Moreover, when examining the feasibility of accommodation and any hardships that make an accommodation unreasonable, the Respondent was required to not only look at the resources of the facility involved but also at the employer as a whole. This would include possibilities within the Department of Correction and even exploration as to possibilities with State Government. Respondent presented no evidence that any such action was undertaken.

20. Respondent cited examples of other staff who had been accommodated. There is no evidence as to the process followed but one would believe that some discussion with the person with the disability took place, that some detailed analysis took place and that a decision to accommodate (or refuse to accommodate) came later than 20 or so minutes after a request for accommodation was made, happened with at least one person with a disability at Neuse. None of that happened with Petitioner. If Respondent has never discussed any accommodations with any person with a disability, a serious problem exists system wide.

21. Respondent has failed to adequately rebut the allegation of disparate treatment. Further and as a separate reason, Respondent has failed to fulfill its responsibilities under North Carolina law to fairly and meaningfully explore all reasonable possibilities for accommodation. By Respondent's own admission and view toward (regard of) Petitioner, as well as by the evidence on the record, Petitioner was a qualified person with a disability, the employer was generally aware of the disability (though not specifically since Respondent never explored that with the Petitioner) and was notified that Petitioner required an accommodation. Further factors regarding reasonable accommodations apply with some variation, that is, a reasonable accommodation very well existed or could have existed that would have met Petitioner's needs and Respondent failed to provide those accommodations (in this case even enter into the interactive process with Petitioner). Since accommodations are analyzed on a case by case basis, accommodation factors have some variation under case law. For example, a plaintiff could face discrimination when an employer refuses to consider or discuss accommodation—even though it then was unaware of any particular accommodation and even though the plaintiff did not identify the accommodation—so long as some accommodation was possible at the time the adverse action was taken against the plaintiff. As with all employment discrimination doctrines, flexibility and common sense must guide decision-making. Morris Memorial Convalescent Nursing Home, Inc., 189 W.Va. at 318, 431 S.E.2d at 357, citing Kut-Kwick Corp. v. Johnson, 189 Ga.App. 500, 376 S.E.2d 399 (1989) (elements in discrimination cases must not be applied woodenly but must be tailored to fit the circumstances of each type of discrimination).

22. N.C. Gen. Stat. §§ 168A states that reasonable accommodations include but are not limited to making facilities accessible, modifying equipment and providing mechanical aids, or making reasonable changes in the duties of the job. Accommodations can also include reassignment. An employer may defend against a claim of reasonable accommodation by proving that making such accommodation would impose an undue hardship on the employer. This is an affirmative defense upon which the employer bears the burden of persuasion. In determining whether an accommodation imposes an undue hardship, the trier of fact considers the nature of the accommodation, the financial resources of both the facility involved and the employer as a whole, and the type and characteristics of the employer's operation. Regarding these considerations and requirements, the Respondent has failed in not only defending Respondent's reasoning for denying the various accommodation possibilities both within Neuse and/or the greater employer, State of North Carolina but in even exploring either independently or as part of an interactive process accommodation possibilities with Petitioner.

23. For one or more of the reasons cited above, the Petitioner was the subject of unlawful discrimination because of her handicapping condition.

24. 25 N.C.A.C. 1B.0434 provides: *In those cases in which the State Personnel Commission finds an act of discrimination or unlawful workplace harassment prohibited by G.S. 126-16, G.S. 126-36 or G.S. 126-36.1, the Commission may order reinstatement, back pay, transfer, promotion or other appropriate remedy. The Commission shall also have the authority in such cases to order other corrective remedies to ensure that the same or similar discriminatory acts do not recur.*

25. 25 N.C.A.C. 1B.0422 provides: *Front pay is the payment of an amount to an employee above his/her regular salary, such excess amount representing the difference between the employee's salary in his/her current position and a higher salary determined to be appropriate due to a finding of discrimination. Front pay shall be paid for such period as the agency is unable to hire, promote or reinstate the employee to a position at the level ordered by the Personnel Commission.*

26. State Personnel Commission rules provide the Commission with special legal and equitable powers when discrimination has been found. The SPC may order *a higher salary determined to be appropriate due to a finding of discrimination (.0422) ; it may order back pay, transfer, promotion or other appropriate remedy; and it may order other corrective remedies to ensure that the same or similar discriminatory acts do not recur. (.0422)*

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

DECISION

There is sufficient evidence and supporting law to properly and lawfully support Petitioner's claim of disability based discrimination, and Petitioner prevails upon her contention that Respondent engaged in an unlawful State employment practice constituting discrimination.

It is the decision of the Undersigned that Petitioner be awarded back pay and front pay, if necessary, and all lost benefits.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina State Personnel Commission.

NOTICE

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with N.C. Gen Stat. § 150B-36.

IT IS SO ORDERED.

This the 3rd day of July, 2002.

Augustus B. Elkins II
Administrative Law Judge